

[REDACTED]

ATTORNEYS AT LAW

[REDACTED]

November 21, 2023

Robert A. Willig, Senior Deputy Attorney General
Office of the Attorney General
1251 Waterfront Place
Mezzanine Level,
Pittsburgh, PA 15222

RE: A.C.R.E. Complaint- Earl Township-Lancaster County,
[REDACTED]

Dear Mr. Willig:

Our office represents Earl Township and I have been forwarded your letter of September 27, 2023 regarding the above referenced A.C.R.E. Complaint which was filed by [REDACTED] on behalf of [REDACTED]. It is my understanding that [REDACTED] is proposing a poultry operation which will include the installation of a manure storage facility. Your letter states that the Complainant objects to the setback requirement imposed under the township zoning ordinance for the manure storage facility. Based on information provided to me by [REDACTED] it is my understanding that the proposed poultry operation is a concentrated animal operation (CAO). Under 25 Pa. Code 83.351 a manure storage facility needs to be set back at least two hundred (200) feet from any property line, unless the landowners within two hundred (200) foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the State Conservation Commission. [REDACTED] has provided signed waivers from three (3) neighboring landowners. Given the preemption provision set forth in 25 Pa. Code 883.205, together with the landowner waivers, I would agree that the setback for the manure storage facility proposed by [REDACTED] is allowable.

[REDACTED] is also proposing to build a poultry house barn which measures 81 feet in width and 636 feet in length. Under the regulations for the Nutrient Management Program in Pennsylvania Section 83-201 the definition of a "manure storage facility" specifically states in subparagraph three (3) that "the term does not include the animal confinement areas of poultry houses..." Accordingly, a municipality under its zoning ordinance is entitled to establish a setback for that structure. As shown on its submitted plan to the township it does not comply with the Earl Township Zoning Ordinance which requires a one hundred (100) foot set back from any street or other property line. The plan proposed by the Landowner shows a setback on the west side of the building as forty-five (45) feet and on the south side of the building as fifty-five (55) feet and therefore the poultry house is not in compliance with the Ordinance requirements. The Pennsylvania Municipalities Planning Code authorizes the Township to enact zoning setback restrictions. Additionally, Act 38 states in Section 313

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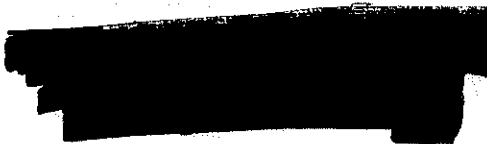
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that "Notwithstanding the provisions of this section, nothing in this chapter shall be construed to diminish, expand or otherwise affect the legislative or regulatory authority of local government units under State law,".

Regarding the odors/gases that may be created by the proposed poultry operation, the Right to Farm Act in Pennsylvania does provide in Section 953 that every municipality that defines or prohibits a public nuisance must exclude from the definition of such nuisance any agricultural operation conducted in accordance with normal agricultural operations. However, if that agricultural operation has a direct adverse effect on the public health, safety and welfare a municipality has the authority to seek any and all appropriate remedies to abate that nuisance.

In summary, the Township believes that it does have the authority under the Pennsylvania Municipalities Planning Code and its Zoning Ordinance to establish a one hundred (100) foot setback requirement for the poultry house which is set forth in Section 27-402 b of the Ordinance. Furthermore, should the poultry operation create a nuisance that has a direct adverse impact on the health, safety and welfare of the public the Township will take any and all appropriate action to abate that nuisance.

Very truly yours,

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Cc: Earl Township