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November 12, 2024

VIA FEDERAL EXPRESS

Robert A. Willig, Senior Deputy Attorney General
Legal Review Section
Pennsylvania Office of Attorney General
Attn: ACRE
15th Floor, Strawberry Square
Harrisburg PA 17120

Re: ACRE Request for Review

[REDACTED]
Chestnuthill Township, Monroe County - Zoning Ordinance Enforcement Notice

Dear Deputy Attorney General Willig,

This office represents [REDACTED], owner of the above-referenced property located in Chestnuthill Township, Monroe County, Pennsylvania. This letter requests a review under ACRE of various provisions of the Chestnuthill Township Zoning Code, (hereinafter "the Ordinance") a copy of which is attached hereto. A copy of the Enforcement Notice issued to our client is also attached, to which we have taken an Appeal.

Our client owns a 56-acre property, located in the Rural Residential zoning district, upon which equine activities such as boarding stable, training of equines and riding instruction and riding have been being conducted for many years, prior to and continuing through her purchase. The use has been being conducted there since the 1970s, pre-dating the enactment of a zoning ordinance in Chestnuthill in 1989. On July 17, 2019, [REDACTED] property was designated as part of an Agricultural Security Area under the Agricultural Area Security Law (AASL). At that time, she was conducting commercial equine activities. Commercial stables are a permitted principal use in a Rural Residential zoning district; see Table of Permitted Uses by District, attached to the zoning ordinance.

Now she has been cited for failure to obtain a permit under Section 119-3 of the Ordinance, and also, on the basis that in the RR district there may be only one principal use per lot. Section 119-69B(2). She has been requested to apply for a land development plan permit.

It is beyond question that commercial equine activities are protected as "normal agricultural operations". They are included as such in 3 P. S. 903. Definition of "commercial equine activity", which includes boarding and training of equines and instruction in handling, driving or riding equines, as well as pasturing of equines. Horses are included as livestock in the definition of "Crops, livestock, and livestock products". As such, a local ordinance is "unauthorized" if it unduly restricts it burdens the activity. See also your office's acceptance letter, June 1, 2017, out of Ferguson Township, Chester County; denial of equine operations as a permitted use, as well as the 50 Acre lot requirement in RA and RR districts, violated ACRE.

At Section 119-21, the ordinance defines "agricultural use" to specifically exclude "riding academies, livery or boarding stables."

At Section 119-40(A)(40) the ordinance imposes limitations on "Stables, commercial (includes riding academies)" requiring a minimum lot area of 2 acres for 2 horses, then one half acre for each additional horse. Additionally, a horse barn, feed area, manure storage area, or stable must be set back 250 feet from any residential lot line, and manure may not be stored within less than 100 feet of a perennial waterway. A copy of the Ordinance is enclosed.

Under Ordinance Section 119-41, Additional requirements for accessory uses, Subsection D (6) (i)(1)(m), (40), "Boarding of animals is permitted as an accessory use as a "farm-related business" but "not including a ... stable".

We believe that the foregoing sections violate both ACRE and the AASL, and the Municipalities Planning Code 53 P. S. 10605, which requires that "where zoning District are created, all provisions shall be uniform for each class of uses or structures within each district.....". As your office opined in the June 1, 2017 acceptance letter out of Ferguson Tp, Chester County, "...if a municipality allows agriculture as a use in a particular zoning district then it must allow all legitimate forms of NAOs, including equine activities, in that district." Ferguson Tp, 6/1/17 p. 3.

Section 119-40, "Additional requirements for Specific principal uses" at Subsection 23 (g)-(h) provides that new or expanded manure storage facilities for keeping of livestock shall not be located within 100 feet of a perennial stream. The Nutrient and Odor Management Act, 3 Pa CSA 501 et seq, at 507, says that 100 feet is the maximum setback from surface water (defined as a perennial stream) UNLESS there is a 35 foot vegetation barrier. The ordinance does not contain that exception and is thus more stringent than the statute and is preempted. 3 Pa CSA 519; *Com., Office of Atty Gen. ex rel. Corbett v. Locust Township*, (Pa Cmwlth 2012) 49 A. 3d 502.

Section 119-69(B)(2) of the Ordinance, which our client is also accused of violating, provides that a lot in a residential district may not include more than one principal use. Since she resides on the 56 acre parcel in this Rural Residential district, she may not conduct the NAO of a commercial stable thereon, even though she could conduct animal husbandry and other "farm related businesses", see Section 119-41 discussed above. She would be required to obtain a variance from 119-69(B) (2) in order to conduct her commercial stable on this 56-acre parcel

where she resides. "Commercial stable" is permitted as a principal use in the RR district. So, in this Agricultural Security Area where commercial equine activities including boarding of equines are a specifically permitted and protected operation, the ordinance burdens the operation with the requirement for a variance. Regarding this particular normal agricultural operation, in effect, she is permitted to have EITHER a farmhouse OR a farm, but not both.

We believe this is an "unreasonable restriction" as applied under 3 P. S. 911(a). In an ACRE acceptance letter out of Adams County, Newlin Township, November 5, 2015, your office noted at Section C, page 8-9 that a blanket requirement to obtain even a special exception for commercial equine operations (riding lessons) was unjustified and lacked rational basis to support it, and thus violated the Municipalities Planning Code, the Right to Farm Act, and the Agricultural Area Security Law.

A special exception use is a permitted use, and it is much less difficult to obtain permission for a special exception than a variance. Nonetheless your office pointed out that there is an application fee and costs associated with the process of obtaining special exception approval. That would be the case in Chestnuthill Township as well.

We believe that Section 119-69(B)(2) creates an unreasonable restriction in this Agricultural Area Security district. Our client cannot continue to live in the farmhouse unless she refrains from commercial equine activities. Encouraging such activities is the primary purpose of the AASL, 3 P. S. 912. Such activities are permitted use in RR, but (due to the one principal use per lot requirement) only if the farmer does not live on the property. An owner similarly situated to our client would have to purchase a separate residence, and either travel to the agricultural operation to conduct necessary activities such as once or twice daily feeding of livestock, and constant general supervision of the horses to make sure they have not escaped nor injured themselves or hire someone else to perform these tasks. This would unreasonably restrict and drastically burden the NAO of commercial equine activities. Therefore, unless the municipality can show that prohibiting the owner of an equine operation from residing on her premises bears some direct relationship to the public health and safety, per 3 P. S. 911(a), it must be enjoined.

"The determination ... that the instant zoning regulation lacks a substantial relation to the preservation of agricultural land, and that irrational results are incurred by application of the ordinance, are the equivalent of findings that the zoning provisions are not reasonably related to Hopewell Township's authority to determine its physical growth pattern in a manner as to protect the agricultural character of that community."

Hopewell Tp. Bd of Supervisors v. Gola, 499 Pa. 246, 452 A.2d 1337 (1982) @ 1341.

In the scenario presented herein, prohibiting the owner/operator from residing on the premises where the commercial stable is conducted actually *increases* the possibility of interference with the public safety.

Further, agricultural buildings are exempt from the Pennsylvania Uniform Construction Code (UCC). According to 34 Pa. Code § 403.1(b), the UCC does not apply to agricultural buildings (34 Pa. Code § 403.1)[1]. This exemption is further supported by case law, such as in Samsel v. Uniform Const. Code Bd. of Appeals of Jefferson Tp., where the court held that a proposed stable to house race horses was considered an "agricultural building" and thus exempt from building permit requirements under the Pennsylvania Construction Code Act (Samsel v. Uniform Const. Code Bd. of Appeals of Jefferson Tp., 10 A.3d 412 (2010))[2]. Similarly, in In re Appeal of Miller, the court determined that a proposed barn used to house horses and store hay and farm implements was an "agricultural building" exempt from the requirements of the Construction Code Act (In re Appeal of Miller, 81 A.3d 1087 (2013))[3].

Our reasoning is that the [REDACTED] never needed a building permit because the building was an agricultural building used for normal agricultural operations. If the use of the property is grandfather for agricultural use (or permitted under the conservation easement) the structures thereon and permitted as of right also follow therewith. As such, we respectfully request that the application for the NCU use also be applied to all the structures, which structures are inextricably intertwined.

Our research has disclosed no other instances in which your office has dealt with the interaction between the "one principal use per lot" restriction, which is a common feature of many zoning ordinances, and the mandate that zoning ordinances must not unreasonably burden nor restrict normal agricultural operations. We respectfully urge you to accept this Request for Review in order to provide necessary, and as yet unsupplied, guidance on this issue.

Thank you for your attention to this Request for Review.

Very truly yours,

By: [REDACTED]

[REDACTED]
Enclosures