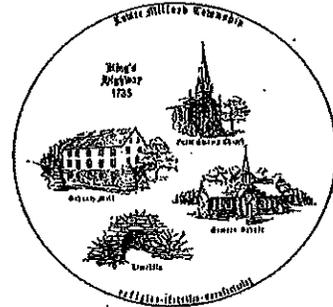


LOWER MILFORD TOWNSHIP

--BOARD OF SUPERVISORS--

7607 Chestnut Hill Church Road
Coopersburg, PA 18036- 3712
Telephone 610-967-4949
Fax (610) 967-1013



Board Members:
Donna L. Wright
Michael W. Snovitch
John C. Quigley

January 30, 2017

RECEIVED

FEB 02 2017

Office of Attorney General
Litigation Section

Susan L. Bucknam
Senior Deputy Attorney General
Office of Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120

Dear Ms. Bucknam:

Thank you for your correspondence of December 20, 2016. I appreciate the opportunity to respond. It is our position that Lower Milford Township's (the "Township") ordinances regarding Timber Harvests do not run afoul of ACRE. In fact, the Township has a rich agricultural history, and is firmly committed to fostering and supporting farming throughout the Township. To that end, the Township is one of the leading municipalities in the state in terms of preservation of farmland. For those reasons, any allegation that our ordinances violate ACRE is surprising and, in our opinion, unfounded.

The definition of a "normal agricultural operation" set forth in ACRE is "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 and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities and is: (1) not less than ten contiguous acres in area; or (2) less than ten contiguous acres in area but has an anticipated yearly gross income of at least \$10,000." We contend that these two qualifiers are vital to the consideration to the regulation of timber harvesting in the Township and the Township's ordinance.

Silviculture is defined by the PA DCNR as "the art and science of controlling the establishment, growth, composition, health and quality of forests and woodlands to meet the diverse needs and values of landowners and society on a sustainable basis." The MPC defines forestry as "the management of forests and timberlands when practiced in accordance with accepted silvicultural principles, through developing, cultivating, harvesting, transporting, and selling trees for commercial purposes, which does not involve any land development."

In Lower Milford Township's 2009 Zoning Ordinance, Agriculture is defined as

The cultivation of the soil and the raising and harvesting of the products of the soil including but not by way of limitation, raising of grains, vegetables, and fruits; vineyards; nurserying, horticulture, forestry; beekeeping; and animal husbandry of common domestic animals and birds such as cows, sheep, hogs, goats, rabbits, chickens, ducks, turkeys, pigeons and of other animals and birds including llamas, alpacas, emus, rheas, and similar non-predatory animals and birds.

It further defines Forestry, identically to the MPC with the additional statement that Forestry is permitted in all Zoning Districts, in particular, it provides that:

The management of forests and timberlands when practiced in accordance with accepted silvicultural principles, through developing, cultivating, harvesting, transporting, and selling trees for commercial purposes, which does not involve any land development. Forestry shall be permitted in all Zoning Districts under provisions of Section 107 and 603(f) of the Pennsylvania Municipalities Planning Code, and in accordance with the provisions of Section 1004 and Section 1200A of this Ordinance.

Timber Harvesting Operations are defined by the Township as:

The disturbance for commercial purposes, and in compliance with an approved timber harvesting plan, of more than one half (0.5) acre of woodland identified on the adopted Lower Milford Township Woodland Classification Map, whether accomplished in a single operation or in more than one operation over three or fewer years. The removal of trees pursuant to an approved subdivision or land development plan, landscape plan or open space management plan, the removal of dead or diseased trees, or invasive vegetation, and the cutting or removal of trees as part of a nursery, orchard or Christmas tree farming operation shall not be considered Timber Harvesting Operations. Forestry, as defined by the Pennsylvania Municipalities Code, as amended, shall be considered a Timber Harvesting Operation. All Timber Harvesting Operations, where permitted, shall comply with the provisions set forth in Section 1200.A.33 of this Ordinance.

The Township defines a "Timber Harvesting Plan" as:

A plan submitted in conformance with the provisions set forth in Section 1200.A.33 of this Ordinance which describes, by means of text and maps, proposed actions involving the removal of trees from a tract of land. Such plan shall have been prepared by a professional with demonstrated expertise in forest management, and shall document measures to be taken to : protect water quality; minimize impacts from skid trails and logging roads, landing areas, and the tree removal process; and ensure site restoration. A Forest Stewardship Plan that promotes the use of BMPs and is consistent with the Sustainable Forestry Initiative may be part of a Timber Harvesting Plan submittal, as provided for in Section 1200.A.33.k.

Lower Milford Township's Timber Harvesting Permit process applies to landowners – not the operators of a normal agricultural operation – who seek to thin and maintain wooded lots. Timber Harvesting Permits are not issued for silvicultural operations, as that term is defined by the DCNR and/or ACRE. While permits may be issued for tree removal on parcels which exceed five acres, the activities which are permitted occur on either fully wooded lots and/or are undertaken only on an as-needed basis. In sum, the activities which are subject to the permitting process do not qualify as a "normal agricultural operation." As a result, the Township's ordinance does not violate ACRE or other statutory law.

Of further interest is the protections accorded by our Zoning Ordinance to Heritage Trees and Vegetation

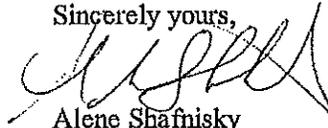
and Higher Value Species. These are defined as trees over thirty inches dbh, or a tree species recognized by the Township as slower-growing and/or smaller trees. The definition and rationale for additional protection for Heritage Trees and Vegetation is a designation based upon "size, shape, form, age, historical importance, scenic qualities, visual prominence, or other characteristics." Invasive tree species or any dead or diseased tree, or trees constituting a safety hazard, are excepted from Heritage Tree Classification, regardless of species or size. Heritage Vegetation is defined as "unique, rare or otherwise specifically selected trees or vegetation" representing "shape, form or historical importance." This includes sites identified on the Pennsylvania Natural Diversity Inventory (PNDI) or the Lehigh County Natural Areas Inventory. Our designation of a Heritage or High Value species is not driven by their cost at sale, which can vary with market changes. Instead, it is determined by review of native species, and species that naturally populated the forests and woodlands of the area.

Our use of the term to a "professional with demonstrated expertise in forest management," does not alter the conclusion that the ordinance does not violate ACRE. Instead, the term is a very broad reference to anyone who is able to put together the appropriate application packet. In the permit application the individual will necessarily demonstrate the expertise necessary with their list and location of the species they intend to cut, as well as their equipment and demonstration of the proper removal of trees via skid lanes and roads that can appropriately handle the weights involved. I am not aware of any Timber Harvest application that has been rejected based upon a logger's lack of expertise. In short, the reference to a "professional with demonstrated expertise in forest management" does not establish that the Township ordinance violates ACRE or impedes a normal agricultural operation in any way.

Please note that this initial analysis is in response to the limited information which the Township has received to date regarding the ordinance and your review of the same. The Township reserves and appreciates the opportunity to provide additional information in the event that the Office of the Attorney General identifies specific issues in relation to the ordinance.

Should you have any questions, please contact me at [REDACTED]

Sincerely yours,



Alene Shafnisky
Zoning Officer

cc: Mark Cappuccio, Township Solicitor