

[REDACTED]
[REDACTED]
January 31, 2025

PA Office of Attorney General
Attn: ACRE
15th Floor, Strawberry Square
Harrisburg, PA 17120

RE: Lower Towamensing Township, Carbon County

Dear Sir or Madam:

I write on behalf my clients, [REDACTED] own an approximately thirty-three acre tract of real estate in Lower Towamensing Township which is zoned Rural-Conservation (RC). In the RC zone, Agricultural and Ag-Tourism uses are permitted by right. [REDACTED] own and operate a lavender farm at the property which has steadily expanded and attracts many visitors to the farm each bloom season to view the lavender. The farm is known as [REDACTED] and has operated as such since 2017. Since that time, their farm is now one of the largest lavender farms in Eastern Pennsylvania and Western New Jersey.

This past summer, [REDACTED] undertook to construct a pole building at their property to house their farm stand from which they sell products made from the lavender (e.g. soaps, oils, dried lavender, etc.), to move the lavender drying and processing activities from their home to the pole building, to install bathrooms and running water so that guests to the farm did not have to utilize the restroom in the [REDACTED] home, and to have a space out of the weather to host on-farm tourism activities and attractions. Prior to the construction of the pole building, [REDACTED] had submitted a zoning permit (along with a building permit) to conduct agricultural and agri-business activities at the farm. Permit 24-04 was issued to them on January 27, 2024 by Lower Towamensing Township allowing agricultural activities. Later in the summer, after the pole building had been erected and when [REDACTED] applied for their septic permits, the Township's sewage enforcement officer conveyed to [REDACTED] that the septic system could not move forward without a detailed description of the uses that [REDACTED] would conduct on the property so that the sewage enforcement officer could model an accurate flow¹. The septic permit was neither approved nor denied and the solicitor for the Township directed [REDACTED] to work with the zoning officer on the approved uses for the property.

¹ During this time, rumors in the Township began to circulate suggesting that [REDACTED] were intending to open a wedding venue and accusations were made that [REDACTED] were pulling a "bait and switch" on the Township. [REDACTED] At that time, no decisions had been made regarding large special events at the property, but, since being forced to make additional application to the Township, [REDACTED] have decided to include such use in their application. Some of the neighbors making the complaint are on the Planning Commission in the Township and it is believed that their influence may be bringing about the tension regarding [REDACTED] use of their property.

Through written correspondence with the zoning officer,² [REDACTED] described all of their proposed activities which they intend to host at the property and detailed to the zoning officer how such activities fall within the Township's permitted use of Ag-Tourism. By way of reply letter, the Township's zoning officer indicated that all of the uses, except educational tours, would be denied under the Ag-Tourism use. [REDACTED] responded with an additional letter further explaining how their uses conformed with the Ag-Tourism use permitted in the RC zone.³ Despite these letters, via a telephone call between counsel for [REDACTED] and the zoning officer, the zoning officer indicated that he would deny the Ag-Tourism uses proposed by [REDACTED] and that [REDACTED] would have to go before the Township's zoning hearing board to obtain approval to engage in the Ag-Tourism uses proposed. The zoning officer noted that part of his reasoning for making such determination is to allow neighbors who might object to the Ag-Tourism activities the opportunity to do so despite such use being permitted by right in the zoning district. As of the date of this letter, [REDACTED] have submitted their formal zoning application and are awaiting the zoning officer's determination.

I believe that the actions being taken by the Township forcing [REDACTED] to go before the zoning hearing board implicate ACRE and allow this office to review the actions of the Township to ensure compliance with ACRE. Without a doubt, the horticultural activities occurring at the lavender farm fall under the protections of Pennsylvania's Right to Farm Act, 3 P.S. §952. In 2021, the Pennsylvania Legislature, at least tacitly, suggested that agritourism activities were, at a minimum, an anticipated activity which may sprout from a farm engaging in normal agricultural activity and an activity which the legislature was interested in protecting and thereby promoting. See Agritourism Activity Protection Act, Act 27 of 2021 (HB 101) (extending protection for ag-tourism activities occurring on "agricultural land" which is land upon which a "normal agricultural activity" occurs). At most, ag-tourism could be viewed as an activity used in the production and preparation for market or use of a horticultural commodity.

More importantly though, Lower Towamensing Township itself has made the legislative determination that both agricultural and ag-tourism activities are permitted within the R-C zone and are uses compatible with the surrounding properties and community. Despite this determination, the Township intends to subject [REDACTED] to an unnecessary and expensive zoning process to conduct the ag-tourism activities which, by the language of the ordinance, are permitted by right. As your office well-knows, Pennsylvania's Municipal Planning Code directs that "Zoning ordinances shall encourage the continuity, development and viability of agricultural operations. Zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present unless the agricultural operation will have a direct adverse effect on the public health and safety." 53 P.S. § 10603(h). Lower Towamensing's attempt to ignore their own ordinance allowing Ag-Tourism uses upon [REDACTED] property restricts the farm's growth and expansion opportunities to allow visitors to come to the farm and enjoy its product in a host of ways all directly linked to the lavender that the Anthonys produce. I believe that Lower Towamensing's expressed plan to nearly wholesale deny [REDACTED] zoning permit application and subject [REDACTED] to the zoning hearing board procedure is an unreasonable restriction on their operation. On behalf of [REDACTED] respectfully request a review of the relevant ordinances in order to provide needed guidance on the issues stated herein.

² Three letters are attached.

³ You will notice there is discussion of a septic system and building codes, which is not the subject of this request for review to the Attorney General.

Thank you for your attention to this important matter. I am available should you have any additional comments or need more material.

Sincerely,

[REDACTED]

[REDACTED]