



East Coventry Township

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www.eastcoventry-pa.gov

855 Ellis Woods Road
Pottstown, PA 19465
Phone: 610-495-5443
Fax: 610-495-9925

November 11, 2022

[REDACTED]

RE: Right-to-Know Request received October 10, 2022

Dear [REDACTED]

As you know, I serve as the Open Records Officer for East Coventry Township ("Township"). A Right-to-Know Law, 65 P.S. §67.101, *et seq.* ("RTKL") request was received from you on October 10, 2022 ("Request") requesting the following:

"Review Letters in connection with proposed use and Land Use of the property located at 851 Bethel Church Road, Spring City, PA, 19475, and, specifically, those reviewing the proposed use and land use of the property, Zoning Permit Applications, Zoning Permits for the property, Permit 21-153 and Permit 22-131 from 1/1/20 to Present."

Upon careful consideration, your Request is **GRANTED**. All review letters related to the proposed use and land use of 851 Bethel Church Road, Spring City, PA 19475 from January 1, 2020 through the date of the Request are enclosed herewith, and consist of 15 pages.

Please be aware that some documents may be redacted or withheld from production pursuant to the protections related to: the draft bills, resolutions, regulations and ordinances exemption under RTKL §708(b)(9); the internal, pre-decisional deliberations exemption under RTKL §708(b)(10); the attorney-client privilege; the attorney work product doctrine; or, the ethics based rule of confidentiality.

As you may know, the attorney-client privilege operates in a two-way fashion to protect confidential client-to-attorney or attorney-to-client communication made in connection with obtaining or providing professional legal advice. Gillard v. AIG Insurance Co., 609 Pa. 65, 15 A.3d 44 (Pa. 2011). Also, the attorney work product doctrine protects the ‘mental impressions’ or strategy of an attorney. Finally, the RTKL cannot mandate (and the Office of Open Records cannot order) the disclosure of communications between parties and their attorney related to ongoing settlement negotiations of litigation. City of Pittsburgh v. Silver, 50 A.3d 296 (Pa. Commw. 2012) (en banc).

Any information that the Township chooses to make accessible herein that would otherwise be exempt or would otherwise not constitute a public record under the RTKL shall not constitute a waiver of the Township's future right to claim, or otherwise prevent the Township from subsequently claiming, any such exemption or that any record does not constitute a public record.

Under the RTKL, you may have the right to appeal this response, in writing, to: Executive Director, Office of Open Records, 333 Market Street, 16th Floor Harrisburg, PA 17101-2234, within fifteen (15) business days of the date of this letter. Please note that this correspondence will serve to close this Request with the Township as permitted by law and in accordance with the terms set forth herein.

Sincerely,



David G. Kraynik,
Township Manager &
Open Records Officer
East Coventry Township

Cc: Mark A. Hosterman, Esq.



1003 Egypt Road, Phoenixville, PA 19460

610.935.2175 610.481.9098

barryisett.com

August 4, 2021

Permit #: 21-153

Nolt Trucking
1250 Lincoln Road
Lititz, PA 17543
lntrucking@gmail.com

RE: PROPOSED MANURE/WASTE STORAGE TANK
851 Bethel Church Road, East Coventry Township, Chester County, Pennsylvania

Dear Nolt Trucking:

Barry Isett & Associates, Inc. is the appointed by East Coventry Township as the Township Zoning Official. We are in receipt of permit applications for the above proposed project to review for compliance with the East Coventry Township Code of Ordinances.

At this time, we cannot approve the permit as submitted for the following reasons:

1. This project may require approval under the East Coventry Township Subdivision and Land Development Ordinance (the SALDO). Please indicate if this proposed project qualifies an accessory building, including farm buildings, per §503(1.1) of the Pennsylvania Municipalities Planning Code or any other applicable exemption.
2. As the proposed area of earth disturbance exceeds 5,000 square feet, a drainage permit is required under the East Coventry Township Stormwater Management Ordinance (the SWMO). Please submit a drainage permit application along with documentation showing compliance with the SWMO. Please direct any technical questions related to the SWMO to the Township Engineer, Brady Flaharty with Arro Consulting, Inc.
3. The proposed project may be exempt from the Pennsylvania Uniform Construction Code as an agricultural building [see the definition of Agricultural Building in 34 Pa. Code § 401.1. Definitions and the list of exclusions and exemptions under 34 Pa. Code § 403.1.(b).(4)]. Please indicate whether the proposed structure will be used to process or treat agricultural products, and therefore would not be considered an agricultural building.
4. Please demonstrate compliance with the East Coventry Township Zoning Ordinance (the ZO) §27-1330.1.F Physical Performance Requirements: Odor
5. Please demonstrate compliance with the applicable ZO area and bulk requirements found in ZO §27-503.

Should you have any questions, you may contact me on my mobile at 215-519-1870.

Sincerely,

A handwritten signature in black ink that reads "H.R. Weaver". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Harry Weaver
Barry Isett & Associates, Inc.
East Coventry Township Zoning Officer
Mobile: 215-519-1870
hweaver@barryisett.com

Copy: Township Property File
David Kraynik, Township Manager
Mark Hosterman, Esq., Wisler Pearlstine, Township Solicitor
Brady Flaharty, PE, Arro Consulting, Township Engineer



1003 Egypt Road, Phoenixville, PA 19460
610.935.2175 610.481.9098
barryisett.com

September 28, 2021
Permit #: 21-153

Nolt Trucking
1250 Lincoln Road
Lititz, PA 17543
lntrucking@gmail.com

RE: PROPOSED MANURE/WASTE STORAGE TANK
851 Bethel Church Road, East Coventry Township, Chester County, Pennsylvania

Dear Nolt Trucking:

Barry Isett & Associates, Inc. is the appointed by East Coventry Township as the Township Zoning Official. We are in receipt of permit applications for the above proposed project to review for compliance with the East Coventry Township Code of Ordinances.

This is our second review for this project. New or amended comments are in bold type.

At this time, we cannot approve the permit as submitted for the following reasons:

1. **The definition of accessory structure found in the East Coventry Township Zoning Ordinance §27-202 states, "A subordinate building or structure, the use of which is entirely incidental to that of the principal or main building or structure, used for an accessory use and located on the same lot."**

The definition of accessory use found in the East Coventry Township Zoning Ordinance §27-202 states, "A use customarily incidental and subordinate to and located on the same lot occupied by the principal use to which it relates."

In our view, the proposed use to transport residual food processing waste to this site and store it in a tank with a capacity of over a million gallons and multiple truckloads of traffic a day is not "entirely incidental," and is not "customarily incidental" to the existing agricultural principal use. Additionally, this cannot be considered an accessory structure as it is not entirely incidental to a principal or main building or structure.

For these reasons, two variances from the Zoning Hearing Board are required:

- a. A variance from the East Coventry Township Zoning Ordinance §27-502 to allow a principal use for the storage of residual food waste in the FR Zoning District, where it is not normally permitted by right, by special exception or by conditional use, and
- b. A variance from the East Coventry Township Zoning Ordinance §27-1329 to allow multiple principal uses where it is normally prohibited.

2. This project may require approval under the East Coventry Township Subdivision and Land Development Ordinance (the SALDO). Please indicate if this proposed project qualifies an accessory building, including farm buildings, per §503(1.1) of the Pennsylvania Municipalities Planning Code or any other applicable exemption.

Because it does not meet the Zoning Ordinance definition of an Accessory Structure, we believe that the requirements of the East Coventry Township Subdivision and Land Development Ordinance apply. However, a waiver from these requirements may be granted by the East Coventry Township Board of Supervisors upon request at the Board's discretion.

3. As the proposed area of earth disturbance exceeds 5,000 square feet, a drainage permit is required under the East Coventry Township Stormwater Management Ordinance (the SWMO). Please submit a drainage permit application along with documentation showing compliance with the SWMO. Please direct any technical questions related to the SWMO to the Township Engineer, Brady Flaharty with Arro Consulting, Inc.

We understand that the applicant has discussed compliance with Township Engineer Brady Flaharty, PE, however this comment remains for completeness.

4. The proposed project may be exempt from the Pennsylvania Uniform Construction Code as an agricultural building [see the definition of Agricultural Building in 34 Pa. Code § 401.1. Definitions and the list of exclusions and exemptions under 34 Pa. Code § 403.1.(b).(4)]. Please indicate whether the proposed structure will be used to process or treat agricultural products, and therefore would not be considered an agricultural building.

It is our opinion that the proposed structure meets the definition of an Agricultural Building found in the Pennsylvania Uniform Construction Code, and therefore the project is exempt from regulation under the Pennsylvania Uniform Construction Code.

5. Please demonstrate compliance with the East Coventry Township Zoning Ordinance (the ZO) §27-1330.1.F Physical Performance Requirements: Odor

It is our opinion that the physical performance requirements do apply to the proposed structure. The applicant should demonstrate compliance or seek a variance from these requirements from the Zoning Hearing Board.

6. Please demonstrate compliance with the applicable ZO area and bulk requirements found in ZO §27-503.

It is our opinion that the proposed structure likely complies with the setback and impervious coverage requirements found in the East Coventry Township Zoning Ordinance §27-503, however, the plans must still be amended to demonstrate compliance.

Should you have any questions, you may contact me on my mobile at 215-519-1870.

Sincerely,

A handwritten signature in black ink that reads "H.R. Weaver". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Harry Weaver
Barry Isett & Associates, Inc.
East Coventry Township Zoning Officer
Mobile: 215-519-1870
hweaver@barryisett.com

Copy: Township Property File
David Kraynik, Township Manager
Mark Hosterman, Esq., Wisler Pearlstine, Township Solicitor
Brady Flaharty, PE, Arro Consulting, Township Engineer
Ray Kolb, Township Public Works Director

TOWNSHIP OF EAST COVENTRY

ZONING PERMIT

Project: Waste Storage Tank

Date: June 17, 2022

Location: 851 Bethel Church Road

Zoning Permit Number: 21-153

The original application and certified copies of plans and specifications, upon strict compliance with which the execution of said work is authorized, will be found duly filed with the Codes Enforcement Office of East Coventry Township, Chester County, Pennsylvania.

This placard shall be posted in a conspicuous place on the work site, easily visible from the principle street and well secured if exposed to the weather, during the entire operation authorized.

Work must commence within 180 days of issuance or permit shall become invalid.

All work shall comply with East Coventry Township Zoning Ordinances and Building Codes.

Zoning Officer:



TOWNSHIP OF EAST COVENTRY

ZONING PERMIT

Project: Demolition

Date: August 31, 2022

Location: 851 Bethel Church Road

Zoning Permit Number: 22-131

The original application and certified copies of plans and specifications, upon strict compliance with which the execution of said work is authorized, will be found duly filed with the Codes Enforcement Office of East Coventry Township, Chester County, Pennsylvania.

This placard shall be posted in a conspicuous place on the work site, easily visible from the principle street and well secured if exposed to the weather, during the entire operation authorized.

Work must commence within 180 days of issuance or permit shall become invalid.

All work shall comply with East Coventry Township Zoning Ordinances and Building Codes.

Zoning Officer:



Rosetree Consulting

Agricultural • Environmental

Rosetree Consulting, LLC
 20 Glenbrook Drive
 Shillington, PA 19607

Tel: (610) 396-7101
 Fax: (717) 427.1752
 EricRosenbaum@RosetreeConsulting.com

Agricultural Review Letter

Following the initial review of the proposed land application plan, Spring City Acres LLC provided revisions to the Design Report. They also submitted copies of the Manure Management Plan (MMP) and Agricultural Erosion & Sedimentation Plan (Ag E&S Plan). These documents were reviewed for completeness and accuracy.

Comments on Design Report for Permit 12-153-851 Dated 6/13/21

Below are the comments originally submitted by Rosetree Consulting, along with an update to the current status of each comment.

1. Page 3 - indicates an approved nutrient management plan. What regulatory body approved the plan? What kind of plan is it? What are the effective dates of the plan? Does the operation intend to continue developing and implementing an approved nutrient management plan?

The document now reads "always spread FPR waste in accordance to any applicable Residual Waste Management regulations" and addresses the initial concern.

2. Page 3 – O&M Plan. Below is a comparison of the O&M requirements in the PA313 Standard with the submitted design report

NRCS PA313 Standard Operation & Maintenance Requirements	Corresponding O&M in the submitted design report
Requirements for emptying the storage, including the expected storage period	Missing in the original submission. It is now addressed in item #8 of the O&M plan
Identification of the staff gauge / permanent marker to measure storage freeboard	Missing in the original submission. It is now addressed in item #3 of the O&M Plan
Perimeter Drains outletting within 50' of surface water – monthly inspection of the outlet	Missing in the original submission. It is now addressed in item #7 of the O&M Plan
Information on safety precautions for toxic & explosive gases	O&M Plan #4&5.
Description of routine maintenance for each component of the facility	There are 3 components to the storage – (1) concrete storage – O&M Plan #1

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	(2) Safety Fencing – see page 43. O&M Plan #5 (3) Leak Detection System – O&M Plan #7
Provision for emergency removal and disposition of material in the event of an unusual storm event	O&M Plan #3 indicates adequate freeboard for unusual storm events
Instructions for ventilating confined spaces	Not applicable
Develop an emergency action plan	O&M Plan #9 & #10 provide adequate information for emergency actions.

The document addresses the initial concerns as all elements are addressed in the O&M guidance.

Comments on the Agricultural Erosion and Sediment Control Plan (Ag E&S Plan), prepared by AET Consulting, dated April 24,2021

The Ag E&S Plan submitted by AET Consulting provides the necessary elements of an Ag E&S Plan

- Best Management Practice Summary, location of the practice & implementation schedules for each practice that is existing or planned for the property
- Soil Loss Calculations for each field showing that planned management will result in soil loss within the allowable limit.

The Ag E&S Plan meets state guidelines.

Predicted soil loss exceeds the allowable limit (T) in fields BC1-BC3, BC4, and BC7. The planner correctly states that the program used to calculate soil loss has accuracy limitations. For instance, the program is not precise enough to definitively establish a difference between 2 ton and 2.5 ton when T is 2 ton.

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Comments on the Manure Management Plan (MMP), prepared by AET Consulting, dated April 24, 2021

The MMP submitted by AET Consulting provides application guidance for all tracts operated by Lloyd Z Nolt, including the Spring City Acres #1 Farm and Spring City Acres #2 Farm. The plan outlines Poultry litter and FPR application rates for each crop that may be grown on the farm, and crops listed in the MMP are consistent with the crop rotation provided in the Ag E&S Plan.

The calculated maximum FPR application rates for each crop are correct based on the analysis used in the calculation. There are few discrepancies, however, that should be addressed:

1. There is no Manure Management Plan Summary for FPR applications
2. The calculation is based on "FPR-Tyson DAF" material with a analysis of 7.3 lbs total nitrogen, 7.3 lbs phosphorus, and 0.6 lbs potassium per 1000 gallons. There is no analysis in the Potential Manure/FPR Products Nutrient Analysis with this analysis.
3. All FPR calculations state that "Option 3 P Index Must be Completed". The P Index is not included in the plan.

I would want to see these 3 points addressed in the MMP before accepting it as complete.

Respectfully Submitted

Eric Rosenbaum

Rosetree Consulting LLC

Rosetree Consulting

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Comments & Opinion on AET Letter Dated 9/11/21

A Land Application System Plan was provided by AET consulting, summarizing the required elements that would be in the operation's FPR nutrient management plan. Those elements are:

1. A map showing field boundaries & setback areas
2. Annual analysis of the FPR materials that are land applied.
3. Regular soil testing of cropland for basic fertility values
4. Annual calculation of FPR application rates based on soil tests, FPR analysis and planned crops
5. Recordkeeping of loads applied to each field
6. Recordkeeping of annual nutrient balance for the past year's application.

Nolt's have chosen not to include any detailed information on the nutrient management plan. It is difficult to tell how they are complying with nutrient management regulations, but the information provided does allude to the appropriate work being performed to meet regulations.

As stated earlier, there are a few different nutrient management plans a farm can develop, based on their level of regulation. In this case, the operation needs to comply with the planning requirements outlined in the DEP FPR Manual. A nutrient management plan meeting these requirements does not need formal approval by the County Conservation District or the State Conservation Commission, nor is it considered public information. However, the design report states there is an approved nutrient management plan, indicating that some government agency reviewed the plan and provided official feedback constituting approval.

The township could ask for the following documents. The operation may or may not be willing to provide them:

1. Copy of the nutrient management plan.
2. Copy of the approval letter or email from the government agency performing the review
3. Copy of the Agricultural Erosion & Sedimentation Plan. This plan will not have a review process or approval letter.

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Comments & Opinion on Fox Rothchild Letter Dated 10/21/21

- **Page 1, 1st paragraph** -- Letter states land application of FPR & manure. If the operation is land applying FPR, a nutrient management plan meeting DEP's Food Processing Residuals Manual is required. If the farm is land applying FPR and manure, a Manure Management Plan that meets DEP's Manure Management Manual would also be required. It is possible, and allowable, for the farm to have one nutrient management plan satisfying both programs. Other documents provided indicate there may be a few cattle on pasture. Pastured animals deposit the majority of manure on the pastures, with small amounts collected and land applied. The amount of collected cattle manure would not significantly alter a nutrient management plan.

- **I SCA Farm & Purpose of the Tank** – There are a number of reasons why a farm would want a storage structure
 - Staging of adequate materials – A number of factors are considered in this statement. Storage is a desirable solution for to manage the supply of FPR materials and labor for land application.
 - most FPR generators produce a small amount of material on a daily basis – not enough to cover an entire field or farm.
 - FPR materials are not land applied when annual crops are actively growing and cannot be land applied during winter months. Contingency plans are needed for these times.
 - Equipment used to transport material from the generation site to a farm is not the ideal equipment for land application (see soil health below)
 - Land application for annual crops can occur in 2 short windows – (1) from harvest of the previous crop until winter conditions are met, and (2) when winter conditions end until the planting of the current cash crop. This could be as few as 30 days in the fall and 60 days in the spring. Weather conditions will further reduce this window.
 - Soil Health – land application of manure on saturated soils leads to soil compaction. Equipment fitted with road tires causes significantly more compaction than application fitted with field tires. Soil compaction reduces a plants ability to obtain nutrients and water, reduces overall productivity of the land, and reduces the soils' ability to infiltrate

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rainwater. Any decrease in rainwater infiltration is offset by increase surface water runoff, which can increase erosion and increase off sight nutrient loss.

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Closing Opinion:

Agriculture often has public perception issues in suburban areas that do not occur in more rural settings. The past few years have seen many townships increase their role in determining that all agricultural operations within their borders are meeting the minimum requirements for agricultural regulations. The two regulatory plans all farms in the township should have in place are the following:

1. Agricultural Erosion and Sedimentation Plan / Soil Conservation Plan – Ag E&S Plans, also called Soil Conservation Plans, address soil loss and nutrient loss concerns on the farm. All farms with pastures, or cropland, are required to have an Ag E&S Plan. These plans do not need review or approval by a government agency.
2. Nutrient Management Plan – all farms producing and utilizing manure (or FPR) are required to have some level of nutrient management plan. This includes the family with 1 pet horse and the dairy farm with 100 milking cows. The level of animal density and source of material applied will dictate the level of planning needed.

Next Steps:

Most townships we deal with will ask farms for copies of both the Ag E&S Plan and nutrient management plan as part of the permitting process for a new barn or manure storage. I would ask for both of these documents as part of the permit approval package. The goal is not to review the plans for accuracy, but rather to review for completeness and that the farm is implementing them according to the timelines in the plan.

I would also ask for the missing items in the Design report to be addressed. Let's make sure whatever is submitted in the design report is consistent with the language in the Ag E&S Plan

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I am supportive of using a storage structure to temporarily store/stage materials for land application. As a certified nutrient management specialist, Certified Crop Adviser with Sustainability specialty certifications, and the executive director of the PA 4R Nutrient Stewardship Alliance, I can attest to storage providing many benefits for farms to improve nutrient use efficiency and overall conservation. If the farm will be land applying material, a storage structure offers a better alternative for responsible management of the land and the nutrients contained in the FPR material(s). Comparing land application of materials with a storage vs without a storage, I see more benefits to a storage. They are as follows:

1. Reduced frequency of land application. Without a storage, land application could occur up to 275 days a year, depending on the farm's rotation and weather conditions.
2. Reduced odors arising from land application. The more frequently land applications occur, the higher instance of negative public interactions.
3. Increased ability to manage healthy soils. Managing field traffic to times when soils can support the equipment loads will minimize compaction. This, in turn, will reduce the risk of nutrient runoff into surface waters.
4. Increased ability to manage applied nutrients and improve overall nutrient use efficiency. Supplemental fertilizer will be applied to meet yield goals. Material removed from a storage will be more homogenous than multiple materials applied daily, resulting in consistent supplemental nutrient needs. This will improve the farm's ability to manage crops responsibly and reduce the risk of over applying nutrients.

Respectfully Submitted

Eric Rosenbaum
Senior Agronomist, Rosetree Consulting
Certified Crop Adviser (CCA)
CCA specialty certifications in Sustainability, Resistance Management and 4R Nutrient Stewardship
Certified Nutrient Management Planner
Certified Conservation Planner