

[REDACTED]
Attorneys at Law

[REDACTED]
December 5, 2024

Via E-MAIL [REDACTED]
Ms. Elizabeth K. Spangenberg
Office of Attorney General
15th Floor Strawberry Square
Harrisburg, PA 17120

Re: ACRE Request for Review

Dear Ms. Spangenberg:

I serve as solicitor to the Lower Milford Township Board of Supervisors and am writing in response to your letter dated November 5, 2024 regarding the ACRE Complaint filed by [REDACTED] of [REDACTED]

[REDACTED] ("Landowner") is the owner of the property located at [REDACTED] in Lower Milford Township ("Property"). The Property is 3.8 acres and is located within the Township's Rural Residential-1 Zoning District ("RR-1 District"). On August 19, 2024 the Township issued a Notice of Violation to Landowner for: (1) operating a winery on the Property known as [REDACTED] where a winery is not permitted within the RR-1 District, and (2) keeping several large pets on the Property in violation of Section 1200(A)(9) of the Lower Milford Township Zoning Ordinance ("Zoning Ordinance"). [A true and correct copy of the Notice of Violation is attached hereto as Exhibit "A"].

The Township Supervisors have considered the issues raised in Landowner's ACRE Complaint which was filed in response to the Notice of Violation. In particular, Landowner avers that she operates a farming operation on the Property which includes growing grapes and fruit for the production of wine, and raising sheep, goats, chickens and ducks for production and sale of animal products.¹ The Complaint states that Landowner anticipates more than \$10,000 in gross income from these operations.

¹ The Notice of Violation states that the large animals being kept on the Property include seven (7) goats, four (4) alpacas, one (1) sheep and various poultry. Landowner's ACRE Complaint does not claim that the alpacas are used for an agricultural use.

[REDACTED]

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Initially, I note that Lower Milford Township is an agricultural community. The Supervisors have strived to ensure that the Zoning Ordinance fosters farming throughout the Township. The Supervisors understand that viticultural products, dairy products, and products raised or produced on farms for human consumption are “agricultural commodities” pursuant to the Right to Farm Act. Accordingly, the Supervisors acknowledge that the production and sale of these agricultural commodities are protected normal agricultural operations on a property less than 10 acres if those operations are anticipated to earn at least \$10,000 in gross income.

Landowner, however, has failed to establish that her use of the property includes growing grapes, the production of wine, or the raising sheep, goats, chickens and ducks for production and sale of animal products, or that these operations will earn at least \$10,000 of income. Rather, Landowner has consistently informed the Township that [REDACTED] purchases grapes from local orchards, outsources production of wine to off-site vendors, and only keeps farm animals on the property as family pets.

Specifically, in response to the Notice of Violation, Landowner sent an e-mail dated August 22, 2024 to the Township’s zoning officer in which she stated that [REDACTED] wine is produced offsite in Kempton, Pennsylvania and retail sales of wine are done in Kutztown, Pennsylvania or farmers markets. [A true and correct copy of Landowner’s August 22, 2024 e-mail is attached hereto as Exhibit “B”] Landowner further noted that the animals on the Property are “pets”. *Id.*

The use of the Property, and the violations of the Zoning Ordinance listed in the Notice of Violation do not include the production of “agricultural commodities” or “normal agricultural operations” as those terms are defined in the Right to Farm Act and ACRE. Landowner’s ACRE Complaint fails to include any documentation to support claims that the existing uses are protected by ACRE.

For the foregoing reasons, the Lower Milford Township Board of Supervisors respectfully requests that Landowner’s ACRE Complaint be dismissed. Alternatively, the Supervisors request the Landowner schedule a site visit of the Property with Township officials and/or members of the Office of the Attorney General to inspect the purported farming operations, and Landowner produce records to establish the anticipated gross income of the farming operations. An inspection and the requested records are necessary to resolve the conflicting information Landowner has provided to the Township regarding the use of the Property. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

[REDACTED]

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[REDACTED]
cc:

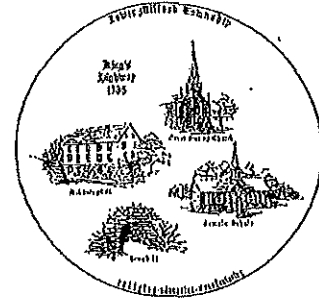
[REDACTED]
Lower Milford Township Board of Supervisors
[REDACTED]

EXHIBIT A

LOWER MILFORD TOWNSHIP

--BOARD OF SUPERVISORS--

7607 Chestnut Hill Church Road
Coopersburg, PA 18036-3712
Telephone (610) 967-4949
Fax (610) 967-1013



Board Members:

Ellen L. Koplín, Chair
Lowell F. Linde, Vice-Chair
Timothy E. Cogle, Supervisor

VIA USPS CERTIFIED RETURN RECEIPT AND USPS FIRST-CLASS MAIL

August 19, 2024

[REDACTED]

RE: Notice of Violation – Parcel Identification Number [REDACTED]

[REDACTED]

Dear [REDACTED]

You are the record owners of the above-referenced property located at [REDACTED] identified as parcel identification number [REDACTED] and sized at 3.804 acres, located in the Rural Residential-1 (RR-1) Zoning District in Lower Milford Township, Lehigh County, as depicted on the Lower Milford Township Zoning Map adopted July 20, 2009 and regulated in accordance with the Lower Milford Township Zoning Ordinance No. 114 of 2009, as amended ("Zoning Ordinance").

On October 3, 2023, I issued a letter to your attention inquiring about the uses present on your property after receiving notice from the Pennsylvania Liquor Control Board regarding your application for a winery license. Upon receipt of my letter, you contacted the Township Office and we met in person on October 16, 2023. At that time, I informed you that a winery was not a permitted use within the RR-1 district. You informed me that although you received your winery license, you had not actively begun operation as a winery. You expressed interest in exploring zoning relief required to operate the winery. This was detailed in my follow up letter dated November 28, 2023, which requested an update on how you planned to proceed with receiving potential zoning relief. On December 4, 2023, we spoke via telephone and you advised me that you were not proceeding with requesting zoning relief to operate your winery and were actively looking to relocate your future winery business.

Notice of Violation – [REDACTED]
August 19, 2024

It has come to my attention that, despite our prior conversations, [REDACTED] is being operated on your property at [REDACTED]. The operation of the winery is evident due to your active presence online, including but limited to the appearance of the winery as a business on Google maps, the business website [REDACTED], the business Facebook page and your listing as a vendor at multiple farmers markets.

In accordance with Ordinance Article V, Section 501 *Use Regulations*, a winery is not a permitted use within the RR-1 zoning district and constitutes as a violation of the Ordinance. **The use of your property as a winery must cease and be removed within thirty (30) days of receipt of this letter.** As property owner, you have the right to file an appeal to the Zoning Hearing Board as provided for in Article XVI, *Administration and Enforcement*, of the Zoning Ordinance. Appeals must be filed within thirty (30) days of receipt of this letter. Enclosed is a copy of the Zoning Hearing Board Notice of Appeal. The application must be returned to the Township Office along with the applicable fee of six hundred (\$600.00) dollars, as set by Resolution 2024-1. Failure to comply with this notice within thirty (30) days, unless extended by an appeal to the Zoning Hearing Board, will result in civil enforcement action being commenced by the Township and could result in fines of not more than five hundred (\$500.00) dollars per day that the violation continues, plus reimbursement of the legal fees incurred by the Township. Enforcement of municipal Zoning Ordinances is required by the Pennsylvania Municipalities Planning Code Act of 1968, P.L.805, No. 247, as reenacted and amended.

Additionally, the Township has become aware that numerous large and medium sized animals are being kept on your property, including but not limited to seven (7) goats, four (4) alpacas, one (1) sheep, and various poultry. Zoning Ordinance Article XII, Section 1200, Subsection A.9 permits the keeping of common domestic farm animals as pets on properties in the Township, but limits the number of small, medium and large sized animals on properties as follows:

“ A.9 Common Domestic Farm Animals as Pets

Non-traditional pets (i.e. other than dogs, cats or common house birds) can be kept according to the following limitations:

a. Small common domestic farm animals such as poultry, rabbits or other small non-nuisance animals (excluding mink, roosters and garbage fed pigs) may be kept as domestic pets on residential properties in all districts. Unless the parcel is over 3 acres, the number of small animals shall not exceed twelve (12) aggregate. Roosters are not permitted on residential properties under three (3) acres in RR-2 or VC Districts. Coops or shelters must be located in rear yards and meet a minimum of twenty-five (25) foot setback from both side and rear property lines.

b. Large and medium sized and additional numbers of small common domestic farm animals and birds may be kept as pets or for domestic purposes (other than animal husbandry or qualifying as Intensive Agriculture) on a parcel of at least three (3) acres in the AC, RC, and RR-2 Districts, and which meets the minimum yard requirements

Notice of Violation - [REDACTED]
August 19, 2024

pursuant to the following requirements:

- 1) One (1) large animal such as a horse, cow, or pig, four (4) medium sized animals such as sheep; or not more than twenty-five (25) poultry, fowl, rabbits, or other small animals (excluding minks and garbage fed pigs) for the initial three (3) acres;*
- 2) One (1) additional large animal per added 1 ½ acres, or four (4) additional medium sized animals, or twenty-five (25) additional small animals (excluding mink) may be kept per each additional acre;"*

In accordance with Article XII, Section 1200, Subsection A.9, the keeping of large and medium sized animals is not permitted in the RR-1 district and in violation of the Zoning Ordinance. **The animals must be removed from your property within thirty (30) days of receipt of this letter.** As property owner, you have the right to file an appeal to the Zoning Hearing Board as provided for in Article XVI, *Administration and Enforcement*, of the Zoning Ordinance. Appeals must be filed within thirty (30) days of receipt of this letter. Enclosed is a copy of the Zoning Hearing Board Notice of Appeal. The application must be returned to the Township Office along with the applicable fee of six hundred (\$600.00) dollars, as set by Resolution 2024-1. Failure to comply with this notice within thirty (30) days, unless extended by an appeal to the Zoning Hearing Board, will result in civil enforcement action being commenced by the Township and could result in fines of not more than five hundred (\$500.00) dollars per day that the violation continues, plus reimbursement of the legal fees incurred by the Township. Enforcement of municipal Zoning Ordinances is required by the Pennsylvania Municipalities Planning Code Act of 1968, P.L.805, No. 247, as reenacted and amended.

Thank you in advance for your cooperation in this matter.

Sincerely,

[REDACTED]

Lower Milford Township
Township Administrator/
Zoning Officer and Planning Administrator

CC:
Lower Milford Township Board of Supervisors (via email)

[REDACTED]

EXHIBIT B

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Thursday, August 22, 2024 7:17 PM
To: Zoning <zoning@lowermilford.org>
Subject: [REDACTED]

Hi [REDACTED]

I am EMailng you to have a written account as to what was stated on your message over the phone when I called on 8/22/2024 to make sure you received my message.

- 1) [REDACTED]s produced in Kempton, PA.
- 2) Our retail sales are done in Kutztown, PA and at other Farmers Markets.
- 3) I will look over our online presence and make sure people are aware that [REDACTED] does not exist in Lower Milford Township. Our Google listing was changed and is in the verification process.

This year has been extremely hard and busy finding a new home for our business. We have appreciated your patience in working through this even though we were not able to stay in Lower Milford like we would have loved to.

As far as our animals are concerned they are our pets and we love each and every one of them. We have built a place here that our neighbors love to come and bring their children. We have thinned our herd down and would appreciate it if you could direct anyone with questions or concerns to us personally so that we can understand and rectify any problems our neighbors may have with our animals. We constantly have our neighbors come and tell us how much they love the animals and what we are doing. I understand everyone has a job to do but this property has been my life for a very long time. I take our home, our animals and what we do

seriously. If you have any further questions or concerns you can always call me.

Thank You,

[REDACTED]

[REDACTED]