

July 18, 2024

[REDACTED] and [REDACTED] are believed to reside at [REDACTED] Coolbaugh Township, PA, more particularly identified as Monroe County Parcel [REDACTED], comprising of approximately 0.2 acres. [REDACTED] is the owner of [REDACTED]. [REDACTED] is believed to own an adjacent property identified as Monroe County Parcel [REDACTED] also comprising of approximately 0.20 acres. The properties are located in the R-3 Medium-Density Residential Zoning District, where Animal Husbandry, Home Use is permitted subject to the restrictions of the Zoning Ordinance. It is believed that the majority of the non-permitted structures and the livestock and chickens are located on [REDACTED] 0.2 acre parcel at [REDACTED].

There is no violation of ACRE and/or the RTFL in this case. The relevant property is a 0.2 acre parcel located in the R-3 Medium-Density Residential Zoning District and it is improved with a residential dwelling that [REDACTED] are believed to use as their primary residence. [REDACTED] complaint stems from certain provisions in Coolbaugh Township's Zoning Ordinance that limit the number of chickens and livestock on the property, as well as the requirements that they secure a permit for accessory structures and that such accessory structures be located outside of the requisite yard setback and public right-of-way.

Included with this letter are photographs of the 0.2 acre residential property that contains the accessory structures that have not been permitted and the chickens and livestock. This is clearly not a farm. This is a residential property with a single-family residential home and [REDACTED] is seeking to engage in agricultural activity as an accessory use beyond what is permitted under the Zoning Ordinance. The 0.2 acre parcel is not permitted to have livestock given its small size. The Zoning Ordinance requires a parcel to be at least two (2) acres in order to have livestock. [REDACTED] property is also not large enough to maintain seven (7) chickens. The Zoning Ordinance allows for ten (10) chickens per acre of property. At most, [REDACTED] would be permitted to have two (2) chickens on the 0.2 acre parcel.

First and foremost, [REDACTED] is not entitled to ACRE protection from the enforcement of the Zoning Ordinance because he is not operating a farm. Although a farm is not expressly defined in the RTFL and/or ACRE, [REDACTED] is more appropriately characterized as a resident, not a farmer. It is important to look at the intent of the RTFL and ACRE, which were intended to protect farmland, with farmland being described as areas where agriculture has traditionally been present. The subject property in this case is a 0.2 residential property in the poconos with a single-family dwelling that has no history of being used for agricultural use.

Neither ACRE nor the RTFL are implicated by the Township's enforcement of its Zoning Ordinance. Pursuant to ACRE, municipalities shall not enforce or adopt ordinances which:

(1) Prohibits or limits a normal agricultural operation unless a local government unit:

- (i) Has expressed or implied authority under state's law to adopt the ordinance; and
- (ii) It is not prohibited or preempted under State law from adopting the ordinance.

3 Pa. C.S.A. §312. The definition of "normal agricultural operations" includes those "activities, practices, equipment and procedures that farmers adopt, use or engage in the production and

preparation for market of poultry..." 3 P.S. §952. A "farmer" is defined as a person "engaged in the production of agricultural commodities." 3 P.S. §2402. "Agricultural commodity" is defined as those farm products that are "transported or intended to be transported in commerce." 3 P.S. §952. The above-referenced terms indicate that ACRE's applicability is limited to farms engaged in commerce that are producing commodities to sell in the marketplace. Clearly [REDACTED] accessory use on his 0.2 acre residential property does not include the production of agricultural products for sale in the marketplace, the production of agricultural commodities that are transported in commerce, and/or otherwise include a normal farming business. Accordingly, ACRE does not apply.

In addition to the above, the Court in *Commonwealth v. Richmond Twp.*, 917 A.2d 397, stated the following in pertinent part:

Section 312 of ACRE, 3 Pa. C.S. §312, adopts the definition of "normal agricultural operation" in section 2 of the Right to Farm Law, 3 P.S. §312, which defines a "normal agricultural operation" as:

[t]he 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.

Clearly [REDACTED] does not meet the first element for a normal agricultural operation as the property is only 0.2 acres. There is also no evidence of [REDACTED] receiving any income associated with his accessory use on his property, and it is believed that any such claimed revenue by [REDACTED] will be far below the requisite \$10,000.00 required to be considered a normal agricultural operation. Any claimed revenue from two livestock, consisting of two micro mini cows, and seven (7) chickens will not amount to anywhere near the requisite \$10,000.00 threshold.

The Court in *Commonwealth v. Locust Twp.*, 49 A.3d 502, also stated the following in relevant part:

An unauthorized ordinance under ACRE, therefore, is "one that prohibits or limits a normal agricultural operation absent authority of state law." *Commonwealth v. Richmond Twp.*, 917 A.2d 397, 405 (Pa. Cmwlth. 2007)...

The threshold question in any ACRE case is whether the Ordinance prohibits or limits a "normal agricultural operation." *Commonwealth v. East Brunswick Twp.*, 956 A.2d 1100, 1115 (Pa. Cmwlth. 2008).

Commonwealth v. Locust Twp., 49 A.3d 502, 516-517. As is clearly evident from the facts in this case and the property involved, and as depicted on the attached photographs, the property in this case is not a normal agricultural operation and therefore ACRE does not apply. Further, the relevant Zoning Ordinance provisions in this case do not prohibit or limit normal agricultural operations within the Township.

Municipalities have express authority under the MPC to regulate land uses within their territory through their zoning ordinance. The Pennsylvania Commonwealth Court in *Commonwealth v. Locust Twp.*, 49 A.3d 502, 516 (Pa. Cmwlth. 2012), ruled that the RTFL prohibits municipalities from declaring or prohibiting normal agricultural operations as a public nuisance, but that it is not a violation of the RTFL for a municipality to enforce its zoning ordinance. *Commonwealth v. Locust Twp.*, 49 A.3d 502, 516 (Pa. Cmwlth. 2012). Here, the relevant sections of the Coolbaugh Township Zoning Ordinance are specifically authorized as appropriate zoning ordinance land use provisions under the MPC. The Township is not enforcing a nuisance ordinance and/or provision, but simply enforcing its appropriate land use restrictions provided for within its Zoning Ordinance in accordance with the MPC. The relevant sections of the Zoning Ordinance, and specifically Sections 400-57.B(2), 400-119.A(2) and 400-18 of the Zoning Ordinance are not inconsistent with ACRE and/or the RTFL and are permitted regulations under the MPC. (Copies of the above-referenced sections of the Zoning Ordinance are attached hereto.)

The Zoning Ordinance provisions at issue in this case do not regulate the operation and/or process of farming, but simply provide for reasonable land use limitations in the Township's R-3 Medium-Density Residential Zoning District. [REDACTED] accessory use on his property is not a normal agricultural operation and the Township's Zoning Ordinance does not attempt to regulate any normal agricultural operation within the Township.

Further, the RTFL is intended to protect existing farms from harm caused by rezoning. No such rezoning is present in this case. [REDACTED] property was not historically used for farming or agriculture and has not been rezoned. [REDACTED] introduced the livestock and chickens and installed the accessory structures in violation of the Zoning Ordinance in or around 2022 and 2023 and the Township began enforcement proceedings soon thereafter. The Township's Zoning Ordinance is not intended to and does not harm any longstanding farming operation within the Township. Similarly, the relevant Zoning Ordinance provisions are not inconsistent with ACRE. ACRE preempts local ordinances that seek to prohibit or restrict agricultural operations of a farming business. [REDACTED] does not operate a farm, does not produce or sell agricultural commodities as defined by ACRE and does not engage in agricultural commerce. Therefore, the enforcement of the applicable Township Zoning Ordinance provisions is not prohibited by ACRE.

In relation to the enforcement actions of the Township, [REDACTED] was issued three separate Zoning Enforcement Notices in July 2023 for violating the Coolbaugh Township Zoning Ordinance due to the keeping livestock, an excessive number of chickens, and a rooster on the above-referenced 0.2 acre residential property. Specifically, [REDACTED] have violated and continue to violate Section 400-57.B(2) of the Zoning Ordinance by keeping livestock and a

number of chickens beyond that permitted on the property. Section 400-57.B(2) of the Coolbaugh Township Zoning Ordinance states the following in relation to Animal Husbandry, Home Use:

(2) Animal husbandry, home use.

(a) The following minimum parcel sizes shall be required (including the dwelling unit):

- [1] Livestock: two acres.
- [2] Small animals and fowl: no minimum.

(b) The following minimum front, side and rear setback distances shall be maintained for any pens (but not pasture areas), stables, barns, coops or other animal housing structures and for the indoor or outside storage of manure, by-products or waste:

- [1] Swine: 100 feet.
- [2] Other livestock: 75 feet.
- [3] Small animals and fowl: 25 feet.

(c) The maximum number of animals shall not exceed the following:

- [1] Cattle, bison, swine and similar animals: one per acre with a maximum total of three.
- [2] Sheep, goats, llamas, alpacas, ostriches, emus, and similar animals: four per acre with a maximum total of 12.
- [3] Small animals and fowl: 10 per acre with a maximum total of 30.

_____ currently maintain two (2) livestock and seven (7) chickens on the property. The 0.2 acre parcel is not large enough for the keeping of livestock and/or the seven chickens pursuant to the Zoning Ordinance.

In addition to the above-referenced Zoning Enforcement Notices under Section 400-57.B(2), _____ was also served with a Zoning Enforcement Notice in May 2023 due to the installation of accessory structures on the Property without securing the requisite zoning permits. The installation of accessory structures on the property required a zoning permit under Section 400-119.A(2) of the Zoning Ordinance and _____ failed to secure such a permit. In addition to not securing the requisite zoning permits, the accessory structures encroach within the requisite yard setbacks in violation of Section 400-18 of the Zoning Ordinance and also encroach within the Coolbaugh Township public right-of-way. Dimensional land use regulations, such as yard setbacks are within the authority of the Township to include within its Zoning Ordinance pursuant to the MPC. Further, the requirement to have property owners secure a zoning permit before installing structures on their property is clearly authorized under the MPC. In addition, and perhaps more importantly, prohibiting encroachments within the Township's public right-of-way along public roadways is within the authority of the Township and does not run afoul of ACRE and/or the RTFL.

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The above-referenced sections of the Zoning Ordinance, specifically Sections 400-57.B(2), 400-119.A(2) and 400-18, are traditional land use regulations and provide appropriate zoning ordinance restrictions in accordance with the MPC. The MPC provides the Township with the authority to implement such land use regulations in the Zoning Ordinance, and the Township is not prohibited or preempted from doing so under ACRE or other laws.

In sum, the Township has express authority to establish zoning districts and land use regulations within those zoning districts. The relevant provisions regulate the use and specific conditions associated with the use of the land and such provisions are reasonable and authorized by the MPC. None of the above-referenced sections of the Coolbaugh Township Zoning Ordinance are unduly restrictive and each provision bears a substantial relationship to the protection of public welfare. As such, the Coolbaugh Township Zoning Ordinance is consistent with the MPC and complies with ACRE and the RTFL.

Thank you for your attention to the foregoing. If you have any questions, please feel free to contact my office.

Very truly yours,

A thick, solid black horizontal bar used to redact the signature of the sender.

By: 