

February 17, 2017

PA Office of Attorney General
Attention: ACRE
15th Floor, Strawberry Square
Harrisburg, PA 17120

RE: ACRE Petition for review of Township of Lower Saucon, Northampton County Zoning Ordinance
Related to Forestry

Dear Attorney General Josh Shapiro:

[REDACTED] and [REDACTED] supported by [REDACTED] Lumber Company of [REDACTED] request a review and a legal challenge by the Pennsylvania Office of the Attorney General of the forestry related sections of the Township of Lower Saucon, Northampton County Zoning Ordinance and the enforcement of this unauthorized local ordinance under the Pennsylvania's Agriculture, Communities and Rural Environments (ACRE) law, Act 38 of 2005.

The [REDACTED] site and the [REDACTED] site are adjacent to each other across [REDACTED] Drive in the [REDACTED] portion of Lower Saucon Township in the [REDACTED] portion of Northampton County. The [REDACTED] site is about 16.25 acres, although only about 10 acres located south of an unnamed tributary is being targeted for harvesting. The [REDACTED] property contains 11.32 acres on the south side of [REDACTED] Drive. Both sites have major species on the property of tulip poplar, white ash, and red oak. Other species include members of the white oak group, maple group, beech, black birch and hickory.

[REDACTED] Company of [REDACTED] has been selected by each landowner to harvest the selected timber on each site. [REDACTED] is the consulting forester for the project and works out of [REDACTED]. According to the original plan, a total of 112 trees on the [REDACTED] site and 131 trees on the [REDACTED] site were to be harvested. In trying to follow the ordinance, these harvest amounts were reduced to 76 trees on the [REDACTED] site and 111 trees to be taken for harvest on the [REDACTED] site, as it was offered to the township.

An application for permit was submitted to the Lower Saucon Township in the fall of 2015, but the township has not yet permitted the activities on the site. The township and harvester had a number of conversations in 2016 related to the project, which resulted in the sawmill owner attending a township supervisors meeting in the summer of 2016.

Silviculture activities are included in the definition of normal agricultural operations under the ACRE law. Since 2005, there have been a number of ordinances that have been reviewed by the Office of Attorney General.

Section 603(f) of the Municipalities Planning Code provides that,

"(f) Zoning ordinances may not unreasonably restrict forestry activities. To encourage maintenance and management of forested or wooded open space and promote the conduct of forestry as a sound and economically viable use of forested land throughout this commonwealth, forestry activities, including, but not limited to, timber harvesting, shall be a permitted use by right in all zoning districts in every municipality."

We feel that some actions taken by the Lower Saucon Township and issues within its forestry ordinance need to be reviewed by the Attorney General.

First are the consultant fees that were charged by the [REDACTED] to review the plan for each site. The total amount is [REDACTED] plus interest for the two sites. Without a permit yet available, these fees are expected to increase substantially. The Attorney General has reviewed other township ordinances and has stated that the township shall not charge an engineer rate on any forestry review.

Furthermore, the Township's Environmental Advisory Committee reviewed and offered judgement on the quality of the proposed harvest. Members of the EAC, including the Chair, spoke out against the harvest and the EAC as a whole stated in the late summer of 2015 that the harvest should not be approved. Again, this is Environmental Advisory Council recommending to the full Council that the proposed permit be denied. They should not have any role in this permitting, particularly as it relates to the harvest permit. There is no mention of the EAC in the forestry ordinance text. Regardless, they should not have any opinionated input into activity that is permitted by the MPC.

[REDACTED] company believes that the no cut buffers along streets, riparian areas, waterbodies and abutting properties, including buildings on adjacent properties, and required retention of a percentage of the original basal area is an unreasonable impact on the landowners ability to dictate activities on their land above what is provided by state law.

There are a number of additional items that have been identified in the April 13, 2016 from the Attorney General letter to East Nantmeal Township, Chester County and the December 7, 2015 letter from the Attorney General to the Municipality of Monroeville, Allegheny County seeking to address the misuse of a their township ordinances related to forestry.

We believe that a number of these items are also a found in the Lower Saucon Township forestry ordinance.

- We believe that the required use of different sizes of USGA maps provides an unreasonable burden upon the landowner, forester and harvester.
- The plan requires the applicant to hire a registered surveyor to attest the accuracy of the site plan. The requirement of the surveyor cost the applicants a minimum of \$200 fee, due to the fact that one of the applicants worked for a surveying firm, otherwise, this would be a more expensive fee;
- The timing of statements related to the use of consultants and timing of the project, including insurance;
- The designation of the use of "Selection Harvest Method", instead of the one or more silviculture methods;
- The reforestation process and period;

- Restrictions on forestry activities on slopes greater than 25% or 40%;
- The use of culverts, broad based dips and water-bars;
- The detail of the use of fertilizer and seed as part of addressing disturbed areas;
- The disposition of tops and slash and underbrush;
- No-cut buffer zones;

If you have additional questions or require additional information, please do not hesitate to contact [REDACTED]
[REDACTED] Consulting, LLC, Office [REDACTED] Cellular [REDACTED]

Signed :

[REDACTED]

[REDACTED] Company

[REDACTED]

Landowner

[REDACTED]

[REDACTED]
Landowner

cc: [REDACTED]

Attachments:

- Attachment 1: Zoning Ordinance §180-102 Site Plan Review and §180-127.2 Forestry
- Attachment 2: Zoning Definitions related to forestry
- Attachment 3: Application submitted by [REDACTED] Company
- Attachment 4: Northampton County Conservation District E&S Plan Reviews
- Attachment 5: Engineering Reports (2)
- Attachment 6: Minutes of Environmental Advisory Council – September 8, 2015
- Attachment 7: Current Financial situation