

[REDACTED]

February 24, 2025

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

RE: ACRE Request for Review – Lower Towamensing Township,
Carbon County – [REDACTED]
[REDACTED]

Dear Attorney Willig:

Thank you for your email of February 12, 2025 to the Lower Towamensing Township Board of Supervisors. I am the Solicitor for the Township.

The current Zoning Ordinance of Lower Towamensing Township was adopted March 10, 2015. I have reviewed [REDACTED] letter of January 31, 2025. We agree that [REDACTED] own a large tract of land in the Rural-Conservation (RC) district of the township. [REDACTED] states that the farm is known as "[REDACTED]" and has operation as such since 2017. The Township does not know when they began operating. However, we will accept that date.

In early 2023, [REDACTED] made an application to the Zoning Officer to construct a pole barn. For your reference, I am enclosing a copy of their application dated October 17, 2023. The application states that the proposed use of the structure would be "Agricultural Business Activities." In January 2024, the Zoning Officer granted the permit. I'm enclosing a copy of the permit for your reference. The permit was issued for a "40' x 80' Pole Building- Ag Use." [REDACTED] have since constructed this pole building.

During the late spring or summer of 2024, rumor circulated around the community that this pole building would be used as a wedding venue. Communication then commenced between [REDACTED] and my office regarding the intended use. It was understood by the Township that the primary use for this building would be agricultural, which is a permitted use. [REDACTED] subsequently attended a meeting of the Board of Supervisors of the Lower Towamensing Township on November 5, 2024. It is correct that they were instructed that if they wish to make another use of the property, other than agricultural, they should fill out

an application, being as detailed as possible, and send it to the Zoning Officer.

On January 29, 2025, [REDACTED] did submit a Zoning Permit Application. A copy of that application is attached to this letter. The Zoning Officer issued a response on February 10, 2025. A copy of that response is also attached to this letter. That response provided that the zoning permit issued on January 27, 2024, allowed agricultural uses including the growing, cultivating and harvesting of lavender, activities relating to processing, drying, oil distillation, bud removal and cleaning of lavender grown on the farm, activities related to developing and incorporating lavender grown on the farm into products, and a farm stand/store. The Zoning Officer indicated that it was in his opinion that expanding their operations to include other uses such as crafting classes, artistic tours, etc., would not be permitted uses.

Section 450-27 of the Zoning Ordinance lists the Table of Use Regulations. Agriculture is permitted in the RC district. Agriculture is defined in the Zoning Ordinance. It includes the cultivating of soil, raising of crops, forestry, horticulture and gardening, including animal husbandry, poultry farming and dairy farming, but excluding kennels. The reference of agriculture is referred to in different sections of the Zoning Ordinance. Section 450-32 specifically provides that:

"Agricultural activities permitted to be conducted within the Township by this Ordinance may be conducted even though these activities may create an annoyance or inconvenience to neighboring residential uses due to sights, sounds, smell or conditions resulting from the agricultural activities, provided that the agricultural activities are conducted in accordance with any and all regulations of the Township and the State and are not conducted in a manner which creates a definite danger to the health or safety of neighboring uses. (See also PA Act 133 of 1982 – "The Right to Farm Law")."

Agri-tourism is defined in the zoning ordinance. However, it is not listed as a permitted use in any of the zones. Since it is not listed as a permitted use, it would fall under Section 450-26 regarding Uses Not Specifically Provided For. This section provides as follows:

- A. No zoning ordinance can regulate all possible uses of land or anticipate all future conditions. A particular use may be allowed in a district if the use is not materially different from other uses allowed in that district. Such uses may be permitted if the Applicant demonstrates:
 - 1. The proposed use is not materially different from other uses in the district.
 - 2. The propose will not create adverse effects to a degree materially greater than other uses permitted in the district.
- B. If the proposed use is similar to a use permitted by right, the Zoning Officer may allow the use, provided the other applicable requirements in this Ordinance are met. If the proposed use is similar to a use permitted by Special Exception, the Zoning Hearing Board may allow the use, provided other applicable requirements in this Ordinance are met, as well as the conditions expressed for the special exception use most similar to the proposed use.

The Township Zoning Officer stated in his letter that Agri-Tourism is permitted by right. This is not correct. However, this section does give the Zoning Officer certain latitude to allow the use provided the other applicable requirements of the ordinance are met. At the same time, the Zoning Officer did not allow the additional agri-tourism uses sought by [REDACTED] because he did not believe this is similar to agriculture. The Township agrees. That is, crafting classes, photography sessions, live music, yoga classes, events including parties, baby and bridal showers, and social gatherings, etc. are not similar to agriculture.

The uses which have been allowed by the Zoning Officer of the Township would fit within the definition of "Normal Agriculture Operation." In fact, some of the uses which he has allowed most likely fall outside of that definition. It is submitted, however, that the other uses that [REDACTED] are seeking certainly fall out of the definition of "Normal Agriculture Operation."

[REDACTED] through their attorney, have suggested that the Agri-tourism Activity Protection Act is somehow applicable. It is submitted that it is not applicable. The purpose of that act was to offer limited civil liability for agri-tourism activities. It is important to note, however, that certain activities, such as weddings and concerts, are excluded from the Agri-tourism Activity Protection Act.

The letter from [REDACTED] attorney to your office is dated January 31, 2025. This is two (2) days after they submitted their zoning application. Further, it is before the Zoning Officer issued his letter of February 10, 2025.

In the Zoning Officer's letter of January 9, 2025, he explained the Zoning Officer's understanding of the Zoning Ordinance. Following the letter of January 9, [REDACTED] attorney again contacted the Zoning Officer asking him to change his mind. It is our understanding that the Zoning Officer told their attorney that he would not change his mind and instead, if they are dissatisfied, they should make another application and appeal the Zoning Officer's decision to the Zoning Hearing Board.

It is the position of the Township that it would be appropriate for [REDACTED] to appeal the decision to the Zoning Hearing Board. That is the proper form for relief, if they believe that their use is actually a permitted use. It is the position of the Township that the uses that [REDACTED] are seeking, other than normal agricultural operations, are not uses which are protected by ACRE. Further, it is the position of the Township that the agri-tourism uses being sought by [REDACTED] are not permitted uses.

The Township has acted correctly throughout these proceedings. They have acted upon the zoning application that [REDACTED] submitted on October 17, 2023 in issuing the permit on January 27, 2024 to allow the construction of the building for agricultural uses. At no point has the Township interfered with the agricultural use of [REDACTED] property. Should you need to review the Ordinance, a copy could be provided to you. However, it is also available on the Township website, which has a link to General Code.

Thank you for your consideration.

Very truly yours,

[REDACTED]
Enclosures
cc: Lower Townamensing

ZONING PERMIT APPLICATION TO BUILD

LOWER TOWAMENSING TOWNSHIP

Date 10/17/23

595 Hahns Dairy Road
Palmerton, PA 18071
(610) 826-2522

Permit # 24-04

Application is hereby made for a permit to erect or alter a structure which shall be located as shown on diagram on page 2 of 2 and/or to use the premises for the purpose described herewith. The information which follows, together with location diagram, is made a part of this application by the undersigned. It is understood and agreed by this applicant that any error, misstatement or misrepresentation of material fact, either with or without intention on the part of the applicant, such as might or would operate to cause a refusal of this application, or any change in the location, size or use of structure or land made subsequent to the issuance of this permit, without the approval of the Zoning Office, shall constitute sufficient grounds for revocation of this permit.

Tax Map# _____

1) Ownership, Location, and Present Use of Property:

- A. Owner's Name: _____ Phone #: _____
Address: _____
- B. Present Tenant: N/A
- C. Does Tenant Have Owner's Consent for Proposed Work? Yes _____ No _____
- D. Present Use of Structure & No. of Families: _____
- E. Present Building, Describe: _____
- F. Site is Located in BC Zoning District as Shown on the Zoning Map

2) Type of Work Proposed:

- _____ New Structure _____ Addition ☒ Accessory Structure
_____ Accessory Use _____ Interior Alteration _____ Exterior Alteration
_____ Other _____

- 3) Proposed Use of Structure & No. of Families: Agricultural Business Activities
Description of Work: Construct new 40' x 80' pole barn building on slab
Lot Size: 33.74 AC Size of Improvement: 40' x 80' Width: 80' Length: 40' Height 25'4"
Distance From Lot Lines: ~1000' Front; ~2000' Rear; ~800' One Side; 164' Other Side _____

4) Applicant:


Name: _____ Phone #: _____
Address: _____
Owner, Lessee or Authorized Agent of Subject Property: Owner
Estimated Cost of Project: \$ _____ Applicant's Signature: _____

(2)

(Office Use Only)

Approval Dates and Action Taken

1. Application Approved: ☒ Yes ☐ No Date: 1/27/24

Zoning Office 

2. Reason for Denial: _____

3. Applied to Zoning Hearing Board: ☐ Yes ☐ No Variance Application: ☐ Yes ☐ No

Special Exception Application: ☐ Yes ☐ No Conditional Use Application: ☐ Yes ☐ No

4. Board's Decision: ☐ Granted ☐ Denied Date: _____ Order: _____

Board Member: x _____ Vote: ☐ Yes ☐ No

Board Member: x _____ Vote: ☐ Yes ☐ No

Board Member: x _____ Vote: ☐ Yes ☐ No

Remarks/Notes: _____

(Payment of Fees Does Not Guarantee Issuance of Permit – Fees are nonrefundable)

LOWER TOWAMENSING TOWNSHIP
CARBON COUNTY

Tax Map # _____

ZONING / BUILDING PERMIT

Date Issued 1/27/24 Zoning Permit # 24-04

Building Permit # 24-05

Location of Project _____

This Permit is Being Issued for 40' x 80' Pole
Building - Ag Use

Contractor _____ Owner _____

Address _____ Address _____

This card MUST be attached by the Owner
or Contractor in a Visible location on the
premises under construction until work is
completed and final inspection is completed.

Signature of Zoning Officer _____

ZONING PERMIT APPLICATION

LOWER TOWAMENSING TOWNSHIP

Date: Jan. 29, 2025

595 Hahns Dairy Road
Palmerton, PA 18071
(610) 826-2522

Permit #: 25-08

Application is hereby made for a permit to alter the use or to use the premises for the purpose described herewith. Any change in the size, land or use made subsequent to the issuance of this permit without the approval of the Zoning Officer shall constitute grounds for revocation of this permit. All applications to be accompanied with a "letter of intent" which describes the proposed activity in sufficient detail and a diagram of the property (interior layout and exterior lot, if required) to ensure adequate evaluation.

Tax Map # [REDACTED]

1) Ownership, Location and Present Use of Property:

- A. Owner's Name: [REDACTED] Phone #: [REDACTED]
Address: [REDACTED]
- B. Present Tenant: n/a
- C. Does Tenant Have Owner's Consent for Proposed Work? Yes No
- D. Present Use: Agricultural Zoning District: R-C
- E. Lot Size: 33.794 acres

2) Proposed Use of Structure and/or Land:

- Exterior Alteration Change in Use Special Exception Use
 Conditional Use Accessory Use Non-Conforming Use
 Temporary Use X Other See attached

3) Applicant:

Name: [REDACTED] Phone #: [REDACTED]
Address: [REDACTED]

Owner/Applicant Signature: [REDACTED]

(Office Use Only)

Planned Use Conforms to Zoning Ordinance? Yes ✓ No

To be Referred to Zoning Hearing Board? ✓ Yes No

Amount Paid: \$ Date: 2/10/25 Approved: Denied: X

[REDACTED]
Zoning Officer

Reason for Denial:

Action of Referral:

(Payment of Fees Does Not Guarantee Issuance of Permit - Fees are Non-Refundable)

Lower Towamensing Township

Zoning/Building Dept.

595 Hahn's Dairy Road
Palmerton, PA 18071
610-826-2522

February 10, 2025

Re: [REDACTED]

Uses – Permit Application #25-08

Dear [REDACTED]

We have received your permit application to expand the uses approved under permit #24-04, issued 1/27/24, for the above listed property. In our review, we have found the following:

1. The property, located at [REDACTED] is zoned RC (Rural Conservation).
2. Zoning Permit #24-04 issued 1/27/24 approved the following uses on this property:
 - a. The growing, cultivating and harvest of lavender.
 - b. Activities related to processing, drying, oil distillation, bud removal and cleaning of lavender grown on the farm.
 - c. Activities related to developing and incorporating lavender grown on the farm into products.
 - d. A farm stand/store.

(Generally speaking, all uses listed in Section 202 of the zoning ordinance definitions of Agriculture and Ag-Tourism are permitted by right.)

3. It is the opinion of this office that Section 202 of the zoning ordinance would support adding Farm Tours for educational purposes.

However, it is also the opinion of this office that expanding the operation to include uses such as Crafting Classes, Artistic tours and visits, Photography Sessions, Live Music, Yoga Classes, Meditation Classes, Small Events (birthday parties, bridal & baby showers, social gatherings, anniversaries, fundraising events, community activities, and business meetings), as

well as large events such as outside weddings would not fall under approved uses in the Rural Conservation zoning district found in Sections 202 and 405 of the zoning ordinance.

I found the information provided relating to other laws, guidance documents and case law quite informative. However, please keep in mind that this office is bound to making determinations consistent with the regulations found in the zoning ordinance. The other laws, guidance documents and case law are all issues that should be presented to the Zoning Hearing Board for consideration.

4. The application submitted contained a basic aerial view of the property. However, a detailed site plan showing off-street parking areas for any proposed commercial agricultural tourism expanded uses will be needed.
5. In terms of the Building Codes, Chapter 10 of the IBC requires 300 gross square foot of floor area per occupant for agricultural building uses OR 15 net square feet of floor area for un-concentrated Assembly building uses. As the AHJ (Authority Having Jurisdiction), it is my opinion that the expanded uses being considered would fall under the Assembly A-Class Uses. (The current plans list the use of this building as Residential Accessory Storage building – U-Class - under the IRC.)
6. With a proposed Occupancy Load of 85 people, in terms of bathroom facilities, Chapter 4 of the IPC governs. The current plans showing one each male and female bathrooms. Based on which A-Class use this building is going to be used for will dictate how many bathroom facilities are required.

It is my understanding that there is an outstanding issue with regards to on-site septic requirements and the installation of bathroom facilities. This issue appears to be holding up the Building Inspector from completing a final building inspection and releasing a final inspection report to my office. (Attached please find a copy of the LVIS Field Inspection report.)

If this facility is proposed for and A-3 occupancy (community hall), sprinklers would not be required. Further, the calculated occupancy load for 2,000 SF area would be 133 persons plus the 1,200 SF office/farm stand area would add six (6) persons; for a total occupancy load of 139 people.

I suggest working with [REDACTED] the Township Sewer Enforcement Officer (SEO) to complete the on-lot septic system process. Once the septic is installed, the bathrooms are completed and final inspections pass, occupancy can be approved for Permit #24-04.

(3)

Due to the above mentioned reasons, this application cannot be approved at this time. Please be advised, you have the right to appeal this determination to the zoning hearing board for further consideration by filing the appropriate documents with the Township Secretary within 30 days of the date of this letter. You have the right to file an appeal challenging the determination of this office or requesting the necessary variances or both.

That being said, should this application be appealed to the Zoning Hearing Board and favorable consideration be received therefrom, a Land Development Plan will probably be required due to the commercial nature of this agricultural tourism business.

If you have any questions, feel free to contact me.

Sincerely,

[REDACTED]
[REDACTED]
Zoning Officer

Cc: Board of Supervisors
[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Friday, January 31, 2020 10:13 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Anthony - Zoning Use Application
Attachments: [REDACTED] zoning_permit_application.pdf SIGNED.pdf; ATTACHMENT TO ZONING PERMIT DATED JANUARY 29.pdf; Site Map.pdf

Please see attached zoning permit application.

Please do not hesitate to contact me with any questions or additional information that is needed.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Phone: [REDACTED]
Fax: [REDACTED]
Web: [REDACTED]

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[REDACTED]

ATTACHMENT TO ZONING PERMIT DATED JANUARY 29, 2025

[REDACTED]

[REDACTED] are the owners of the property for which this application is made. [REDACTED] were issued Zoning Permit number 24-04 allowing for "agricultural" uses on January 27, 2024. From my understanding, "agricultural uses" includes the following activities:

- The growing, cultivating and harvest of lavender.
- Activities related to processing, drying, oil distillation, bud removal and cleaning of lavender grown on the farm.
- Activities related to developing and incorporating lavender grown on the farm into products.
- A farm stand/store.

For Permit 24-04, I would remind the Township of the Right to Farm Act's protection for farmers engaging in direct commercial sales upon their property when at least 50% of the products sold are produced at the property.

[REDACTED] property is located in the Rural Conservation (RC) Zone within Lower Towamensing Township. Agricultural and Ag-Tourism are uses permitted by right, and, upon the Township's receipt of a zoning permit application, should be approved. Lower Towamensing defines Ag-Tourism as follows:

"an activity, business or use typically or reasonably associated with or related to agriculture, farming, horticulture, silviculture, or similar practice, including, but not limited to, an animal or livestock show, barn, Christmas tree farm, community-supported agriculture/co-ops, cider mill, corn maze, educational or recreation center, farm museum, fishing pond, game or hunting preserve, greenhouse or nursery, hayrides or sleigh rides, riding trail, maple syrup, orchard, pumpkin patch, animal petting farm/zoo, on-farm bakery or butcher, retail dairy, U-pick farm, winery, wool or wood shops."

Lower Towamensing Ordinance § 450-18. [REDACTED] are proposing the following Ag-Tourism Uses at their property in connection with their lavender farm and farm stand:

- Farm tours to the general public.
- Crafting classes and artistic tours and visits, including, but not limited to: soap making classes, wreath making classes, and painting classes. Groups of artists may also be invited to the farm to draw inspiration for works from the lavender fields.

suggest that event and gathering spaces go hand-in-hand with retail spaces located on agricultural properties and are, at a minimum, an accessory use when featuring the farm's products. Here too, the atmosphere provided by the farm and the scenery is the draw that the public would be offered to enjoy in its visits.

Weddings and large events also fall under the umbrella of Ag-Tourism. Specifically, "barn dances" are included as examples of ag-tourism activities within the Ordinance's definition. Aside from a marriage ceremony, there is hardly a difference between a barn dance and a wedding reception as both involve music, dancing, and a celebratory atmosphere enjoyed by many guests. Thus, it is not a stretch to say that both weddings and barn dances bear striking similarities and to suggest that weddings and large events are allowable under the ag-tourism use.

The rules of statutory construction are applicable to statutes and ordinances alike. *Glendon Energy Co. v. Borough of Glendon*, 656 A.2d 150 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 670 A.2d 644 (Pa. 1995). One of the primary rules of statutory construction is that an ordinance must be construed, if possible, to give effect to all of its provisions. *Mann v. Lower Makefield Township*, 634 A.2d 768 (Pa. Cmwlth. 1993). In light of these statutory construction rules, I would point out that the Township's definition of Ag-Tourism is an illustrative list, not an exhaustive one, as indicated by the words "including, but not limited to..." Thus, those uses listed are just an example of agritourism activities, but certainly not an all encompassing list. Therefore, this list of specific activities must be read alongside the more general description of an ag-tourism activity which, as defined by the ordinance, is "an activity, business or use typically or reasonably associated with or related to agriculture...horticulture... or similar practice." Lower Towamensing Ordinance § 450-18.

Ag-Tourism is a use that combines traditionally commercial and agricultural uses into a single enterprise aimed at connecting visitors with the agricultural activities, products and lifestyles. The National Agricultural Law Center, one of the leading resources in the country on agricultural law issues, defines "Agritourism" as "a form of commercial enterprise that links agricultural production and/or processing with tourism to attract visitors onto a farm, ranch or other agricultural business for the purposes of entertaining and/or educating the visitors while generating income for the farm, ranch, or business owner."¹ In enacting statutory protections for landowners providing agritourism activities to the general public, the Pennsylvania legislature defined an agritourism activity as "farm-related tourism or...entertainment activity" occurring on agricultural land "and allows members of the general public...to tour, explore, observe, learn about, participate in or be entertained by an aspect of agricultural production, harvesting, husbandry or rural lifestyle that occurs on the farm."² In its most basic sense, agritourism uses invite the public to an agricultural operation to learn and be entertained by the agricultural products, processes and environment. Lower Towamensing's Ag-Tourism definition encompasses this idea by including an illustrative list of activities which might be included in

¹ The National Agricultural Law Center, *Agritourism – An Overview*, <https://nationalaglawcenter.org/overview/agritourism/>, last accessed 1/22/2025.

² Agritourism Activity Protection Act, Act 27 of 2021 (HB 101).

14

29 AC

6.05 AC

41A
33A
0

41A
33A
1

41

33D

12

54.8 AC

41A

31B

11

33.794 AC



proposed 40x20'
building

41A
31B
9

2.045 AC

41A
31B
10

2.006 AC

41A
31A
1A/1B

41A
31A
2

41A
31A
3

41A
31A
4

41
33D
10

3.000 AC

41
33D
9

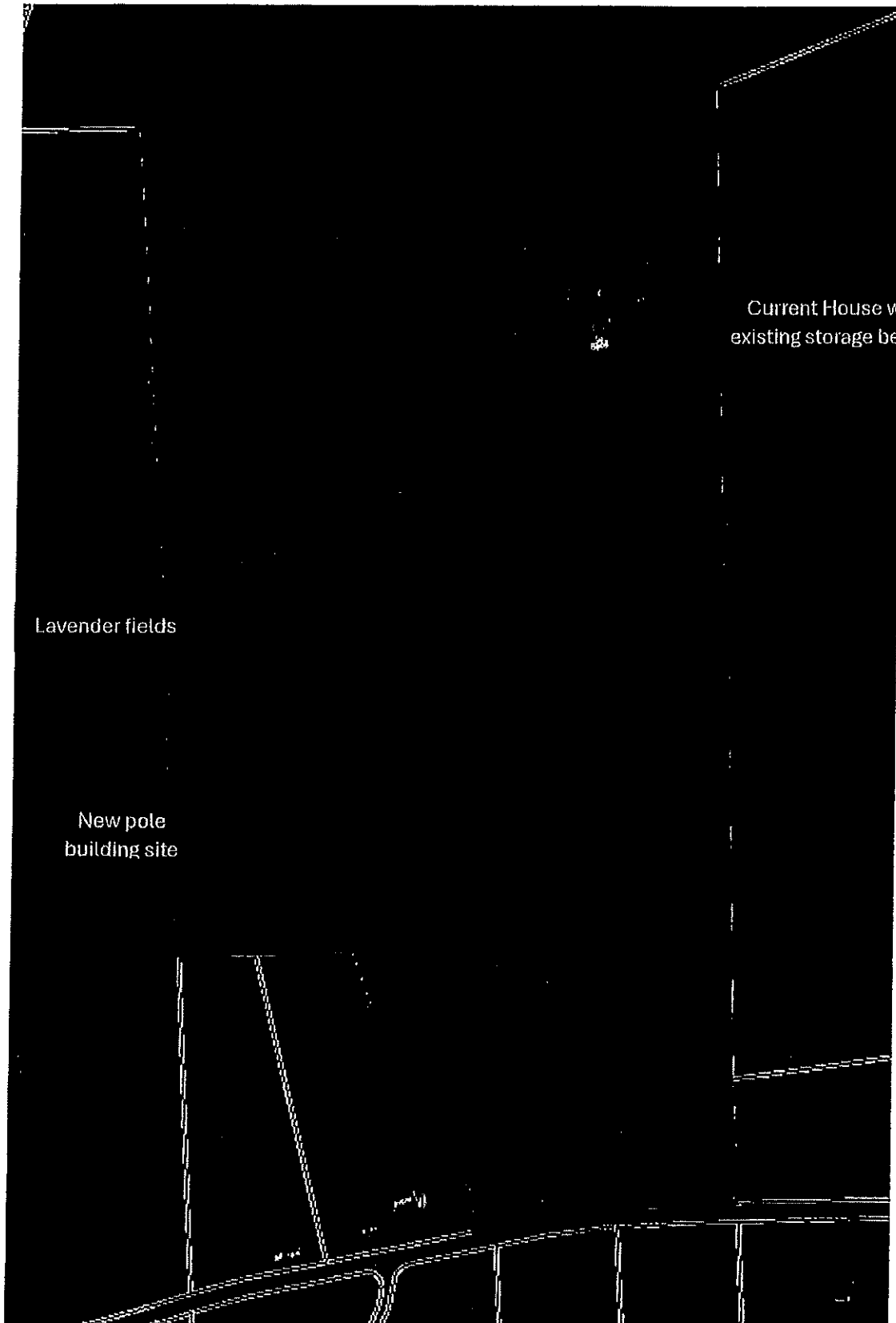
10.1 AC

41
33D
7.01

41
33D
7

300ft

75.628 40.821 Degrees



Current House with
existing storage behind

Lavender fields

New pole
building site