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February 13, 2015

Balady Farms, LLC  
c/o Hafedh Ali Abbas  
380 Moulstown Road  
Abbottstown, PA 17301

**RE: Paradise Township Zoning Hearing Board Decision**

Dear Mr. Abbas:

Enclosed is the decision of the Paradise Township Zoning Hearing Board rendered on January 19, 2015, and entered on February 13, 2015 (the "Decision") denying the Application for an Interpretation of the definition of "agriculture" set forth in the Paradise Township Zoning Ordinance, as set forth more fully in the Decision, on your 380 Moulstown Road property.

You have the right to appeal this action to the Court of Common Pleas of York County, Pennsylvania, within thirty (30) days of the date of the entry of this written decision.

Very truly yours,

STOCK AND LEADER

A handwritten signature in black ink, appearing to read "Peter T. Ruth". The signature is fluid and cursive, with a long horizontal stroke at the end.

Peter T. Ruth, Esquire

PTR:dms  
Enclosure  
cc (w/enclosure):

Amanda Snoke Dubbs, Esquire  
Laverne Seibert, Board Chairman  
Rodney Eisenhart, Board Secretary  
Gary L. Burgard, Board Vice-Chairman  
Wayne Smith, Zoning and Codes Enforcement Officer  
Judy Katz, Paradise Township Secretary

**DECISION OF THE  
PARADISE TOWNSHIP ZONING HEARING BOARD  
YORK COUNTY, PENNSYLVANIA**

<b>Applicants:</b>	Balady Farm, LLC 380 Moulstown Road Abbottstown, PA 17301	<b>Location:</b>	380 Moulstown Road Abbottstown, PA 17301 Paradise Township
<b>Property Owner:</b>	Balady Farm, LLC		
<b>Application No.:</b>	2015-01	<b>Tax UPI:</b>	42-000-FD-0049.00-00000 & 42-000-FD-0049.A0-00000
<b>Date of Hearing:</b>	January 19, 2015	<b>Zone:</b>	Rural Conservation

**DECISION**

**I. FINDINGS OF FACT.**

The Applicant is Balady Farm, LLC (the “Applicant”) of 380 Moulstown Road, Abbottstown, Pennsylvania 17301 (the “Property”). The Applicant owns the Property which Applicant asserts is 28 acres.<sup>1</sup> The Applicant’s application (“Application”) requests an interpretation of the definition of “agriculture,” as that term is defined in the Paradise Township Zoning Ordinance (the “Ordinance”). Specifically, Applicant wishes to operate a commercial chicken processing plant on the Property.

The Applicant filed the Application for an Interpretation with Paradise Township on October 30, 2014. As a result of a scheduling conflict with the Applicant’s counsel, Applicant agreed to hold the hearing on January 19, 2015, waiving the sixty (60) day requirement for the first hearing date pursuant to the Pennsylvania Municipalities Planning Code (the “MPC”). The Applicant’s request for an interpretation was duly advertised and the Property was posted according to law. All adjoining property owners were notified of the time and place of the

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<sup>1</sup> There was conflicting testimony as to whether the Property was 28 acres or 23 acres, as shown on the York County Tax Assessment records.

hearing in accordance with MPC and the Ordinance. Mr. Hafeedh Ali Abbas, manager of the Applicant, was present and testified at the hearing. Amanda Snoke Dubbs, Esquire, with an address of 294 Dew Drop Road, York, Pennsylvania 17402, represented the Applicant.

The Applicant's request for an interpretation was forwarded to the Paradise Township Planning Commission ("Commission"), which reviewed the Application and submitted comments to the Paradise Township Zoning Hearing Board ("Board"). The Board took the Commission's comments under advisement in making its decision on the merits of the instant matter. The hearing on Applicant's request was conducted by the Board on January 19, 2015 (hereinafter referred to as the "Hearing").

Attorney Dubbs questioned the Applicant at the Hearing regarding the requirements of the Ordinance. Eric Johnston, PE of Johnston and Associates, Inc., 2386 Taxville Road, York, Pennsylvania 17408 appeared on behalf of the Applicant. Mr. Johnston has been president of Johnston and Associates, Inc. for 25 years and has completed over seven hundred (700) projects from land planning to environmental issues. Attorney Dubbs submitted as Exhibit 1, Mr. Johnston's curriculum vitae.

Mr. Johnston testified that he reviewed the Ordinance and specifically the definition of Agriculture. By letter dated September 9, 2014, Mr. Johnston requested an interpretation from Paradise Township Zoning Officer, Wayne Smith, of whether the definition of agriculture would include a poultry processing operation, as proposed by the Applicant. Attorney Dubbs submitted Exhibit 2, a site plan showing the Property as 28 acres, consisting of parcels 49 and 49.A, on which are situated various outbuildings. The outbuilding located on the south-eastern portion of the Property, identified as "Convert Interior of Exist. Storage Bldg. to Processing" on the site plan within Applicant's Application is the proposed processing structure (the "Processing

Structure”). The Processing Structure is approximately 80 feet by 40 feet, or 3,200 square feet, consisting of a metal building on a concrete slab.

Mr. Johnston testified that, in addition to residential properties, the Property is surrounded by “livestock areas and barns.” There are currently two (2) outbuildings the Applicant is utilizing, with two (2) floors in each building. Approximately seven thousand (7,000) chickens are raised in the buildings for a specified period of time until the chicks reach a certain age, after which time trucks come and take the chickens off-site for processing. Mr. Johnston lastly testified that in the Ordinance, poultry is included in the definition of “livestock.”

Mr. Hafedh Ali Abbes is the operator and manager on the Property. Mr. Abbes testified that he raises organic, natural chickens that Mr. Abbes believes are of a higher quality. Currently, however, he does not process the chickens (i.e. slaughtered, cut, and cleaned), instead shipping the chickens away to be processed. Mr. Abbes testified that if he were granted a favorable interpretation by the Board, he would process approximately 40,000 chickens per year. According to Mr. Abbes, the 40,000 chickens could be processed in about four (4) hours. The processing would take place two (2) times per week from approximately 9:00 a.m. to 3:00 p.m. As a result of the increased operation, Mr. Abbes would hire six (6) additional employees.

Mr. Abbes testified that truck traffic would actually decrease from the current flow because most of the current traffic results from the processing trucks. If Mr. Abbes were allowed to process the chickens on site, there would be no need for the processing trucks, thereby decreasing overall traffic to and from the Property. After the chickens have been processed, a rendering company would remove the byproducts (blood, guts, and feathers) from the Processing Structure. Mr. Abbes testified that there would be no negative impact on the environment,

stressing that a favorable interpretation from the Board would be the first step, after which Mr. Abbes must then obtain approval from the United States Department of Agriculture (“USDA”).

Zoning Officer, Wayne Smith, testified that he posted the Property according to law. The Applicant had no objection to compliance with the advertising, posting, and notice requirements. Zoning Officer Smith further testified regarding his communication with Applicant. Mr. Smith wrote to Applicant on May 1, 2013 stating that he believed the current use of the Property, i.e. raising poultry, is compliant with the requirements of the Ordinance. Mr. Smith went on to say that “a slaughter house is not a farm operation unless [Applicant is] only butchering the animals that are raised there.” A true and correct copy of the communication is attached to the Application as Exhibit “D.”

Thereafter, on October 13, 2014, Mr. Smith wrote that although Section 1304 of the Ordinance does allow for the breeding, keeping, and raising of animals, it does not clearly authorize a commercial operation. Accordingly, the proposed processing facility would not be in compliance with the requirements of the Ordinance. Upon cross examination from Attorney Dubbs, Mr. Smith stated that the Ordinance’s definition of agriculture includes commercial production and preparation of livestock, and that livestock includes livestock products, specifically poultry and poultry products.

Mr. Robert Nivens, member of the Commission, testified regarding the Commission’s comments on the Application, submitted to the Board by letter dated December 29, 2014. Mr. Nivens testified that agriculture includes the breeding, raising, or keeping of animals, and includes the activities that are consistent with practices and procedures that are normally engaged in by farmers. Ultimately, the Commission is of the opinion that a chicken processing facility is not consistent with definition of “agriculture,” as defined by the Ordinance. Instead, the

“processing of Livestock, including chickens, and selling the butchered meat and meat products to the public, either on the property or shipped off site, constitutes a Commercial Operation and is not an allowed use.” A copy of the Commission’s letter was admitted as Exhibit 2. Upon cross examination from Attorney Dubbs, Mr. Nivens testified that he did not agree with the majority of the Commission that the proposed chicken processing operation was not “agriculture.”

Mr. Todd Lanz, an adjoining property owner with an address of 375 Moulstown Road, testified that he was in favor of the Applicant’s request. Mr. Lanz testified that he works with Mr. Abbes, and that the current operation is very clean and sanitized. Although the operation is currently very “low-scale” it is also very clean. Ms. Heather Honeycut of 7731 Camp Ernie Road testified that she does not oppose a favorable decision as long as all USDA requirements are met. Ms. Honeycut further added that the proposed natural and organic food processing is the new trend in food preparation.

There were several appearances made in opposition to the Application. Ms. Christine Fetterman of 389 Moulstown Road, testified that she lives across the street from the Property. Ms. Fetterman expressed concerns for the safety of children who use the bus stop at the corner of the Property. Ms. Fetterman fears that if the processing plant commences, it will increase traffic coming into and out of the Property. According to Ms. Fetterman, there are no sidewalks in the area, and no streetlights. Additionally, there are concerns regarding how clean the Applicant keeps the Property. Lastly, Ms. Fetterman testified that earlier in the year, Applicant slaughtered approximately one hundred (100) goats.

Ms. Lisa Bahn of 7704 Paradise Heights Road testified that when she moved to Paradise Township, she was attracted to the Rural Conservation zoning district for the preservation of

woodlands, wildlife, and streams. She testified that most of the properties in the area are serviced by well water, and that the consumption of water for the processing plant was a major concern. Ms. Tina Miller of 7727 Camp Ernie Road testified that the Applicant's current operation uses significant amounts of water. Further, water currently runs off the Property, which water contains chicken excrement and other pollutants. Further, when the Applicant allegedly slaughtered one hundred (100) goats, the smell and flies coming from the Property were very concerning.

Mr. Dave Bixler of 7749 Camp Ernie Road testified that the proposed processing operation will over-burden the area's wells, increase flies and smells, and, in his opinion, will take away from the purposes of the Rural Conservation zoning district, i.e. enjoyment and preservation of the outdoors. Attorney Dubbs interjected that the Property, prior to the Applicant's ownership of the same, was used to raise over 120,000 turkeys.

Mr. Richard Kuhns of 7719 Paradise Heights Road testified that he has similar concerns to those already expressed. He further testified that there is a creek at the bottom of the Property, and that, to the best of his knowledge, there currently is no groundwater containment or permits for slaughtering.

At this point in the Hearing, Board Chairman Leverne Seibert reiterated that the purpose of the Hearing was for the Board to make a determination whether the Ordinance's definition of agriculture includes the Applicant's proposed use of a chicken processing operation. Accordingly, if the Board were to agree that such a proposed use is "agriculture," Applicant must meet and comply with other requirements, not just from Paradise Township but also the USDA.

Mr. Akshay D. Vidyarthi of 7686 Paradise Heights Road, testified that the only thing authorized in the Rural Conservation zoning district is raising, not slaughtering. Further, Mr.

Vidyarthi testified that slaughtering is already occurring on the Property and that water discharge is an issue. Ms. Mary Bixler of 7749 Camp Ernie Road testified that the intent of agriculture is growing crops and raising animals, not operating a processing plant as the Applicant proposes. Mr. Clark Craumer of 65 Protectory Road testified that the Ordinance's definition of agriculture includes preparation and production of livestock and livestock products for market. Mr. Craumer raises grain-fed beef on his property, and it in his opinion, there is a difference between producing and preparing livestock for market, as compared to a commercial processing facility as proposed by the Applicant.

Mr. Tim Vaughn of 7704 Paradise Heights Road, asked the Board to consider one question when making its decision: "when does agriculture become industry?" Jim Rohrbaugh of 1268 Moulstown Road asked the Board whether a canning operation is a permitted use. Finally, Dean Bentzel of 1634 Lincoln Highway testified that a processing plant is a commercial operation, and as such, is not the same as the preparation and production for market of livestock and livestock products.

At the request of Board Chairman Seibert, Attorney Dubbs questioned Mr. Johnston regarding the provisions of Section 1304 of the Ordinance. Mr. Johnston testified that the Property is over five (5) acres; the Processing Structure is set-back more than one-hundred fifty (150) feet from the property line, any stream, creek, river, spring, lake, pond, or reservoir, and active public water supply drinking well or an active intake for public water safety; all agricultural accessory buildings will be more than fifty (50) feet from the property line; the manure storage will meet requirements of Act 38 of 2005 ("ACRE"); and that all processing will be contained within the Processing Structure; so that fencing is not required.

## **II. CONCLUSIONS OF LAW.**



A zoning hearing board is tasked with hearing and rendering final adjudications on any appeals from the determination of a zoning officer, including the determination that a proposed use does not fall within a definition contained in the applicable zoning ordinance. *See* 53 P.S. § 909.1(a). The primary objective of interpreting ordinances is to determine the intent of the legislative body that enacted the ordinance. *See* 1 Pa. C.S. § 1921; *see also*, *Bailey v. Zoning Board of Adjustment of City of Phila.*, 801 A.2d 492, 502 (Pa. 2002). Much deference is given to the zoning hearing board's interpretation of its own zoning ordinance, the basis for which comes from the expertise the board has to "interpret the ordinance that it is charged with administering." *Smith v. Zoning Hearing Board of Huntingdon Borough*, 734 A.2d 55, 57-58 (Pa. Commw. Ct. 1999). Further, while "zoning ordinances are to be liberally construed to allow the broadest possible use of land, it is . . . true that zoning ordinances are to be construed in accordance with the plain and ordinary meaning of their words." *Zappala Group, Inc. v. Zoning Hearing Board of Town of McCandless*, 810 A.2d 708, 710 (Pa. Commw. Ct. 2002).

The Ordinance defines "agriculture" as follows:

An enterprise that is actively engaged in the commercial production and preparation for market or use of agriculture, agronomic, horticultural, silvacultural, and aquacultural crops and commodities and/or livestock and livestock products. The term includes an enterprise that implements changes in production practices and procedures or types of crops, livestock, and livestock products, or commodities produced consistent with practices and procedures that are normally engaged by farmers or are consistent with technological development within the agricultural industry. Agriculture does not include the composting of materials originating off the property or the manufacture or sales of landscaping mulch.

It is important to note that the aforementioned definition of agriculture is substantially similar to the definition of "agricultural operation," as that term is defined in the MPC. 53 P.S. § 10107(a). It is also important to note that while the definition of agriculture within the Ordinance permits the breeding, raising, or keeping of animals in compliance with the terms of

Section 1304, it does not specifically permit, nor deny, the processing operation as proposed by the Applicant.

Black's Law Dictionary defines "agriculture" as follows: "[a]griculture' is broader in meaning than 'farming;' and while it includes the preparation of soil, the planting of seeds, the raising and harvesting of crops, and all their incidents, it also includes gardening, horticulture, viticulture, dairying, poultry, bee raising, and ranching." Blacks' Law Dictionary 16c (10<sup>th</sup> ed. 2014). Similarly, Merriam-Webster's Dictionary defines "agriculture" as "the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products." *Agriculture Definition*, Merriam-Webster.com, <http://www.merriam-webster.com/dictionary/agriculture> (last visited February 9, 2015). Although these definitions are not binding on the Board, they do offer some persuasive guidance to support the Board's interpretation of agriculture.

The Board must look to the plain language of the definition of agriculture in the Ordinance, as well as the purpose of the Ordinance in general, which is to preserve the quality of agricultural lands, "they being the Township's most important natural resource." Ordinance § 102(A). The Board is cognizant of the fact that the agricultural industry is undergoing technological development, whereby farmers are seeking to maximize productivity in an otherwise down-economy. The plain language of the Ordinance, however, emphasizes that agriculture is the production and preparation of livestock and livestock products *which are consistent with the practices and procedures that are normally engaged in by farmers. Id.* (emphasis added). Accordingly, the Board must decide first whether the commercial processing of chickens, i.e. slaughtering, cutting, and cleaning, constitutes the production and preparation for market of livestock and livestock products, and second, that even if the processing was

production and preparation, whether such activities are those which are consistent with the procedures that are normally engaged in by farmers in Paradise Township.

Even assuming the Applicant's proposed slaughter, cutting, and cleaning of chickens is agriculture, it would fall under the definition of "intensive agriculture," a use that is not permitted by right or Special Exception in the Rural Conservation Zoning District. In fact, "intensive agriculture" is only permitted in the Agricultural Zoning District by Special Exception. From the above, it is clear that the Board of Supervisors, the legislative body that drafted the Ordinance, intended the purpose of the Rural Conservation District to protect, among other things, groundwater and surface water, woodlands, and open space. To that end, a processing operation does not fit into the definition of "agriculture" set forth in the Ordinance.

Based on the foregoing, the Board is of the opinion that the Ordinance's definition of agriculture does not include the commercial processing of poultry. In coming to this interpretation of the definition of "agriculture," the Board must rely on the history and heritage of agriculture within Paradise Township. In the Board's opinion, "processing" livestock and livestock products is not "preparation and production for market" of livestock and livestock products. To the contrary, the preparation and production of livestock and livestock products deals more with getting the livestock and livestock products ready to be transferred to a processing facility.

An important example came from the comments of Mr. Craumer, a Paradise Township farmer. Mr. Craumer raises cattle and ships them to a processing facility to be processed for consumption by the end consumer. Accordingly, the "preparation and production" is the raising, breeding, and keeping of the cattle, then sending them off to be processed for consumption. To allow the Applicant to process the chickens as he proposes would open up the flood gates,

whereby any farmer raising any livestock would now be entitled to process that livestock for consumption. Regardless of the state and federal requirements for such an operation, such operation is beyond the definition of “agriculture” as set forth in the Ordinance.

Of particular importance, the Board cannot identify, nor was any evidenced presented to show, one farm or farmer in Paradise Township, or the surrounding townships for that matter that engage in processing. Processing is a commercial endeavor, and as such, is not an activity normally engaged in by farmers in the area. Although “agriculture” does include the commercial production and preparation for market of livestock and livestock products, the Board is of the opinion that such production and preparation does not include processing, as discussed above. The Board takes into consideration all of the comments made by property owners surrounding the Property, as well as the comments of those in Paradise Township who are themselves farmers. Based on those comments, the plain language of the Ordinance, and the supporting definitions set forth above, the Board believes that the proposed use as a commercial chicken processing facility is not included within the term “agriculture” as that term is defined in the Ordinance.

For these reasons, the Board determines that the Ordinance’s definition of “agriculture” does not include the commercial processing of chickens.

### **III. DECISION.**

The Zoning Hearing Board of Paradise Township, based upon the testimony of all witnesses, the Application as filed by the Applicant, the exhibits presented at the Hearing, and specifically relying thereon, hereby determines that the Applicant’s appeal is denied and that the interpretation of the word “agriculture,” as defined in the Ordinance, does not include the Applicant’s proposed use as a commercial chicken processing facility. Chairman Seibert and

Vice-Chairman Burgard voted in favor of the above interpretation, while Secretary Eisenhart voted against the above interpretation.

ZONING HEARING BOARD OF  
PARADISE TOWNSHIP

By: /s/ Laverne Seibert  
Laverne Seibert, Chairman

/s/ Gary Burgard  
Gary Burgard, Vice-Chairman

/s/ Rodney Eisenhart  
Rodney Eisenhart, Secretary

Date: 2/13/15

Any party aggrieved by this action may appeal to the Court of Common Pleas of York County, Pennsylvania within thirty (30) days of the date of the entry of this written decision.