

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

September 24, 2007

**TOM CORBETT
Attorney General**

The central purpose of Act 38 of 2005 is to protect normal agricultural operations from unauthorized local regulation. The Act furthers that purpose by conferring upon the Attorney General: (1) the power and duty, upon the request of an owner or operator of a normal agricultural operation, to review a local ordinances for compliance with State law; and (2) the authority, in the Attorney General's discretion, to bring a legal action against a local government unit in Commonwealth Court to invalidate or enjoin the enforcement of an unauthorized local ordinance.

Act 38 took effect on July 6, 2005. In response, the Office of Attorney General developed and implemented a process for receiving requests for review of ordinances, for completing such reviews within the 120-day time period prescribed by the Act, and for bringing legal action when such action is warranted. Consistent with Act 38, all requests for review received during the year ending July 6, 2007, were completed within 120 days (or within a brief extension of the 120-day review period to obtain additional information needed to complete the review) or were still within the 120-day review period.

When the Office receives a request for review of an ordinance, the Office sends the owner/operator who requested the review an acknowledgement that the request was received, and the municipality whose ordinance is the subject of the request for review a notice that the request has been received and that the ordinance will be reviewed.

When the Office completes its review, the Office advises both the owner/operator and the municipality in writing whether or not it intends to bring legal action to invalidate or enjoin the enforcement of the ordinance. If the Office advises the municipality that it intends to bring legal action, it affords municipal officers an opportunity to discuss the legal problems identified in the review and to correct such problems before a legal action is brought.

I. ANNUAL DATA

Between July 6, 2006, and July 6, 2007, the Office of Attorney General (OAG):

- Received 19 requests for review of local ordinances (one of which was withdrawn);
- Completed review of 13 ordinances (one additional review was completed between July 6, 2007 and the date of this Report);
- Sent 8 responses to owner/operators advising that no legal action would be filed;
- Sent 5 notices to municipalities of legal problems with ordinances;
- Brought one legal action against a municipality to invalidate or enjoin the enforcement of an unauthorized local ordinance. The action, brought against Belfast Township, Fulton County, was discontinued after the Township repealed the ordinance (see part **III.A.5.** below).

II. AGGREGATE DATA

Between July 6, 2005, and July 6, 2007, the Office of Attorney General (OAG):

- Received 35 requests for review of local ordinances (one of which was withdrawn);
- Completed review of 29 ordinances (one additional review was completed between July 6, 2007 and the date of this Report);
- Sent 16 responses to owner/operators advising that no legal action would be filed;
- Sent 13 notices to municipalities of legal problems with ordinances;
- Brought 5 legal actions against municipalities to invalidate or enjoin the enforcement of an unauthorized local ordinance. The 4 actions brought before July 6, 2006 are ongoing (see part **III.A.1–4** below).

III. REQUESTS FOR REVIEW, NATURE OF COMPLAINTS, AND ACTION TAKEN

A. Matters Unresolved as of 2006 Report

The following is an update on matters listed in our 2006 Report to the General Assembly, but unresolved as of the date of that Report, which, with respect to each such matter, identifies the ordinance submitted for review; the complaint about the ordinance asserted by the owner/operator who requested the review, the actions taken by the OAG, and the current status.

1. Locust Township, Columbia County

The owner/operator requested review of Ordinance No. 4-2001, which regulates “intensive animal agriculture.” The owner/operator complained that the ordinance conflicts with state law. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. After the Township failed to correct the problems, the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance. Commonwealth Court held that Act 38 does not apply to a pre-existing ordinance unless the municipality acts to enforce it. The OAG appealed that decision to the Pennsylvania Supreme Court. The case is awaiting oral argument.

2. Lower Oxford Township, Chester County

The owner/operator requested review of Ordinance No. 2004-1, which regulates composting activities. The owner/operator complained that the ordinance unlawfully restricts mushroom compost preparation. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. After the Township failed to correct the problems, the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance. Commonwealth Court held that Act 38 does not apply to a pre-existing ordinance unless the municipality acts to enforce it. The OAG appealed that decision to the Pennsylvania Supreme Court. The case is awaiting oral argument.

3. Heidelberg Township, North Heidelberg Township, Robesonia Borough, Womelsdorf Borough, Berks County

The owner/operator requested review of the Joint Township Ordinance, which regulates “intensive raising of livestock or poultry.” The owner/operator complained that the ordinance conflicts with state law. The OAG notified the municipalities of legal problems with the ordinance and offered the municipalities an opportunity to discuss and correct them. After the municipalities

failed to correct the problems, the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance. Commonwealth Court held that Act 38 does not apply to a pre-existing ordinance unless the municipality acts to enforce it. The OAG appealed that decision to the Pennsylvania Supreme Court. The case is awaiting oral argument.

4. Richmond Township, Berks County

The owner/operator requested review of Ordinance No. 81-2000, which regulates “intensive agricultural activity.” The owner/operator complained that the ordinance conflicts with state law. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. After the Township failed to correct the problems, the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance. Commonwealth Court dismissed all but one of the Township's preliminary objections. The case is ongoing in Commonwealth Court.

5. Belfast Township, Fulton County

The owner/operator requested review of Ordinance No. 3 of 2001, which prohibited corporate ownership of farms. The owner/operator complained that the ordinance conflicts with state law. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. The Township responded that it would repeal the Ordinance, but failed to do so. The OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance. The Township repealed the ordinance before the case was heard by the Court, and the lawsuit was discontinued.

6. Clay Township, Lancaster County

The owner/operator requested review of the Township Zoning Ordinance, which regulates “intensive agricultural production facilit[ies].” The owner/operator complained that the ordinance

impedes expansion of normal agricultural operations. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. After negotiations, the Township amended the ordinance to bring it into compliance with Act 38.

7. Lower Towamensing Township, Carbon County

The owner/operator requested review of the Ordinance of 1978, which prohibits “intensive agriculture.” The owner/operator complained that the ordinance conflicts with state law. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. The OAG and the Township are in ongoing negotiations seeking to resolve the matter without resort to litigation.

8. East Bradford Township, Chester County

The owner/operator requested review of the Riparian Buffer Ordinance. The owner/operator complained that the ordinance impedes expansion of animal raising and keeping activities. The OAG notified the owner/operator and the Township that it would not file a lawsuit.

B. New Matters

The following is a summary of the requests for review of local ordinances received by the OAG between July 6, 2006, and July 6, 2007, which, with respect to each request, identifies the ordinance submitted for review; the complaint about the ordinance asserted by the owner/operator who requested the review, and the actions taken by the OAG up to the date of this Report.

1. Hartley Township, Union County

The owner/operator requested review of the Township Zoning Ordinance, which regulates commercial livestock and concentrated animal operations. The owner/operator complained that setbacks and permitting requirements impede the operation and expansion of normal agricultural operations. The OAG notified the Township of legal problems with the ordinance and offered the

Township an opportunity to discuss and correct them. The OAG and the Township have begun negotiations seeking to resolve the matter without resort to litigation.

2. East Brunswick Township, Schuylkill County

The owner/operator requested review of Ordinance No. 1 of 2006, which regulates biosolid application and prohibits biosolid application by corporations. The owner/operator complained that the ordinance conflicts with state law. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. The OAG and Township representatives have met and exchanged correspondence in an effort to resolve the matter without resort to litigation. A lawsuit is imminent if substantial progress is not realized.

3. Salisbury Township, Lehigh County

The owner/operator submitted two requests for review of the Township Zoning Ordinance. The first request sought review of provisions pursuant to which the Township prohibited the owner/operator from starting an alpaca farm. The owner/operator complained that the definition of livestock should include alpacas or the Township should grant a variance. The OAG notified the owner/operator and the Township that it would not file a lawsuit. The second request sought review of provisions that require a special exception for timber harvesting. The owner/operator complained that timber harvesting should not require a special exception. The OAG notified the Township of legal problems with those provisions and offered the Township an opportunity to discuss and correct them. The OAG and the Township have begun negotiations seeking to resolve the matter without resort to litigation.

4. Montgomery Township, Montgomery County

The owner/operator requested review of the Township Zoning Ordinance. The owner/operator complained that the Township has applied provisions of the ordinance unlawfully

to restrict his plant nursery operation. The OAG has endeavored to promote a cooperative resolution of the dispute between the owner/operator and the Township.

5. Lewis Township & Turbotville Borough, Northumberland County

The owner/operator requested review of provisions of the Township/Borough Joint Zoning ordinance that regulates concentrated animal operations. The owner/operator complained that the provisions conflict with state law. The OAG notified the Township/Borough of legal problems with the ordinance and offered the Township/Borough an opportunity to discuss and correct them. The OAG and the Township/Borough have begun negotiations seeking to resolve the matter without resort to litigation.

6. Upper Allen Township, Cumberland County

The owner/operator requested review of Zoning Ordinance No. 205.A. The owner/operator complained that his use of a pole barn to store equipment was an agricultural activity rather than a commercial activity. The owner/operator withdrew his request for review.

7. West Donegal Township, Lancaster County

The owner/operator requested review of the Township's denial of a permit to build a residential dwelling on his property. The owner/operator complained that he was not told before he purchased the property of restrictions that precluded such construction. The OAG notified the owner/operator and the Township that it would not file a lawsuit.

8. Maxatawny Township, Berks County

The owner/operator requested review of the Township's action ordering the movement and reduction of chickens. The owner/operator complained that his small poultry operation existed as a prior non-conforming use and that the Township's action violated that use. The OAG notified the owner/operator and the Township that it would not file a lawsuit.

9. Centerville Borough, Washington County

The owner/operator requested review of a Borough ordinance defining commercial and non-commercial agriculture, requiring a permit for a private non-commercial use in the Agricultural Zoning Area, and imposing a fine for non-compliance. The owner/operator complained that he was engaged in commercial agriculture, but the Borough required that he apply for a non-commercial use permit, and then denied the permit. The OAG notified the owner/operator and the Borough that it would not file a lawsuit.

10. Richland Township, Bucks County

The owner/operator requested review of the Township's requirement that agricultural construction comply with permitting, erosion control, handicap parking, and sprinkler system requirements. The owner/operator complained that the Township has unreasonably restricted, burdened, and delayed construction of an agricultural building on Clean and Green property. The OAG notified the owner/operator and the Township that it would not file a lawsuit.

11. Upper Mount Bethel Township, North Hampton County

The owner/operator requested review of the Township's ordinance requiring a special use permit to sell farm products at his market. The owner/operator complained that the Township told him a special use permit was not required, but is now requiring one, and that the Township rezoned his property from agricultural to residential. The OAG notified the owner/operator and the Township that it would not file a lawsuit.

12. Orange Township, Columbia County

The owner/operator requested review of the Township's action requiring submission of a land development plan before construction of an indoor arena for an equine operation. The owner/operator complained that a land development plan should not be required because the

Township had issued prior building permits. The OAG notified the owner/operator and the Township that it would not file a lawsuit.

13. West Hanover Township, Dauphin County

The owner/operator requested review of the Township's action requiring removal of 100 grape vines and a buffer of trees along the property line of his winery. The owner/operator complained that doing so would damage growing conditions. The OAG notified the owner/operator and the Township that it would not file a lawsuit.

14. Newtown Township, Upper Makefield Township, and Wrightstown Township, Bucks County

The owner/operator requested review of Joint Township Zoning Ordinance No. 2006-18, pursuant to which the Townships approved a re-zoning plan for a high density residential development and a National Veterans Cemetery. The owner/operator complained that the high density residential development will interfere with his normal farming operations. The OAG notified the owner/operator and the Townships that it would not file a lawsuit.

15. Bethel Township, Berks County

The owner/operator requested review of the Township Zoning Ordinance. The owner/operator complained that the ordinance unlawfully excludes aquaculture from the definition of agriculture, requires a special exception to engage in aquaculture, and limits spring water extraction. The ordinance is under review.

16. Peach Bottom Township, York County

The owner/operator requested review of an existing ordinance that restricts, and two proposed ordinances that would further restrict, large scale hog operations. The owner/operator complained that the ordinances would impede normal agricultural operations. The OAG advised the Township of problems with the proposed ordinances. The existing ordinance is under review.

17. New Milford Borough, Susquehanna County

The owner/operator requested review of amendments to Zoning Ordinance No. 15, which prohibits farm animals within the Borough limits. The owner/operator has a 9-acre parcel lying within Borough limits that is used for a market garden and to raise chickens for egg production and sales. The owner/operator complained that the ordinance precludes normal farming operations. The ordinance is under review.

18. Salem Township, Luzerne County

The owner/operator requested review of Ordinance No. 06-02, which prohibits farm animals from being within 200 feet of an adjoining landowner or within 200 feet of a residential water-well. The owner/operator complained that the ordinance interferes with normal farming operations and conflicts with state law. The ordinance is under review.

19. Athens Township, Bradford County

The owner/operator requested review of Township Zoning Ordinance No. 1202, which concerns mineral extraction. The owner/operator complained that he was served with a zoning enforcement notice stating that he is engaged in mineral extraction, but that he is engaged in landscaping and agricultural expansion, not a mineral extraction. The ordinance is under review.