

[REDACTED]

March 28, 2024

Robert A. Willig, Esq.
Commonwealth of Pennsylvania
Office of Attorney General
1251 Waterfront Plaza
Mezzanine Level
Harrisburg, PA 15222

Re: ACRE Complaint-Somerset
Township-Washington County-

[REDACTED]

Mr. Willig:

Response of Somerset Township enclosed/attached.

Yours truly,

[REDACTED]

[REDACTED]

cc: Somerset Township

In Re: ACRE Complaint

Somerset Township, Washington County, PA

Complaint filed by

Complaint:

complaints that Somerset Township will not permit to grow hops, a specialty crop, and manufacture craft beer to sell to the public.

Response to Complaint:

Somerset Township Zoning Ordinance adopted in 1985.

Zoning Map 1985 updated 2008.

purchases 22.953 acres on in 2020

In 2022 contacted Somerset Township requesting a permit to open a "farm fresh eatery and brewery. That request was denied by the zoning officer. appealed the Somerset Township Zoning Hear Board; appeal withdrawn by

September 8, 2023 meeting between his lawyer Atty. Township Solicitor and Code Enforcement and was advised that an eatery/brewery is not permitted. was advised that growing hops and selling is a permitted agricultural use and if a permit is necessary it would be approved that day. (09/08/2023)

January 2024 begins construction of a deck and out rooms to milk house without a building permit. submits building application after construction, permit denied. by his lawyer, sends a letter to Somerset Township to file appeal to the Zoning Hearing Board but does not file the application for appeal or pay filing fee.

Conclusion:

[REDACTED] has been advised by Somerset Township that there is no Township restriction on growing hops and selling to the public. [REDACTED] has been advised that an eatery/brewery is not a permitted use in the zoning district.

A brewery and eat in eatery are not a "Normal Agricultural Operation". [REDACTED] infers that any activity on his property is a "normal agricultural activity" and considers it unnecessary to acquire any type of permit that is required by Somerset Township.

Somerset Township does not have or enforce any ordinances/regulations in violation of Act 38 of 2005 (ACRE).

Attachments:

- p 1 Definition of Normal Agricultural Operations;
- pp 2-4 December emails between [REDACTED] and Municipal Consulting;
- pp.5-6 January 16, 2023 letter from Municipal Consulting to [REDACTED]
- pp.7-8 timeline from Municipal Consulting;
- p.9 January 8, 2024 letter from Municipal Consulting to [REDACTED] concerning construction of "deck and out rooms to milk house";
- pp.10-11 January 25, 2024 letter from Atty. [REDACTED] to Somerset Township with copy of Official Notice of a cease and desist for building construction without a building permit;
- pp.12-13 January 18 2024 email from Municipal Consulting to [REDACTED]

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§ 952. Definitions
Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 3 P.S. Agriculture

Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 3 P.S. Agriculture (Refs & Annos)
Chapter 14B. Protection of Agricultural Operations from Nuisance Suits and Ordinances (Refs & Annos)

3 P.S. § 952

§ 952. Definitions

Currentness

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Agricultural commodity." Any of the following, transported or intended to be transported in commerce:

- (1) Agricultural, aquacultural, horticultural, floricultural, viticultural or dairy products.
- (2) Livestock and the products of livestock.
- (3) Ranch-raised fur-bearing animals and the products of ranch-raised fur-bearing animals.
- (4) The products of poultry or bee raising.
- (5) Forestry and forestry products.

(6) Any products raised or produced on farms intended for human consumption and the processed or manufactured products of such products intended for human consumption.

"Municipality." A county, city, borough, incorporated town, township or a general purpose unit of government as established by the act of April 13, 1972 (P.L. 184, No. 62),¹ known as the "Home Rule Charter and Optional Plans Law."

"Normal agricultural operation." The activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities and is:

- (1) not less than ten contiguous acres in area; or
- (2) less than ten contiguous acres in area but has an anticipated yearly gross income of at least \$10,000.

The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry. Use of equipment shall include machinery designed and used for agricultural operations, including, but not limited to, crop dryers, feed grinders, saw mills, hammer mills, refrigeration equipment, bins and related equipment used to store or prepare crops for marketing and those items of agricultural equipment and machinery defined by the act of December 12, 1994 (P.L. 944, No. 134),² known as the Farm Safety and Occupational Health Act. Custom work shall be considered a normal farming practice.

Credits

1982, June 10, P.L. 454, No. 133, § 2, effective in 60 days. Amended 1996, June 12, P.L. 336, No. 52, § 1, imd. effective; 1998, May 15, P.L. 441, No. 58, § 1, imd. effective.

Footnotes

¹ 53 P.S. § 1-101 et seq. (repealed); 53 Pa.C.S.A. § 2901 et seq.

² 3 P.S. § 1901 et seq.

Re: [REDACTED]

From: [REDACTED]

To: [REDACTED]

Date: Tuesday, December 13, 2022 at 01:37 PM EST

Sounds good.

On Tue, Dec 13, 2022 at 1:36 PM [REDACTED] wrote:

[REDACTED] I'll review and get back to you with a recommendation.

[REDACTED]

On Tuesday, December 13, 2022 at 01:33:35 PM EST, [REDACTED] wrote:

My response to [REDACTED] proposed Eatery /Brewery

Thank You

----- Forwarded message -----

From: [REDACTED]
Date: Tue, Dec 13, 2022 at 1:20 PM
Subject: [REDACTED]
To: <[REDACTED]>
Cc: Julie Ann <[REDACTED]>

I have reviewed the zoning district for the proposed Farm Fresh Eatery / Brewery located at [REDACTED]

This property is located in the R-1 Zoning District. I find that an Eatery /Brewery is not an authorized use in this District and only permitted in the B-1 District
Therefore it is my determination that any such use is denied and not permitted under the current configuration of the Township Zoning Ordinance.

However, An appeal from his determination may be filed with the Zoning Hearing Board. Such an appeal must be filed within 30 days from the date of this email.

Please contact me with any questions concerning this decision.

On Wed, Dec 7, 2022 at 6:37 AM [REDACTED] wrote:

[REDACTED]

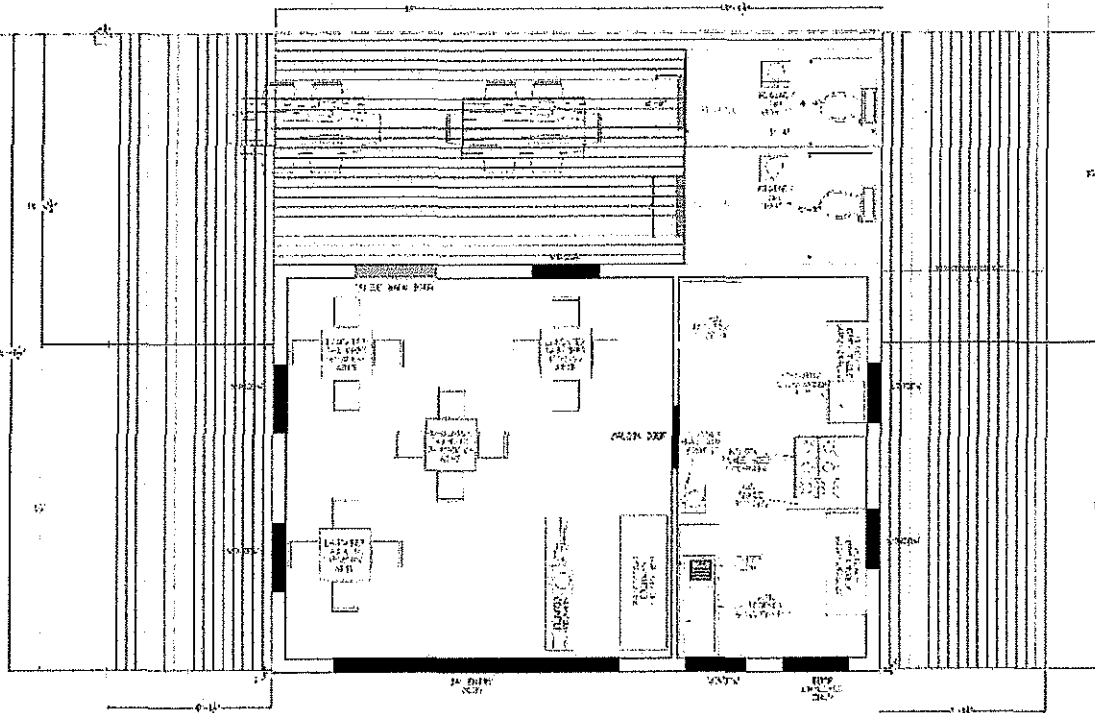
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Thanks for the time spent on the phone the other day. My wife, [REDACTED] and I purchased our property in 2020 with the goal of opening a small and quaint farm-fresh eatery and brewery. We own 2 lots, a 1.25 acre where our home sits, and 22 plus where the Barn and Milkhouse is, [REDACTED]. We've completed most of the major renovations of the existing property and are now prepping the kitchen and brewery manufacturing areas. This project will be completed in multiple phases, beginning with the old Milk House that was once [REDACTED]. Below is the layout we are arranging for the Milk House, which was

reviewed by [REDACTED] the Food Safety Supervisor. Sewage is public, provided by [REDACTED] municipal of [REDACTED]. Water is also public. Currently Peoples Gas and West Penn have approved service drops and we are planning the utility runs. There is much work ahead for the entire picture to unfold, but our short term goal is to open the Milk House kitchen in the 2nd quarter of next year for catering food preparation. If all goes well, we hope to open the Milk House and outside seating areas for sit-in or takeout services in Q4. As I mentioned, we discussed this plan with [REDACTED] who at the time confirmed that zoning was sufficient for these operations, however I do not recall speaking about occupancy requirements. Please let me know your thoughts, or feel free to stop by the farm to discuss further.

Best Regards,

[REDACTED]
President
[REDACTED]
[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

January 16, 2023

[REDACTED]

RE: Occupancy (Use) [REDACTED] - Brewery/Eatery

[REDACTED]

I have reviewed the zoning district for the proposed Farm Fresh Eatery / Brewery located at [REDACTED] [REDACTED]. This property is in the R-1 Zoning District. I find that an Eatery /Brewery is not an authorized use in this District and only permitted in the B-1 District. Therefore, it is my determination that any such use is denied and not permitted under the current configuration of the Township Zoning Ordinance.

An appeal from his determination may be filed with the Zoning Hearing Board. Such an appeal must be filed within 30 days from the date of this email.

Please contact me with any questions concerning this decision.

Sincerely,

[REDACTED]

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Somerset Township

615 Vanceville Road Eighty-Four PA 15330

Phone 724-222-0630 / Fax 724-222-0654

Occupancy Application

Location: [REDACTED]

Zoning District: [REDACTED] Parcel #: [REDACTED]

Proposed Use: Brewery/Eatery

New Owner: [REDACTED] New Occupant: [REDACTED]

Mailing Address: [REDACTED]

Phone: [REDACTED] Email: [REDACTED]

Permit Cost: Home Occupation	\$50.00	_____
Business Occupation	\$100.00	<u>X</u>
Residential Occupancy (Own)	\$50.00	_____
Residential (Rental)	\$30.00	_____

Contact Information to whom occupancy permit is to be issued.

Name: [REDACTED] Phone: [REDACTED]

Email: [REDACTED]

Signature of Applicant: [REDACTED] Date: 1-11-2023

Official Use

Approved: Yes _____ No Date: 01/16/2023

Reason Denied: NOT AN AUTHORIZED USE IN THE R-1 ZONING DISTRICT

Code Official: [REDACTED]

[REDACTED]

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Fwd: [REDACTED] iolation

From: [REDACTED]

To: [REDACTED]

Date: Monday, March 18, 2024 at 01:13 PM EDT

----- Forwarded message -----

From: Municipal Consulting [REDACTED]

Date: Tue, Mar 5, 2024 at 10:45 AM

Subject: [REDACTED]

To: [REDACTED]

The following is a rough timeline for the recent Violation at the [REDACTED]

- Dec 2022- [REDACTED] contacted me by phone Inquiring about what he needed to do to open his business. see att. email thread 12/7 to 1/9/23
- Dec- Applied for occupancy of a Brewery/Eatery
- 12/13/2022- Denied Occupancy for Zoning reasons.
- Feb 2023- Appealed Code Officials Decision.
- 2/28/2023- Initial hearing held, continued. Applicant stormed out of hearing.
- 3/7/2023- Continuation hearing held. Withdrew and was denied by ZHB. Facts & Findings available.
- Between Mar-Sep- [REDACTED] went through and was granted approval of separate subdivision on a different portion of his property.
- Sep 8, 2023- Meeting requested by his counsel w/Twp Officials for similar "Use" discussion. First time "Commercial Recreation" is mentioned for some type of golf center.
- Sept-Dec- No action of note.
- Dec. 27, 2023- Notified construction taking place at property
- Dec 28, 2023- Verified by visit to property.
- 1/5/2023- Received building permit application through twp.
- 1/5/2024 received email acknowledging violation letter
- 1/02/2024- Issued/sent cease and desist letter.
- 1/28/2024- Denied building permit Application.
- 1/25/2024- Filed citation on behalf of Somerset Township.

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Somerset Township

615 Vanceville Road
Eighty Four, PA 15330
724-222-0630

January 8, 2024

[REDACTED]
[REDACTED]
[REDACTED]

RE: Building Permit [REDACTED] - Brewery/Eatery

[REDACTED]

Your Building Permit Application has been Denied

I have reviewed your building permit application for the proposed addition of a "deck and out rooms to milk house." The denial is based on the following factors.

The Eatery / Brewery located at [REDACTED] is not a Permitted Use. This property is in the R-1 Zoning District. As you are aware an Eatery (Eat/Drink place) is not allowed in a residential zoning district. Also, a Brewery (Light Manufacturing) is not allowed in a residential zoning district. Both of these uses are only authorized in other Zoning Districts not in R-1 Zoning District where your property is located.

As well your application not passing zoning review. It should be noted that the drawings you have submitted are concept drawings and would not be accepted. All commercial Drawings would need to be Stamped/Sealed blueprints prepared by a professional Architect or Engineer.

Therefore, it is my determination that your proposed use and subsequent application is denied and not permitted under the current configuration of the Township Zoning Ordinance as not allowed in a residential zoning district. As well as insufficient stamped drawings.

An appeal from his determination may be filed with the Zoning Hearing Board. Such an appeal must be filed within 30 days from the date of this letter.

Please contact me with any questions concerning this decision.

Sincerely,

[REDACTED]
[REDACTED]
[REDACTED]

[Redacted]

[Redacted]
Washington, PA 15301

January 25, 2024

Somerset Township
615 Vanceville Road
Eighty-Four, PA 15330

IN RE: Notice of Appeal of Decision of Code Enforcement Officer

To whom it may concern:

Please be advised that I represent [Redacted] Please accept this letter as their appeal to the Zoning Hearing Board of an alleged violation in connection with the "Official Notice", dated December 29, 2023, a copy of which is attached hereto. Please docket the appeal and schedule a hearing in this matter.

I would also respectfully suggest that the Township solicitor be engaged in this matter.

If you have any questions with regard to this matter, please do not hesitate to contact me.

Very truly yours,

[Redacted Signature]

By: [Redacted]
Attorney at Law

cc: [Redacted]

Enclosure

[Redacted]

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Somerset Township

615 Vanceville Road Eighty Four PA 15330

Phone: (724) 222-0630

Fax: (724) 222-0654

Official Notice

12/29/2023



Violation(s)

Somerset Twp: Building without Permit CEASE and DESIST

§ 65-2. Permit required.

It shall be unlawful for any person or persons, partnership or corporation, to erect or construct any new building, either for residential or commercial purposes, within the limits of Somerset Township, Washington County, Pennsylvania, or to alter, repair, enlarge, as hereafter defined, any existing building or remove any existing building within such limits until there has first been secured by the owner or owners of said building a permit issued by the Code Enforcement Officer of Somerset Township.

sec. 65-7 Cease and Desist all construction activities, Failure to do so may result in you being found guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus costs of prosecution.

Correct within days: 0

YOU ARE IN VIOLATION OF THE REFERENCED ORDINANCE

The issue needs addressed and corrected within the numbers of days listed above. If not corrected a Citation will be issued and filed with the local District Justice.

Failure to comply with this notice within the time specified, unless extended by the appeal to the Board constitutes a violation with possible sanctions clearly described. An appeal from this determination may be filed with the Zoning Hearing Board. Such an appeal must be filed within 30 days from the date of mailing of this Notice.

Please call the number below if you have any questions.

Thank you for your cooperation.

Code Enforcement Officer

PLEASE CONTACT MCS (724) 263-0377 OR (724) 470-8254

Email: mcservices111@gmail.com

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response

From:

To:

Date: Thursday, January 18, 2024 at 12:21 PM EST

This email is in response to the email you sent on Jan 16, 2024. I have broken down my response in a point by point format in the hopes of making things more clear.

- You stated "Three years ago we spoke to the Somerset Zoning board." The township has no record of any zoning hearings for your property. The Zoning Hearing Board is for dispute resolution on zoning matters so if you spoke to them there would be some sort of record. Please produce any such records and I'll be happy to review them.
- "Somerset twp. Employees on your property for drainage/utilities" What purpose were they there for? I believe it may have been for a road cut for tying into the sewer. If that is the case, that would be for the township road, not your property. Also, said sewer line was for personal use to your house. In addition, Somerset has no jurisdiction over sewer or their Sewer authority, I merely checked to see if they had permitted it. If I am not correct with my reasoning please feel free to clarify.
- Somerset's agent of Somerset Township has specifically denied your occupancy application for "Farm Fresh Eatery / Brewery" because of zoning issues. The email of Denial from Dec. 13 2022 is attached to this email by you. We have approved other requests such as a separate subdivision and a road cut. According to our records the solar panel application was on hold based on whether you were applying for them under the requested business or for personal use. That question was never answered by you, therefore that application was never approved or denied.
- We have received no communication from your engineer in regards to a site plan spoken of in our meeting with you and your attorney (Sept. 8, 2023). We have checked our records dating back to the aforementioned meeting and have failed to find any email correspondence, voicemails and even went as far as to research call logs to see if there were any missed calls from him. None were found. He should have had no problem contacting us, and again we have no record of any such communication. In addition, I'm not sure why he would need to contact us. The type of site plan that he needs to draw up for you is based completely on the zoning of the area and proposed use, all information found in the zoning ordinance/saldo. That information can be located both through the township and on the township website. We are well aware of that, or should be. Any communication with anyone at Somerset should not have any bearing on a site plan that is being prepared by him.
- In regards to the meeting, you were told that farming (growing/selling) of raw materials, I believe you stated you were going to grow hops, was permitted as an agricultural use (activity) but the brewery and eatery was not permitted by ordinance. In said meeting you were also told that you were welcome to reapply, because you discussed some type of golf center, but that application would need to have a detailed description of use and site plan attached.
- In regards to your statement of what we're "doing wrong in your eyes." I thought I, as well as others, made it clear that the denial was based solely on Somerset's Zoning Ordinance. There are certain "permitted uses" and activities that are allowed and others that are not. The ordinance is not about right or wrong, I/we simply determine whether a requested "Use" is permitted or not permitted according to the Ordinance and then approve or deny accordingly. An applicant has a right to appeal my determination, as you did.
- To be clear the different uses referred to in your original application are as follows:
 - Growing/Selling of crops. Defined as "Agricultural"- Permitted in R-1 district.
 - Brewery. Defined as "Light Manufacturing"- Not permitted in R-1 district.
 - Eatery. Defined as "Eat/Drink Place"- Not permitted in R-1 district.

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- For additional clarification your property is located in an R-1 district (zoned R-1). While "Agricultural" uses/activities are permitted in that district, your property is not located in an Agricultural district (zoned A-1).
- In response to the construction of a deck not needing a permit. The Township adopted the Uniform Construction Code in 2004 and, according to their Ordinance, have required building permits even predating that. So if someone told you that no permit was required, they were clearly mistaken. Additionally, after being issued a stop work order for a deck being constructed. You submitted an application showing a proposed deck to be constructed wrapping three sides of your detached building and attaching to your barn as well as depicting equipment and seating area for the previously denied brewery/eatery. As you are aware that permit has been denied on the basis of it being in furtherance of the previously mentioned zoning denial.

I hope this clears things up for you. Feel free to respond with any issues or questions.

Thank you for your time and attention,

