

[REDACTED]

February 4, 2020

via Regular Mail and E-mail  
[REDACTED]

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

RE: ACRE – Request for Review  
[REDACTED]  
[REDACTED]

Willistown Township, Chester County – Zoning Ordinance Enforcement Notice

Dear Senior Deputy Willig:

I represent [REDACTED] owners of the above-referenced property, located in Willistown Township, Chester County, Pennsylvania. Recognizing the importance of agricultural operations in the Commonwealth, I respectfully write on the [REDACTED] behalf to the Office of Attorney General requesting a formal review under Pennsylvania's Agriculture, Communities, and Rural Environment Act ("ACRE") of Willistown Township Zoning Ordinance ("Ordinance"), Section 139-6 (Height of Buildings), regarding an "as applied" violation.

By way of pertinent background, the [REDACTED] (the "Farm" or "Property") consists of approximately 100.9 acres in area and located in Willistown Township's designated RU (Rural) Zoning District. The Farm is a working, organic farm, established in 2008, with an emphasis on sustainable farming operations. Nine (9) acres of the Property are devoted to warm-season grass and native perennial meadows for wildlife conservation, with two (2) acres separately devoted to organic vegetable gardening.

The Farm hosts children for educational outreach and programming involving agricultural and environmental education. The Farm employs both full-time and seasonal labors for its agricultural operations, including horticulturists, farmers, vegetable growers, livestock specialists, grooms, and riders.

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The Farm is just one of few breeders in the United States of rare Soay sheep. Other livestock of the Farm includes: grass-fed heritage cattle; heritage pigs; and heritage chickens (for both egg production and butchering). Last year, approximately 700 pounds of honey was produced using seven (7) on-site beehives. Additionally, the Farm currently houses approximately 20 horses, along with its associated equestrian facility, which serves as the primary basis for this Request for Review.

Despite the Farm's longstanding agricultural operations, on August 14, 2019, Willistown Township ("Township"), through its Director of Engineering and Planning [REDACTED] issued a Zoning Ordinance Enforcement Notice ("Enforcement Notice") upon [REDACTED] for the Property and the use of the Property associated with the Farm. A copy of the Enforcement Notice is attached hereto, marked as Exhibit "A". The Enforcement Notice alleges a violation of Section 139-6 (Height of Buildings) of the Township's Ordinance, which provides that "chimneys, spires, towers, elevator penthouses, tanks and similar projections of a building shall not be included in calculating the height but shall not be permitted to exceed the height of the building by more than 25%." A copy of Ordinance Sections 139-6 and 139-13 (in pertinent part) is attached hereto, marked as Exhibit "B".<sup>2</sup>

For ease of reference, Township Ordinance Section 139.6 provides the following:

§ 139-6. Definitions.

HEIGHT OF BUILDING

A building's vertical measurement from the mean level of the ground surrounding the building to a point midway between the highest and lowest points of the roof, provided that chimneys, spires, towers, elevator penthouses, tanks and similar projections of a building shall not be included in calculating the height but shall not be permitted to exceed the height of the building by more than 25%.

The Township's Enforcement Notice fails to recognize and apply the plain language of the Ordinance, which appropriately altogether exempts "farm buildings" from height measurements.

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<sup>1</sup> [REDACTED] no longer serves as the Township's Zoning Officer. [REDACTED] as replaced [REDACTED] [REDACTED]th of whom are copied on this ACRE Request for Review.

<sup>2</sup> Pursuant to and in accordance with the Pennsylvania Municipalities Planning Code and the Willistown Township Zoning Ordinance, [REDACTED] timely appealed the Township's Enforcement Notice (the "Appeal") to the Willistown Township Zoning Hearing Board ("ZHB"). In the first instance, the Appeal challenges the Enforcement Notice, while alternatively seeking dimensional variance relief from the Ordinance's "Height of Buildings" provision (§ 139-6), should the Township fail to withdraw the Enforcement Notice or should the ZHB not rule in favor of the Schmidts. The Appeal was scheduled to be heard by the ZHB on November 26, 2019, but is currently postponed, extended, and stayed through February 26, 2020.

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To this end, Ordinance Section 139-13, addressing RU Zoning District "Area and Height Regulations," provides as follows:

§ 139-13. Area and height regulations.

D. Height. No building ***other than a farm building*** shall exceed 35 feet in height.

(*emphasis added*).

Moreover, the Ordinance at Section 139-6 (Definitions) defines a "farm building" as follows:

§ 139-6. Definitions  
FARM BUILDING

Any building used for storing agricultural equipment or farm produce or products, housing livestock or poultry or processing dairy products. The term "farm building" shall not include dwellings, but shall include a barn or silo.

The Township's asserted height violation improperly ignores the farm building exemption of its own Ordinance, and as provided for under Pennsylvania law. Specifically, the Township has taken issue with a fully-constructed roof installed above an existing and utilized equestrian riding ring ("Riding Ring") on the Farm. The roof and components thereof were carefully vetted and approved by the Township through its designated agents, consultants, and officials. Following substantial expenditures made by [REDACTED] in reliance upon the Township's permit issuance<sup>3</sup>, and having fully constructed the Riding Ring over an approximate nine (9) month timeframe, the Township subsequently issued the Enforcement Notice, alleging a violation of purported height restrictions for the Riding Ring structure.

The Commonwealth of Pennsylvania and the Attorney General's ACRE office has long stated and maintained that "equine operations are recognized as normal agricultural operations under various State laws, regulations, and court decisions." See Commonwealth of Pennsylvania, Office of Attorney General, November 5, 2015, ACRE Review Request / Newlin Township, Page 2, attached hereto and incorporated herein, marked as Exhibit "C"; see also, e.g., 3 P.S. 903 and 3 Pa. C.S. § 952. Additionally, the Agricultural Area Security Law's definition of "commercial equine activity" includes, *inter alia*, "the training of equines," the instruction of people in handling, driving or riding equines," as well as "the use of equines for riding or driving purposes." See 3 P.S. § 903.

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<sup>3</sup> The duly applied for and issued permit, dated November 8, 2018, is attached hereto, marked as Exhibit "E". The [REDACTED] Plans, dated October 28, 2018, (serving as the basis for Township permitting), are attached hereto, marked as Exhibit "F". The Plans depict the roof design, the peak height, the eave height, as well as the individual cupola heights. The Riding Ring roof was installed and constructed in accordance with the Township-approved Plans.

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Moreover, in the case of Samsel v. Jefferson Township, 10 A.3d 412 (Pa. Cmwlth. 2010), the Commonwealth Court of Pennsylvania held that stables were "agricultural buildings," exempt from permitting under the Uniform Construction Code. Furthermore, horses that are "bred, raised and trained for show purposes rather than for use on the farm" are nonetheless farm animals or livestock falling within agricultural uses. Id. at 415-416, quoting in part Worobec v. Unemployment Compensation Board of Review, 536 A.2d 467, 470 (Pa. Cmwlth. 1988). The Office of the Attorney General, following consultation with experts of the Pennsylvania State University College of Agricultural Sciences ("PSU") and the Pennsylvania Department of Agriculture ("PDA"), has determined that equine operations which board, train, and provide lessons are engaged in the production of agriculture. See Commonwealth of Pennsylvania, Office of the Attorney General, June 1, 2017, ACRE Review Request / Ferguson Township, Page 2, attached hereto and incorporated herein, marked as Exhibit "D".

In spite of issuing permits for construction, properly relied upon by [REDACTED], the Township now belatedly asserts that the cupolas, which are essential to ventilating and drawing air through the Riding Ring, are the source of the alleged height violation. The cupolas of the Riding Ring structure provide far more than just an ornamental feature; they are a critical health and safety function of the Riding Ring to the horses and riders, serving as air-drawing devices to create a cooling and healthy airflow beneath the structure's roof, protection those animals and humans thereunder. Under the present set of circumstances, the Farm's horses spend large parts of the day housed in the Riding Ring, which is a "farm building," as defined by the Township's Ordinance and as recognized under Pennsylvania law. In addition, the Farm's horses are "livestock," as defined and recognized by Pennsylvania Courts and the Attorney General's ACRE office to include competition and show horses.

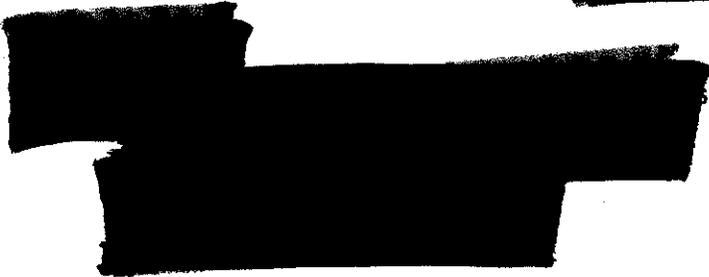
The Township Ordinance's farm building height exception at Section 139-13.D is unquestionably applicable to the Farm, and the height-based violation asserted by the Township is without proper foundation or justification. There is no enforceable height restriction in this instance. Simply stated, the cupolas (along with all other structural features of the Riding Ring), provide no legitimate basis for Township zoning-related enforcement against the Schmidts, their agricultural operations, and/or their Farm.

The Township's attempted enforcement efforts pertaining to the equestrian structure unlawfully limits the lawful agricultural operations at the Farm. Such unauthorized, attempted enforcement exceeds the Township's authority under Pennsylvania law. Therefore, we respectfully request that the Office of the Attorney General review the Township's Ordinance, as applied to the Farm, and collectively work with Willistown Township to bring its Ordinance interpretation and application into compliance with state law, whereby the pending Enforcement Notice is promptly withdrawn and [REDACTED] appellate-related expenses refunded.

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I thank you in advance for your assistance with and attention to this matter, and I look forward to hearing from you on behalf of the Attorney General at your earliest convenience. In the meantime, should you have any questions or require additional information, please do not hesitate to contact me directly.

Very truly yours,

A rectangular area of the document is completely blacked out, obscuring the signature of the sender.A large, irregular area of the document is completely blacked out, obscuring several lines of text.

**FIFTEENTH ANNUAL REPORT OF THE  
ATTORNEY GENERAL TO THE GENERAL ASSEMBLY  
PURSUANT TO SECTION 318 OF ACT 38 OF 2005  
AGRICULTURE, COMMUNITIES AND RURAL ENVIRONMENT - “ACRE”**

**October 2020**

**Josh Shapiro  
Attorney General**

also agreed to amend its ordinances. Once the Township provides proof that it has amended its ordinances the OAG will close the case. **Status – In Negotiation**

**9. Fairview Township, York County**

Landowner applied for a permit to build a large structure to use in a proposed winery operation. The ACRE complainant wanted to use the building in various ways: to manufacture the wine; as a tasting room; as a storefront to sell the wine; and as an event destination. The OAG denied the ACRE complaint because the proposed building was not an accessory use that would be subordinate to an already existing tree farm on the property nor would the building be excluded from the requirements of the Uniform Construction Code. 35 P.S. §§ 7210.101, *et.seq.* **Status – Closed**

**10. Peters Township, Washington County**

Farmer contended that the Township’s ordinance requiring him to cut down weeds and tall grass at a road intersection violated ACRE. He further stated that the Township was not in compliance with the Agricultural Area Security Law (“AASL”)<sup>17</sup>. The OAG denied the ACRE complaint. The ordinance was not specific to agriculture; the Township has authority to require a citizen to comply with an ordinance of general applicability designed to make a roadway safe. Review of the farmer’s claim that the Township was violating the AASL showed that these claims were unfounded. **Status-Closed**

**11. Willistown Township, Chester County**

Willistown has a height limitation ordinance for new construction which specifically excludes agricultural buildings. The Township denied the ACRE complainant’s permit application to build a horse barn and riding ring based on the height limitation ordinance. The OAG accepted the case informing the Township that equine activities constitute a NAO, the proposed stable/riding

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<sup>17</sup> 3 Pa.C.S. §§ 901-915.

ring was an agricultural building, therefore, its own height limitation ordinance did not apply. The Township agreed and issued the building permit. **Status-Closed**

**12. Lower Milford Township #2, Lehigh County**

Landowner hoping to start a winery challenged the Township's ordinance requiring a minimum of five acres in which to operate a winery. The OAG accepted the case, informing the Township that with property in an agricultural zoning district a landowner can meet the requirements for a NAO under the RTFA without consideration of an acreage requirement if the anticipated yearly gross income from the property is \$10,000 or more. The Township agreed to amend its ordinance to bring it into compliance with the RTFA. Once the Township provides proof that it has amended its ordinances the OAG will close the case. **Status-In Negotiation**

**13. Providence Township, Lancaster County**

A forestry company filed an ACRE complaint wherein it challenged the Township's requirement that an already completed and Department of Environmental Protection ("DEP") approved E&S Plan must also be reviewed and approved by the local County Conservation District before issuing a timber harvesting permit. Furthermore, the complainant challenged ordinance provisions concerning mandatory setbacks/buffer zones applicable in all circumstances as well as several stream crossing requirements. The OAG accepted the case. Upon receipt of the OAG's acceptance letter, the Township has agreed to amend its ordinances to bring them into compliance with state law. Once the Township provides proof that it has amended its ordinances the OAG will close the case. **Status-In Negotiation**

**14. Hopewell Township, Beaver County**

Farmer filed an ACRE complaint concerning various ordinances dealing with CAOs/CAFOs and what the Township refers to as "intensive agriculture." The OAG accepted the case. The