

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
May 20, 2025

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

Via Email to  
[REDACTED]

**RE: ACRE Complaint – Hopewell Township – York County**  
[REDACTED]

Dear Attorney Willig:

This letter is a response to the April 21, 2025 inquiry regarding an alleged Act 38 of 2005 ("ACRE" or, the "Act"), 3 Pa.C.S. § 311 *et. seq.* violation for the [REDACTED] property located at [REDACTED] Hopewell Township, Pennsylvania [REDACTED] (the "Property") by Hopewell Township (the "Township").

In 2021, [REDACTED] and [REDACTED] purchased the Property which is an approximately 99-acre farm in Hopewell Township. The farm is accessed by a 50' right-of-way over adjacent land of [REDACTED]. The 50' right-of way was formalized when the [REDACTED] property was subdivided from the Property and intended to provide access for the [REDACTED] residence and whatever additional residences were to be constructed on the Property. After purchasing the Property, [REDACTED] obtained a building permit and constructed a barn and driveway on the Property, which was to also have stormwater improvements. Before completing all the work or starting any of the stormwater improvements, and prior to obtaining an occupancy permit, an acquaintance began to occupy the barn as a residence and to install additional unpermitted structures and a camper which were also illegally occupied. They also stored a crop of tobacco in the barn. The Township filed an enforcement case against [REDACTED] which it prevailed on and collected a fine from [REDACTED] (See Exhibit A, Docket Statement.)

Despite the violations, the Township tried to work with [REDACTED]. The Township subsequently offered a 60-day temporary occupancy permit so that [REDACTED] did not need to immediately remove the tobacco. [REDACTED] was to complete the stormwater planning within the 60 days in order to continue occupying the barn and driveway. He declined the offer. (See Exhibit B, August 5, 2021 Supervisor Minutes.) The Board of Supervisors again extended the offer at the November 4, 2021 meeting. (See Exhibit C, November 4, 2021 Supervisor Minutes.) [REDACTED] and his land surveyor then attended the December 2, 2021 meeting where the need to do stormwater management planning and land development were discussed and agreed on. (See Exhibit D, December 2, 2021 Supervisor Minutes.) A motion was even passed at the

[REDACTED]

meeting to submit a resolution for the sewage planning module for a proposed residence. The Township has not pursued further enforcement of the stormwater violations, even though more than three years have elapsed since the barn was constructed and occupied. The Township requirements for stormwater management have remained the same throughout that time.

As part of the barn project, [REDACTED] installed an improved driveway from the end of the [REDACTED] driveway to the barn. As with any other impervious area construction, [REDACTED] was to install stormwater management for the barn and the driveway. The driveway is lengthy and [REDACTED] wanted it located further away from his house, so the stormwater management has turned out to be more costly than [REDACTED] anticipated. The current driveway extends from the existing [REDACTED] driveway across what was previously a field. In order to save costs, [REDACTED] has now claimed that dirt field lane constituted impervious area that is now somehow grandfathered from any permanent stormwater management. The simple fact is that a driveway was installed and improved to an impervious gravel surface which requires permanent stormwater management. Permanent stormwater management must also be installed for the barn. [REDACTED] has been told this from the very beginning and the Township has been very patient with him to do this work, despite his continued efforts to evade the stormwater management.

In January 2024, [REDACTED] through his engineers, filed a full land development plan for the access drive, barn and a new residence with a stormwater management plan. This plan met most of the requirements of the Township and was the pathway the Township advised was necessary going back to 2021. The Township solicitor issued a comment letter on February 6, 2024, and the Township engineer reviewed the plans and issued a plan review comment letter on February 7, 2024, and a stormwater review comment letter on February 19, 2024, and. (See Exhibit E.) The York County Conservation District issued an NPDES permit on June 11, 2024. [REDACTED] still has not followed-through to get approval of the land development plan or complete the stormwater management facilities approved by the NPDES permit.

[REDACTED] appeared before the Board of Supervisors on behalf of [REDACTED] at the November 7, 2024 meeting. (See Exhibit F, November 7, 2024 Supervisor Minutes.) Again the Township told [REDACTED] through [REDACTED] that it does not object to the proposed residential dwelling, but he must complete the land development plan and install long overdue stormwater management for the barn and access drive as well as the new home. [REDACTED] seemed to acknowledge and agree on that path forward. [REDACTED] is now trying to separate the new home from the barn and driveway so [REDACTED] can manage to only install stormwater for the new home without being held to the plans as submitted. The Township will not allow that to happen.

[REDACTED] also complains about the requirements to improve the private right-of-way across the [REDACTED] property. The plan that created that access divided the farm into the [REDACTED] lot and the farm that is now the Property. Access to the Property comes across the [REDACTED] property via shared drive with the [REDACTED] residence. The Hopewell Township Subdivision and Land Development Ordinance ("SALDO") is clear that when two lots share a private drive, the private drive must be improved to certain minimum standards. [REDACTED] may seek waivers to the

improvement standards he finds too burdensome. Some of those waiver requests were filed with the land development plans in January 2024.

I am attaching the last correspondence from [REDACTED] and my reply by email. (See Exhibit G.) The Township again asks [REDACTED] to continue with a land development plan so there is a clear record of what has been approved on the Property. The plan that was submitted covers the barn, house, access drives and stormwater management facilities for all of those improvements.

As for the ACRE claim now before us, I first stress that as summarized above, the claim has nothing to do with any agricultural operations. After our substantive review of the claim, the Township does not believe the facts alleged by [REDACTED] demonstrate an ACRE violation.

In pertinent part, ACRE requires that local ordinances do not impact, "normal agricultural operations as defined under section 2 of the act of June 10, 1982 (P.L. 454, No. 133), entitled 'An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances.'" Id.

ACRE further defines normal agricultural operations in 3 P.S. § 952 as follows:

"Normal agricultural operation." The 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.

The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry. Use of equipment shall include machinery designed and used for agricultural operations, including, but not limited to, crop dryers, feed grinders, saw mills, hammer mills, refrigeration equipment, bins and related equipment used to store or prepare crops for marketing and those items of agricultural equipment and machinery defined by the act of December 12, 1994 (P.L. 944, No. 134), known as the Farm Safety and Occupational Health Act. Custom work shall be considered a normal farming practice.

Id.

Based on the foregoing definition, the right to construct a residential dwellings is not protected under ACRE. The Pennsylvania Legislature has provided that a local ordinance is unauthorized when it, "1) [p]rohibits or limits a normal agricultural operation unless the local government unit has expressed or implied authority under State law to adopt the ordinance and is not prohibited or preempted under State law from adopting the ordinance . . .". 4 Pa.C.S. § 312. Even if [REDACTED] allegations are true, the SALDO as applied by the Township does not prohibit or limit normal agricultural operations.

In addition, the Township is not in violation of ACRE by requiring [REDACTED] to file a land development plan or to do stormwater management. The Commonwealth Court in Com., Office of Atty. Gen. ex rel. Corbett v. Locust Twp., 49 A.3d 502, 508-09 (Pa.Cmwlt. 2012) held that Locust Township was not in violation of ACRE for requiring a land development plan be submitted to the municipal body, even though Chapter 5 of the Pennsylvania Nutrient Management Act, 3 PA.C.S. §§ 501 *et. seq.* also requires submittal of a land development plan. The court held that, "[e]ach serves a separate purpose with independent legal significance". Corbett at 508-9. The, "information the municipality requires [is] to ensure that the proposed land use is consistent with the local ordinances that authorize, govern, and restrict that use". Id.

The Township has the express right pursuant to the Pennsylvania Municipalities Planning Code to adopt and enforce zoning and subdivision regulations. [REDACTED] has not alleged any facts in his complaint that establish the Township's subdivision ordinance as adopted and enforced limits or restricts any normal agricultural operations. Therefore, on behalf of Hopewell Township, I respectfully request the complaint be dismissed and the case closed.

To the extent [REDACTED] disagrees with the requirement to file a land development plan or to perform stormwater management, he may appeal any plan or permit denial to the Court of Common Pleas for resolution.

A full copy of the Township's SALDO can be found at <https://ecode360.com/31984960> for your further review. Please do not hesitate to contact should you have any questions or require additional information.

Very truly yours,

[REDACTED]  
[REDACTED]  
[REDACTED]

Enclosures

cc:

[REDACTED]  
[REDACTED] Manager, Hopewell Township (by email)