

Limiting Growth – Can ACRE, and Right-to-Farm Help Protect a New “Normal” in Agricultural Operations?

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In general, Pennsylvania municipalities have broad discretion over land-use regulations. Typically, so long as a municipality acts within the parameters of the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.* (“MPC”), it is relatively free to regulate where any given land use can operate within its boundaries. At times, the courts may step in where a regulation is unreasonable, arbitrary, or confiscatory, but the legislature has been reluctant to interfere with local control over land use and development. One rare exception to the rule is farming, where the legislature has stepped in to protect “normal agricultural operations” from unreasonable local regulation. The Right to Farm Act, 3 P.S. §§ 951-958 (“RTFA”) was adopted to limit “the circumstances under which agricultural operations may be subject matter of nuisance suits and ordinances”. The RTFA works in tandem with the Agricultural Communities and Rural Environment Act (“ACRE”), 3 Pa.C.S. § 101 *et seq.* As described by the Pennsylvania Farm Bureau, ACRE provides a means for farmers burdened by ordinances that illegally inhibit farming practices to initiate a process to challenge and invalidate the ordinance.

Both ACRE and the RTFA only protect “normal agricultural operations”, a statutory definition under Section 2 of the RTFA which includes 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. . .” 3 P.S. §952. The activity must not be less than 10 contiguous acres, or in the alternative, have a yearly gross income of at least \$10,000. In addition, the definition expressly “includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry”.

ACRE, in relevant part, prohibits the adoption or enforcement of “unauthorized local ordinance [s]” which includes an ordinance that prohibits or limits a normal agricultural operation (unless otherwise allowed by law) or restricts or limits the ownership structure of a normal agricultural operation. See 3 Pa. C.S. §312. As the Pennsylvania Supreme Court has stated, the term “normal agricultural operation” is intended to be read expansively in order to take into account new developments in the farming industry. In certain instances, courts have read the RTFA as protecting (at the time) “new” farming practices over protest from neighbors. See *e.g. Gilbert v. Synagro Cent., LLC*, 131 A.3d 1 (Pa. 2015) (finding application of recycled biosolids to be a “normal agricultural operation”). As new technologies develop, and formerly cutting-edge practices become mainstream, the question arises as to whether and when they are entitled to the protections afforded to “normal agricultural operations”.

This question has come to the fore where agricultural production collides with energy production. Agrivoltaics, the practice of combining photovoltaic electric generation with agricultural production, dates back to the early 1980s. However, it has gained regional popularity in the past decade as Pennsylvania has scrambled to meet its renewable energy generation targets. To solar developers, farmland often offers the best physical characteristics for photovoltaic generation. It is generally vacant, already cleared of trees, and flat. To many farmland owners, the promotion of agrivoltaics offers potential for expanded economic opportunities not available in the traditional agricultural sector. Many see a solar lease as a financial lifeline for the family farm. More and more often, when use of agricultural land is proposed to be used for solar generation, the landowner maintains the right to continue to crop-farm (“agrovoltaics”), or to allow livestock grazing (“rangevoltaics”) on the property. In modern industrial spaces, solar and agriculture are often considered compatible uses. So, where agrivoltaics are proposed, could the solar component be entitled to protection under RTFA and ACRE?

The question remains outstanding, but a recent decision from the Commonwealth Court indicates that the Court, at least, is not ready to come to that conclusion. On January 15, 2026, the Court in *West Lampeter Solar 1, LLC v.*

West Lampeter Township Zoning Hearing Board, 2026 WL 110932, No. 76 C.D. 2025 (Pa. Cmwh. Jan. 15, 2026)^[1] rejected a developer's assertion that its proposed "agrivoltaics solar farm" was an "agricultural use" for purposes of zoning approval. While the issue was not expressly before the Court, it opined that the "Department of agriculture specifically advises that a 'commercial scale solar' or 'solar farm' does not meet the definition of normal agricultural operation under the Right to Farm Act, . . . and therefore, it will not receive protection from local ordinances, otherwise given to agricultural operations." *West Lampeter Solar*, supra. The Court noted that the applicant argued that agrivoltaics constituted a "technological development within the agricultural industry" an argument to which it responded "[w]e disagree." The Court ended its analysis of the issue by stating the "Zoning Board's conclusion that 'agrivoltaics' does not constitute an agricultural use [was] unassailable." *Id.*

In its reasoning, the Court found it notable that the energy generated by the proposed solar panels would not be used to prepare or market any crop or livestock products and would not "advance the sheep grazing enterprise" contemplated. Looking to the definition of "agricultural operation" under the MPC as well, it stated that "there must be a connection between the technological advance and the preparation of agricultural products," and found none. As noted above, the issue of whether or not agrivoltaics constituted a "normal agricultural operation" under the RTFA or ACRE was not before the Court, in *West Lampeter Solar*, but its treatment of the ordinance interpretation matter before it is illustrative. For now, it appears that, despite becoming increasingly common, agrivoltaics may not be "normal" enough to warrant statutory protection.

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^[1] Opinion reported, citation pending.

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