



March 8, 2017

**Via overnight courier**

Robert Willig  
Office of Attorney General  
Pittsburgh Manor Complex  
564 Forbes Avenue  
6<sup>th</sup> Floor  
Pittsburgh, PA 15219

**RE: North Coventry Township Ordinance No. 30 of 5/26/2009**

Dear Mr. Willig,

I am requesting the Office of the Attorney General of Pennsylvania to review North Coventry Township, Chester County, Ordinance #30 enacted on May 26, 2009 with respect to the Agricultural Communities and Rural Environment Act (ACRE). It is my opinion that this ordinance severely limits and impedes normal agricultural operations of silviculture and forestry as well as not allowing a forest landowner to maintain sustainability of his/hers woodlands for current and future generations. This is in direct contrast to the Commonwealth's ideals of long term sustainability of agriculture and the encouragement of basic forest management principles.



Recently I initiated a forest management plan review by a consulting forester with the intent to perform a timber harvest and make timber stand improvements (TSI). After completion of the review, proposal and marking by the consulting forester, North Coventry Township contacted me to inform me that a timber harvesting ordinance had been adopted since the time of our last timber harvest which was 2006. I was completely unaware of such an ordinance. After requesting a copy of the ordinance and inquiring with the township manager why, as a significant timber tract landowner, I had not been invited to participate in the discussions surrounding such an ordinance and the potential impact it may have on our normal agricultural operations, he replied, "We never thought of you or your operation regarding this matter." It is my opinion that clearly the offline agenda of North Coventry Township was to adopt this ordinance in a manner and of specific language to highly restrict and over regulate all timber harvesting and TSI practices within the township as well as with blatant disregard to the Agricultural Security Areas within the township, the Right to Farm Act, the Right to Practice Forestry Act and commonly accepted best management practices (BMPs) within the silviculture and forestry industries.

The following are some brief descriptions of why I feel that the ordinance requires review by your office.

### Definitions

- **Hedgerows.** Should not be considered or regulated as woodlands at all. This is inconsistent with Section 2 [2] [b] [ii], which excludes fence lines (used interchangeably and ambiguously with hedgerow?) from requiring a timber harvesting permit. It also implies that planted windbreaks or any linear plant community are considered woodlands. This can be interpreted, by way of example, 10 or fewer trees or shrubs a homeowner may plant as a windbreak on a residential property is regulated as woodlands and not a landscape planting.
- **High Value Species.** Unreasonable and unnecessary to regulate certain tree species based on their size.
- **Invasive Plant Species.** The list should follow the Commonwealth's invasive plant list that is monitored and updated regularly. This list can become inaccurate and dated over time.
- **Legal Holiday.** There is no significance to define these in a timber harvesting ordinance.
- **Owner, Landowner.** The owner of the standing timber may be different than the owner of the land by agreement or other instrument.
- **Specimen Vegetation.** Is not overly pertinent to silviculture/forestry environment. Size only does not determine specimen vegetation. A plant or tree's location also determine specimen status or not. A Registered Landscape Architect (RLA) whose skill set is best suited to the visual landscape, is not an expert on forest plant communities. This is clearly for the sole purpose of virgin forest and single aged stand protection. It would be more concise to write this language, define these terms and not disguise it as Specimen Vegetation.
- **Timber Harvesting Operation.** 5+ trees > 6" DBH/acre constitutes a timber harvesting operation? Too restrictive. Does not take into account any TSI or BMPs.
- **Tree Protection Zone.** Is impractical in a commercial timber harvest ordinance, more appropriate for a building ordinance.
- **Woodlands.** 10 trees > 6" DBH does not make a woodland. Silva culture is misspelled. Should not include timber areas or woodland disturbance areas of the previous 10 years.

### Section 2

- **2 (g) [2] [a] [iv]** "Plus reasonable estimation of review expenses" – should be billed to landowner or operator after review. Is this customary or inconsistent with other township ordinances? Is this a punitive reaction to fees not being paid in the past?
- **2 [2] [b] [ii]** Should include maintenance and delineation of property lines also.

- **Curative 2 [2] [b] [iv]** Trees that are a hazard to person, property, or the public due to a predisposed state of decay, rot, insect or disease or its location. This should include trees within a maintained landscape or visual landscape.
- **2 [2] [c] [i] [g]** Table or list of trees to remain? Unreasonable. Harvest related to the trees left standing. Unreasonable. Projection of reforestation that shall be established? Identification of forest canopy to remain?
- **2 [2] [c] [i] [i] (3)** "Landowner shall be responsible that all such forested areas subject to the harvest are reforested or maintained in a forested state." What if the timber harvest is to expand the landowner's other agricultural pursuits within an agriculturally zoned area or ASA? What if it is in contrast with the intent of the landowner's forest management plan? This section is an overreach of regulation. Dictates what a landowner can and cannot do with their land. Can be interpreted that the township is dictating the flora/species age class of a property. These are all an overreach. Qualifications of Township Forester are not defined. Reestablishment of the canopy is ambiguous.
- **2 [2] [c] [ii]** Foresters rarely prepare, nor have the training and expertise to provide, drawings that meet standard engineering practices outlined.
  - [a] township discretion (?) to require a survey or partial survey is unreasonable and expensive.
  - [b] "in the area" too vague, name and addresses of all adjacent property owners is unreasonable.
  - [c] Too restrictive.
  - [e] What is the pertinence? This request seems as a justification means for permit denial.
- **2 [2] [c] [iv]** Permit fee (\$1,000) and escrow fee (\$1,000.00) is exorbitant, unreasonable and inconsistent with similar North Coventry Township permit fees and recently increased (2015?), most likely as a deterrent to file a timber harvesting permit. Township fee schedule is enclosed.
- **2 [2] [c] [v]** The Township should provide an estimate of the Engineer and Forester's fees for inspections, reviews, consulting and legal.
- **2 [2] [d] [ii]** Clear cutting, in some instances, is a viable TSI tool and should be allowed to be used by a landowner or forester.
- **2 [2] [d] [iii]** Timber harvesting can be successfully accomplished without environmental damage on steep slopes.
- **2 [2] [d] [iv]** Valuable timber can be located within these areas and this precludes the landowner to access what is his/her [timber] property.
- **2 [2] [d] [v]** 10% disturbance allowance is unreasonable and too restrictive.
- **2 [2] [d] [vi]** - See 2 [2] [d] [v]
- **2 [2] [d] [vii]** Precludes timber harvesting in a Ridgeline Overlay Protection District. Most of our woodlands are within this district, hence it restricts the use of our land for forestry. Violations of Ag Security Area, Right to Farm and Right to Practice Forestry Acts.

- **2 [2] [d] [viii]** With high costs of permit, inspection and review, Specimen Vegetation harvesting becomes a necessity to make a timber harvest economically viable.
- **2 [2] [d] [x]** Violation of Ag Security Area, Right to Farm and Right to Practice Forestry Acts.
- **2 [2] [d] [xi]** Ordinance/township does not have the authority to mandate the species diversity on private lands. Species diversity is a landowner's prerogative and should be in the best interest of the stand and the landowner not a municipal mandate.
- **2 [2] [d] [xvii]** Not practical, too restrictive, sensitive environmental areas are addressed in the Erosion & Sedimentation plan.
- **2 [2] [d] [xviii]** Buffer zones are impractical and unreasonable. High quality timber is located within them and by not harvesting those areas it leads to uneven aged stands.
- **2 [2] [d] [xix]** - see 2 [2] [d] [xviii]
- **2 [2] [d] [xxii]** This requirement creates uneven distribution of tops and slash (especially in the case of a long narrow land parcel), which creates uneven regeneration of the stand. This requirement should only apply to property boundaries.
- **2 [2] [d] [xxiii]** Decaying tops and slash are beneficial wildlife and amphibian habitat in riparian buffers or wetlands.
- **2 [2] [d] [xxv]** Processing is not defined. Portable mill? Firewood splitting? Timber harvest in and of itself is the commercial sale of wood and logs. Why zoning approval needed? Right to Practice Forestry Act?
- **2 [2] [d] [xxvi]** Should not include removal of stumps that are incidental and necessary to the timber harvest for landings or skidding.
- **2 [2] [d] [xxxii]** Complete removal of invasive plant species is difficult. A "best effort to eradicate" language should be used here.
- **2 [2] [e]** Timber harvesting should not require a Conditional Use hearing if the regulations were fair, workable, not overly restrictive and followed customary BMPs of the industry while affording adequate environmental protections. Placing the burden on the applicant is a violation of an Ag Security Area, Right to Farm and Right to Practice Forestry Acts.
- **2 [2] [e] [ii] [d]** The ordinance, as written, is in direct contrast to this statement "avoid unreasonable and unnecessary restriction on the right of property owners to harvest timber"

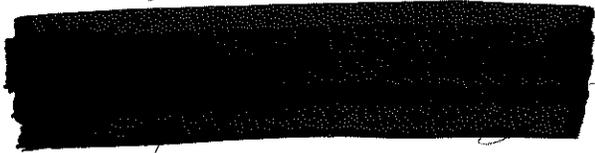
#### **Additional comments:**

Nowhere in this ordinance does it address the necessity of timber harvesting due to catastrophic events such as storm, lightning, wildfire, severe wind, disease or insect infestation (e.g. Emerald Ash Borer, Spotted Lanternfly, Dutch Elm Disease, Oak Wilt, Oak Decline, Gypsy Moth, etc.) All which render a timber stand unsalable unless harvested prior to an event or in response to an event (i.e. recovery timber harvest). In these cases,

public and private safety, are paramount as well as the inability to complete a timber harvest according to the ordinance as enacted and should be addressed in the ordinance. This ordinance does not address the inspection and subsequent movement of quarantined wood and forest products within and out of the Township. This ordinance encourages a high grade timber harvest and not one across all timber classes. This ordinance is foolhardy and impetuous with regards to professional, well-managed timber harvesting and modern silvicultural practices.

Forest lands that are not managed and not subject to principles of conservation will decline, become unhealthy and become an unsustainable resource.

Sincerely,

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Enclosures    Ordinance No. 30  
                    Schedule of Fees January 4, 2016

CC via email:

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