

Law Offices
SAGER & SAGER
ASSOCIATES
43 High Street
Pottstown, PA 19464

(610) 323-1328
FAX (610) 323-9336

Lawrence Sager
Daniel I. Sager
Adam J. Sager

Louis Sager
(1910-1987)

April 26, 2017

Robert A. Willig, Senior Deputy Attorney General
Office of the Attorney General
6th Floor, Manor Complex
564 Forbes Ave.
Pittsburgh, PA 15219

RE: ACRE Review Request – [REDACTED]
– North Coventry Township, Chester County, PA

Dear Mr. Willig:

In response to our communication on behalf of North Coventry Township, as its Solicitor, I respond to the letters of [REDACTED] dated March 8, 2017 requesting the Office of the Attorney General of Pennsylvania review the North Coventry Township Timber Harvesting Ordinance with respect to the Agricultural Communities Rural Environment Act (ACRE) as well as the North Coventry Township Motor Vehicle Weight Limit Ordinance with respect to ACRE as well.

In this letter, I will discuss initially ACRE and the case law concerning the same. I will then respond seriatim to the March 8, 2017 letter of [REDACTED] concerning the Timber Harvesting Ordinance and then I will respond seriatim to the letter of March 8, 2017 of [REDACTED] concerning the Motor Vehicle Weight Limitation Ordinance of North Coventry.

Section 313 of ACRE prohibits local governments from adopting or enforcing “an unauthorized local ordinance” 3 Pa.C.S. §313(a). In **Commonwealth vs. Locust Twp. & Locust Twp. Bd. of Supervisors**, 49 A.3d 502 (Comm. Ct. 2012), the court in dealing with a municipal ordinance that had limited nutrient management with respect to an agricultural operation in the Township, stated that an “unauthorized local ordinance” under ACRE as an ordinance doing any of the following:

“(1) Prohibit or limit a *normal agricultural operation* unless the local governmental unit:

(i) has expressed or implied authority under State law to adopt the ordinance; and

(ii) is not prohibited or preempted under State law from adopting the ordinance.

(2) Restricts or limits the ownership structure of normal agricultural operation.” (Id. at 516, emphasis as stated).

The case went on to cite ***Commonwealth vs. Richmond Twp.***, 917 A.2d 397, 405 (Pa. Cmwlth 2007) the proposition that an unauthorized ordinance is “one that prohibits or limits a normal agricultural operation absent authority of state law.”

There are various state regulations that affect timber harvesting. Timber harvesting that disturbs twenty-five or more acres of land require an erosion and sedimentation control permit, construction of access roads, a log landing and skid trails can cause temporary soil disturbance in the harvest area. Under 25 Pa. Code, Chapter 102, an earth disturbance site-specific erosion and sediment control plan is required to minimize erosion and sediment pollution.

The timber harvesting requires that access roads and skid trails be constructed across streams, in accordance with regulations to minimize any impact on water flows or water quality. A permit is required for stream crossing under 25 Pa. Code, Chapter 105.

The crossings of wetlands by logging access roads and skid trails require permits under both state and federal law. Chapter 105 of the 25 Pa. Code prohibits “encroachment” on any wetland without a permit from the DEP. The permit application requires an erosion and sediment control plan.

25 Pa. Code, Chapters 102 and 105 also prohibit any alteration or disturbance of streams, fish habitat or watershed damage or destroying of habitat. There is permitting process through the DEP.

Under the Vehicle Code, 75 Pennsylvania consolidated statutes, Chapter 49, there are legal standards established for all overweight hauling. Road bonding regulations are allowed and provided under 67 Pa. Code, Chapter 189. Those regulations provide for posting, excess maintenance agreement, permits, inspections and monitoring, and bonding.

Under the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. §10603(f), it is provided:

“Zoning ordinances may not unreasonably restrict forestry activities” (emphasis added).

The section further provides that timber harvesting shall be permitted by right in all zoning districts.

The statute does not define “unreasonable restriction” and there are no appellate court decisions to my knowledge that have interpreted this section with respect to timber harvesting. There is case law that has interpreted unreasonable restrictions provided under a parallel provision of the MPC concerning mineral extraction.

Under Section 107 of the MPC, "Forestry" is defined 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." 53 P.S. §10107.

The MPC also provides "reasonable development of minerals" 53 P.S. §10603(i). There have been various cases in dealing with what is "reasonable". In **LaRock v. Board of Supervisors**, 961 A.2d 918 ("**LaRock II**"). The court stated in **LaRock vs. Board of Supervisors of Sugarloaf Twp.**, 866 A.2d 1208 (Pa. Cmwlth. 2008) that:

"This statute [Section 603 of the MPC], taken as a whole, weighs and balances several different interests in requiring zoning ordinances to reflect the policy goals of the community, and subsection (i) sets out the reasonable development of minerals as *one* such interest. However, the statute requires a *balancing of interests* to determine whether the zoning ordinance, ... is *reasonable*. Id. at 1212. (emphasis supplied).

In **LaRock II**, the court noted that the trial court had not considered any of the factors or balancing "the interest set out in Section 603". The court had remanded the proceedings to determine whether "*as a whole*", the ordinance is reasonable. Not on the basis of bare percentage of land that was mined or available for mining (emphasis supplied).

The court in **LaRock II**, went on to review the mandates of Section 603 of the MPC referencing its decision in **Hanson Aggregates Pennsylvania, Inc. vs. College Township Council**, 911 A.2d (Pa. Cmwlth. 2006). The court noted that the **Hanson** Court had to deal with the issue of "reasonable development of minerals" under Section 603 of the MPC. The court noted that "there is a presumption that a zoning ordinance is constitutional and valid unless the party challenging the zoning ordinance shows that 'it is unreasonable, arbitrary or not substantially related to the police power interests' which it purports to serve. **Hanson**, 911 A.2d at 595. One of the reasons a court will find an ordinance 'unreasonable and not substantially related to the police power [is] if [the ordinance] is unduly restrictive or exclusionary.' Id. For instances, a 'challenger must demonstrate [that an] ordinance totally excludes an otherwise legitimate use 'either' on its face or by application.' Id. 'Once the challenger meets the burden the municipality must show the ordinance 'bears as substantial relationship to the public health, safety and welfare,' **Hanson**, 911 A.2d at 594 quoting **Maciose vs. Zoning Hearing Board of Borough of Baldwin**, 850 A.2d 882, 888 (Pa. Cmwlth. 2004).

LaRock II then noted that in determining what is "reasonable" various factors must be considered including the special nature of various sites within the municipality, the preservation allowed for natural resources and agricultural land, 53 P.S. §10603(b)(5), the preservation of agricultural land, environmentally sensitive areas and areas of historic significance 53 P.S. §10603(c)(7) and the ordinances adopted consistent with municipal comprehensive plan 53 P.S. §10603(j).

The court then discussed what factors were to be considered and balanced to establish to determine whether the ordinance was reasonable. The court considered the purpose of the

ordinance, the community development objectives of the ordinance, the character of the Township, the needs of the citizens, the suitability and the special nature of particular parts of the Township, the objective to preserve the quality of existing residential and agricultural areas, the Township's purpose to preserve natural amenities such as streams and stream valleys, the Township's provisions to permit forestry and agricultural uses. Considering those factors, the court found the ordinance to be reasonable.

In *Farley vs. Zoning Hearing Board of Lower Merion*, 636 A.2d 1232 (Pa. Cmwlth. 1994), the court held that a landowner must show that the Ordinance's regulation of mining was unreasonable and bore no rational relationship to any legitimate zoning interest. The reasonableness of the ordinance as a whole must be considered.

In the unreported decision *In re: Appeal of Gibraltar Rock, Inc.*, (Pa. Cmwlth. October 11, 2013), the Commonwealth Court followed its prior decisions and accessed factors for reasonableness aforesaid in determining that the ordinance in question was reasonable.

With these principles in mind, we now consider [REDACTED] specific assertions. Initially, we note that [REDACTED] took specific portions of the Timber Harvesting Ordinance to assert that the ordinance precludes timber harvesting. His analysis is facially faulty based in light of the legal principles enunciated aforesaid since **the test of reasonableness is a consideration of all the factors as to the ordinance as a whole.**

Since the adoption of the timber harvesting ordinance on May 26, 2009, there have been twelve (12) timber harvesting listings in North Coventry Township. They are as follows:

2010	[REDACTED]	18.9 acres 23.9 acres
2011	[REDACTED]	12.6 acres 14 acres
2012	[REDACTED]	24 acres 9 acres
2014	[REDACTED]	36 acres
2016	[REDACTED]	24.8 acres 19.9 acres 7 acres
2017	[REDACTED]	18.8 acres, 12.3 acres & 11.1 acres 21 acres

Accordingly, it is difficult for one to argue that the North Coventry Timber Harvesting Ordinance precludes timber harvesting. Nevertheless, I will respond seriatim to the issues raised by [REDACTED] in his letter of March 8, 2017.

As to his concern about the definitions:

1. Hedgerow: By definition, a hedgerow is a line of shrubs or trees enclosing or separating fields. (Merriam-Webster Dictionary, Oxford Dictionary, Wikipedia). The definition in the ordinance comports with the accepted English definitions for hedgerow. [REDACTED] believes that even if there are trees in the hedgerow, the Timber Harvesting Ordinance should not regulate hedgerows. If [REDACTED] were correct (we assert he is not), the Timber Harvesting Ordinance does not encompass trees in the hedgerow for timbering purposes. Accordingly, a regulation concerning the same would not be within the scope of an ACRE review. [REDACTED] also asserts that it is inconsistent with Section 2(b)(ii), page 8 of the ordinance which provides that a timber harvesting permit is not necessary for routine maintenance and clearing of farm fence lines. Obviously, a fence line may include a hedgerow and the clearing of the fence line – hedgerow in that respect would not fall within the parameters of timber harvesting permit. There is no inconsistency.

2. High Value Species: [REDACTED] asserts that it is unreasonable and unnecessary to regulate certain species based on their size. He does not spell out what is unreasonable and unnecessary concerning the same. The regulation as set forth in the ordinance concerning high value species is under the General Operational Standards and Practices, ¶ xi, p. 12 which requires 30% of the forest canopy to be preserved with the remaining trees to be distributed throughout the area subject to the timber harvesting operation. 50% of those remaining trees are to be comprised of the Higher Value Species. If there are not sufficient trees to satisfy the regulation, the Higher Value Species trees may not be harvested. Obviously, the purpose of the ordinance is to make sure of the regeneration of the higher quality woods for timber harvesting and future harvesting as well as protecting important species of trees and creating a sustainable requirement woodland and ecosystem.

3. Invasive Plant Species: [REDACTED] wants the Commonwealth's Invasive Plant list to be used as reference. He does not assert that the list is improper. There is no claim that any of the species that are named are not invasive. More importantly, for ACRE review purposes, he does not indicate how the definition affects the right of timber harvesting. It does not.

4. Legal Holiday: [REDACTED] does not argue with the definition of a Legal Holiday per se. He asserts that there is significance to define the term for a timber harvesting ordinance. With all due respect, the Township has a right to make sure that the peace and tranquility of the community is not disturbed and that activities that may affect the public is done at reasonable times and in an appropriate manner. Noteworthy is the fact that [REDACTED] does not argue about the General Operational Standards and Practices, ¶ x, p. 12 prohibiting the operation to take place between the hours of 7:00 p.m. to 8:00 a.m. or on any Sunday. He only complains about the prohibition on Legal Holidays. Further he does not state why it would be unreasonable to have the prohibition and how that would preclude timber harvesting on a reasonable basis.

5. Owner, Landowner: [REDACTED] asserts that the definition is inappropriate because the Owner of the standing timber may be different from the Owner of the land. Respectfully, [REDACTED] misses the point: The ordinance provides for reasonable regulations

concerning timber harvesting by requiring that the Landowner or the Operator not be allowed to conduct timber harvesting without first securing a timber harvesting permit. Remedial arrangements of the ordinance apply to the Landowner as well as the Owner of the standing timber. Nowhere in the ordinance does the ordinance indicate that a Landowner or the Owner of standing timber are the same. See Section 2(g) [2], p. 7 of the Ordinance.

6. Specimen Vegetation: [REDACTED] states that the definition is "not overly pertinent to silvicultural/forestry environment." We understand that he recognizes that specimen vegetation has pertinence although he does not believe that it is overly pertinent. He criticizes the ordinance and how it is drafted. The reference in the ordinance to specimen vegetation is for the purpose of recognizing that certain individual trees of a certain size constitutes specimen trees. Under the General Operational Standards and Practices, Subsection viii, the Specimen Vegetation is not to be harvested unless essential to eliminate a hazardous condition and there is a demonstrable financial hardship if the vegetation is not removed. Accordingly, the very standard recognizes that if there is a financial hardship by the non-removal of Specimen Vegetation to be timber harvest. The ordinance does not preclude the harvesting of Specimen Vegetation where there is a hazardous condition or there would be a financial hardship. Thus, it can hardly be argued that the ordinance does not reasonably protect the Specimen Vegetation while taking in account the right to timber harvest under the appropriate conditions that do not affect good forest management and the public generally.

7. Timber Harvesting Operation: [REDACTED] asserts that the definition is too restrictive. The definition relates to a disturbance for commercial purposes of more than four trees of greater than six inches DBH per acre. If [REDACTED] is correct that the definition is too restrictive and does not apply to timber harvesting, then there would be no ACRE issue since the regulation does not restrict timber harvesting. Moreover, dealing with the reasonableness of the ordinance, it should be noted that the removal of a dead or diseased tree, the cutting of firewood, the clearing of an area in accordance with an approved subdivision or land development plan, the cutting of trees for a Christmas tree farming operation such as [REDACTED] does not constitute a timber harvesting operation.

8. Tree Protection Zone: [REDACTED] comment is that it is impractical provision in a commercial timber harvest ordinance and should properly be more appropriate for a building ordinance. The provision prohibits construction activity within fifteen feet from the trunk of the tree to be retained. The obvious significance is that if the tree is to be retained, there should not be such activity around the tree that would kill the tree and destroy the very tree that you are trying to protect. [REDACTED] does not address the issue.

9. Woodlands: [REDACTED] asserts that ten trees larger than six inches DBH covering a quarter acre or more does not constitute a woodland. The definition excludes commercial horticulture enterprises such as orchards, Christmas tree farms such as what [REDACTED] has and commercial nurseries. The definition also requires that there be a tree mass or plant community in which tree species are dominate or co-dominate. Significantly, [REDACTED] does not refer to that portion of the definition relating to tree mass or plant community with trees being dominate a complete or nearly complete aerial canopy. Again, [REDACTED] asserts that the definition should not encompass timber area or woodland disturbance for a

timber harvesting area. If so, what is the ACRE concern about the regulation then? [REDACTED] also argues that the definition should not include timber areas or woodland disturbance for the previous ten years. Under the MPC, timber harvesting does not include removal of trees for a development purposes. Accordingly, if in fact in the last ten years there was timber harvesting then the issue of restricting further tree disturbance is appropriate and reasonable to avoid the clearance of land for development purposes under the guise of timber harvesting.

As to Section 2 of the ordinance and [REDACTED] comments:

1. 2(g)[2][a][iv] [REDACTED] questions whether it is customary to require the applicant to deposit a reasonable estimation of review expenses. This is the customary practice of North Coventry Township. It is no punitive. The payment is related to administrative costs, legal fees for the Township, and consultant fees. The payment is based upon prior experience and the amount is periodically reviewed. The Township does not use it for punitive purposes or for funding other than timber harvesting permitting issues. The requirement of payment is reasonable and does not preclude timber harvesting.

2. 2[2][b][ii] [REDACTED] comment is that a timber harvesting permit should not be required where there is maintenance in delineation of property lines. The ordinance address that issue. Clearing of a farm fence line does not require the harvesting permit. [REDACTED] seeks to expand the ordinance to include delineation of property lines. To the extent that the trees are cleared for timber harvesting a permit is required. If there is a timber harvest of trees, what difference should the situs of the trees on the property make as to the requirement of a permit?

3. 2[2][b][iv] It appears that [REDACTED] wants to rewrite the ordinance to include another provision that trees that are a hazard to a person, property or the public can be removed without a timber harvesting permit. Again, this appears to be beyond the scope of an ACRE issue. Certainly, the removal of a tree for something other than lumbering purposes has nothing to do with an ACRE challenge. In any event, the issue is subsumed under 2[2][b][iii]. The Township allows the removal of a tree that poses a hazard to person, property or the public. See, for example, the definition of Timber Harvesting Operation, 7 supra.

4. 2[2][c][i][g] [REDACTED] believes that the list of trees to remain as part of the plan is unreasonable. We respectfully disagree. The plan does not have any meaning unless there is a reference to the trees to be removed and the trees to remain. As part of the plan, there is a requirement for reforestation. The Township does not believe that it is unreasonable for the estimation of the projection of the reforestation including the identification of the canopy to assure that the plan is in fact workable and for the regeneration and preservation of the natural resource.

5. 2[2][c][i][i](3) [REDACTED] asserts that the provision that the landowner be responsible for reforesting or maintaining the harvested area in a forested state is unreasonable. Is that not one of the principle objectives of the plan? The Township does not believe that it is unreasonable that as a part of a timber harvesting plan to require that the landowner assure that the plan provisions for reforesting and maintaining the harvested portion of the property be

complied with. If the owner seeks to change the arrangements, then the owner would have to seek an amendment to the plan and approval of the changes. Otherwise, the owner would not be complying with the timber harvesting plan with respect to reforestation or maintaining the forest state. Respectfully, [REDACTED] wants it both ways – he wants to timber harvest as he so desires and to avoid a plan for the reforestation or maintaining the forest state so that there can be timber harvesting in the future. If the ACRE challenge is on the basis that timber harvesting is being unreasonably restricted or precluded, why would the challenger complain about a regulation that assures regeneration of the harvested woodland so that there can be further harvests in the future?

6. 2[2][c][ii] [REDACTED] complains about the ordinance requirements for the plan to show natural features and topography. Effectively, he does not want a plan. It is interesting that twelve other landowners had no problem in meeting the requirements of the Township ordinance in providing a timber harvesting plan. He is accusatory that the Township is using the stipulations to deny a plan, however, there is no justification for that assert particularly since there have been a dozen permits granted, and we know of no plan that was not approved.

7. 2[2][c][iv] [REDACTED] objects to the \$1,000.00 permit fee and the \$1,000.00 escrow. He claims that it is exorbitant. The provision provides that the application should be accompanied by the requisite fee and review payment. The Township has a right to charge for the review. Why should the tax payers have to subsidize the commercial operation? Considering what is necessary for a review, the permit fee is more than reasonable to cover the Township's fees for review, inspection, and administration by the Township's Code Enforcement Officer, the Township's Forester, and other staff personnel. And, again, twelve other applicants had no problem with paying the fees. The requirement of the payment of the fees is not precluding the timber harvesting in the Township.

8. 2[2][c][v] [REDACTED] believes that the Township is to provide an estimate of engineer and forester's fees for inspections, review, consulting and legal. That is what the fees per the fee resolution does. And, again, twelve other applicants had no problem with the provision. The provision has not and does not preclude timber harvesting in the Township.

9. 2[2][d][ii] [REDACTED] believes that clear cutting is a viable TSI tool in some instances. Accordingly, as a corollary he recognizes that in other instances, the Township could prohibit clear cutting. He does not, however, set forth the standards to support his claim that the prohibition effectively precludes timber harvesting. Indeed, the ordinance provides for a method to resolve the issue if the prohibition does in fact unreasonably preclude timber harvesting. See 2[2][e], the conditional use process under the ordinance.

10. 2[2][d][iii] [REDACTED] asserts that timber harvesting can be successfully accomplished without environmental damage on steep slopes. The corollary is that there is a risk of environmental damage on steep slope harvesting if done improperly. The General Operating Standard precludes timber harvesting on slopes greater than 25%. Several points are to be made: To what degree does the preclusion affect any steep slope timber harvesting for [REDACTED] [REDACTED]? That information has not been supplied. Does the restriction preclude the economic viability of the harvest? Apparently not since there have been many harvests during the time that

the ordinance has been in effect. Secondly, if there is a risk of environmental damage, why is it not reasonable for the Township to prohibit the use so long as it does not preclude viable timber harvesting. If it does, the applicant can resort to the conditional use process. Finally, does [REDACTED] suggest that the Township does not have authority to assure that there is appropriate storm water management and erosion controls with respect to steep slope areas? The Township suggests that the standard set forth in the subsection does not preclude viable timber harvesting and is a reasonable condition.

11. 2[2][d][iv] [REDACTED] asserts that the prohibition of timbering and harvesting in a floodway, 100-year floodplain, wetland, or a zone-one buffer is improper since it precludes access to property that can be lumbered. The regulation does not preclude access. It precludes timbering in those areas. Apparently, [REDACTED] has no objection to prohibiting timbering in the subject areas. There is no controversy.

12. 2[2][d][v] [REDACTED] asserts that the zoning ordinance provision concerning the riparian buffer zone is too restrictive. He does not state why or what the basis for the same is. The provision under the zoning ordinance, relating to any disturbance whether it is timber harvesting or otherwise is to protect waterways under the Clean Water Act and is, therefore, appropriate. The Township has authority to so protect the waterways. [REDACTED] has not set forth the basis why a 10% restriction is unreasonable and too restrictive. Is a 9% disturbance prohibition too restrictive? What is his standard?

13. 2[2][d][vi] [REDACTED] complains about the prohibition of timber harvesting within the 10% disturbance area of the wetland margin. The wetland margin has been established under the zoning ordinance with respect to any disturbance in development including timber harvesting. The comments made above with respect to the riparian buffer apply equally here. We do note that he does not complain about the operational standards as set forth in subparagraph ix concerning stream crossings. Apparently, he does recognize that the Township has the authority to protect the waterways including the wetlands in the Township.

14. 2[2][d][vii] [REDACTED] asserts that precluding timber harvesting in the Ridgeline Overlay Protection District is a violation of the right to farm and the right to practice forestry acts. As noted in the beginning of this letter, the Township has the authority under various State Statutes, particularly the MPC, to regulate environmentally sensitive areas including a ridgeline. Indeed, its comprehensive plan so address that purpose in full. Under the Pennsylvania's Environmental Rights Amendment of the Pennsylvania Constitution, Article 1, Section 27, the people of the Commonwealth have the right to the preservation of natural, scenic, historic and esthetic values of the environment. While case law interpreting the Environmental Rights Amendment under the ***Commonwealth vs. National Gettysburg Battlefield Tower, Inc.***, 311 A.2d 588 (Pa. 1973), raised the issue as to whether the amendment was self-executing, that issue has no substance to this case since there are replete statutory provisions, many of which have been eluded to in the beginning of this letter, providing authority for the Township to protect the environment to assure clean air, pure water and the preservation of certain environmental values. Thus, the Township asserts that timber harvesting ordinance that establishes conditions to preserve the environment while making reasonable provisions for timber harvesting is more than reasonable. Indeed, if in each case the balance is not achieved

to establish a reasonable prohibition, the ordinance provides for the means to rectify the problem through a conditional use application. The standard is well set forth in the case of *Payne vs. Kassab*, 312 A.2d 86, (Pa. Cmwlth. Ct. 1973) *aff'd*. 361 A.2d 363 (Pa. 1976). There the test was set forth as follows:

- (1) Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth's public natural resources?
- (2) Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum?
- (3) Does the environmental harm which will result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom that to proceed further would be an abuse of discretion?

[REDACTED] has failed to provide any evidence to suggest that there has been a failure of the Township to meet the standard aforesaid. Furthermore, the Township verily believes that timber harvesting can take place pursuant to the ordinance without disturbing the highly important environmental ridgeline.

15. 2[2][d][viii] [REDACTED] claims that Specimen Vegetation harvesting becomes necessary because of the costs of a permit inspection and review fees. The subsection takes in consideration the financial issue, if there be one. The subsection clearly indicates that harvesting is allowed if "there is a demonstrable financial hardship if the vegetation is not removed." [REDACTED] complaint concerning the costs of permit, inspection and review have already been addressed.

16. 2[2][d][xi] [REDACTED] concludes that the regulation precluding operation or removal of products during the hours of 7:00 p.m. and 8:00 a.m. or on a Sunday or a legal holiday is a violation of the Ag Security Area, Right to Farm and Right to Practice Forestry Acts. His conclusions are not based upon any reference to specific statutory mandates or how the prohibition precludes economically viable timber harvesting. The specific complaint is reflective of the picayune objections without any substance. Certainly, the Township has a right to make sure that the timber harvest is in accordance with the plan. To that extent, does the Township need to engage the services of its code enforcement and forester outside normal business hours? Assuredly, in balancing the community's rights and needs with respect to the harvesting, issues concerning police coverage, traffic control, abatement of noise during holidays and off business hours and on Sundays, and the disturbance of the community during off business hours is a concern. To the best of this writer's knowledge, logging normally takes place during the business hours. [REDACTED] does not demonstrate how the regulation precludes viable timber harvesting. He merely asserts that it is a violation. His objection, like so many others, reflects the sense and tone of complaint for the sake of complaining without any substance.

17. 2[2][d][xi] [REDACTED] asserts, without referencing any provision in an act or case law, that the Township does not have authority to mandate species diversity on private lands. For the reasons as already referenced, the Township does have the authority to control

land use planning, protect the environment, and preserve environmental values including "natural, scenic, historic, and esthetic." In protecting the natural resources for the common good as well as assuring future timber harvesting productivity, the Township certainly has a right to regulate reasonably species diversity. Indeed, that goal is implicit in the right of the Township to mandate a reasonable timber harvesting plan that balances the public's rights and the landowner's right to economically have a viable timber harvest. If, once again, the restriction of species diversity affects the viability of the timber harvest, the landowner has the right to seek relief under the ordinance by the conditional use process set forth in the ordinance.

18. 2[2][d][xvii] [REDACTED] asserts that the regulation requiring skid or transportation within 50 feet of the wetland, stream or drainage ways is impracticable and unreasonable. Effectively, he objects to the 50-foot buffer and margin with respect to wetlands. Again, certainly the Township has a right to establish reasonable regulations to assure clean water and to protect wetlands, streams or drainage ways. Indeed, the regulation itself, recognizes that there may be encroachment for stream crossings which are allowed per the operational standard and practice regulation. Moreover, in accordance with other ordinances of the Township, an erosion and sedimentation plan would have a comparable margin buffer. Again, [REDACTED] objects to the regulation and asserts that the issue be addressed in an Erosion & Sedimentation Plan. It is asserted that the addressing of the same by such a plan effectively results in the same operational standard and limitations that he objects to. Is this an objection for the sake of objecting?

19. 2[2][d][xviii] [REDACTED] asserts that provision concerning a buffer zone is unreasonable. The regulation assures that tree harvesting does not adversely impact adjacent properties and the public right-of-way's. Again, the Township has the right to protect the environment and maintain esthetic conditions for the public and adjacent property owners. Buffers are appropriate regulations with respect to zoning and land planning. The Township has authority under the MPC to maintain the buffers. Again, [REDACTED] makes a conclusion without any factual foundation. He does provide any evidence to establish that the regulation precludes economically viable timber harvesting. Indeed, as noted aforesaid, there have been at least a dozen timber harvesting plans under the ordinance that were approved and executed upon. Clearly, the regulation does not preclude economically viable timber harvesting. If it did so, the ordinance provides a mechanism for relief under the conditional use provisions.

20. 2[2][d][xix] [REDACTED] objects to the further buffer zone regulation and references his prior remarks that it is impracticable and unreasonable. The Township's response is the same as above.

21. 2[2][d][xxii] [REDACTED] complains about the regulation concerning leaving slash within 50 feet of the public street, recreational trail or private roadway. He asserts that the requirement creates uneven distribution of tops and slash which creates uneven regeneration of the stand. He does not state how that occurs. He does acknowledge that the requirement should be applicable to property boundaries. The regulation relates to property boundaries as well as the public streets, recreational trails or private roadways. One of the major factors determining the success of a logging operation is the disposable or clean-up of the leftover

material (slash). The provision in the ordinance concerning the same is not unreasonable under the circumstances.

22. 2[2][d][xxiii] [REDACTED] asserts that provision prohibiting tops or slash from being left in any storm water swale, floodway, floodplain, zone-1 riparian buffer or wetland is inappropriate because, as he asserts, decaying tops and slash are beneficial to wildlife and amphibian habitat within riparian buffers and wetlands. The Township believes that the clean-up of the storm water swales, floodways, floodplains and wetlands outweighs any beneficial effect to allowing slash in those areas because of the reasonable regulation to assure proper storm water management, stream control, maintaining riparian buffers and wetlands, all of which assures that the clean water and storm water management standards are complied with.

23. 2[2][d][xxv] The processing of wood products or the commercial sale of wood or logs is not permitted unless zoning approval is obtain. Obviously, the processing of timber is distinct from the timber harvest itself. Commercial processing of timber for manufacturing use is appropriately regulated by the zoning ordinance. The regulation merely sets forth that which is required by appropriate zoning of non-timber harvesting uses. Timber harvesting does not encompass the manufacturing of products or the sale of commercial by-products from harvested trees.

24. 2[2][d][xxvii] [REDACTED] asserts that the condition concerning the removal of stumps constitutes earth disturbance and is subject to the applicable sections of the code concerning earth disturbance is inappropriate since the removal of stumps are incidental and necessary to timber harvesting. If the removal of the stumps is necessary for timber harvesting, the regulation does not preclude the removal, it merely requires that appropriate earth disturbance permits be obtained to assure that there is proper storm water management, etc.

25. 2[2][d][xxxii] The regulation calls for the removal of invasive plant species and further control of invasive plan species. Apparently, [REDACTED] does not complain about the provision. He asserts that the removal of all plant species is difficult and asserts that a best effort to eradicate should be the standard. Obviously, if the tree harvester uses his best efforts and acts in good faith, he is following the regulation. The additional language is not necessary.

26. 2[2][e] This is the conditional use provision that effectively gives the landowner or timber harvester the opportunity to obtain relief from any provision that is unreasonable. As noted in the beginning of this letter, the burden is on the applicant to establish that the application of the ordinance is unreasonable for timber harvesting. The ordinance is presumptively valid and lawful. The burden is on the applicant. The conditional use provision allows the landowner and tree harvester the opportunity to seek appropriate relief on a case by case basis if such relief is necessary. Interestingly, no landowner or tree harvester has found it necessary to seek relief. Obviously, for the reasons aforesaid, the Township believes that its ordinance is reasonable and meets the legal requirements concerning timber harvesting regulations.

27. 2[2][e][ii][d] As noted aforesaid, the ordinance provides, in the appropriate case, for relief if necessary. [REDACTED] reference to this section is merely general conclusions about the ordinance that have already been addressed. He does not object to the

spirit and goal of the ordinance to avoid unreasonable and unnecessary restriction of the right of property owners to harvest timber, which activity is permitted use in all zoning districts as noted in the ordinance itself.

As to [REDACTED] additional comments, he criticizes the ordinance because it does not address "catastrophic events" or management, asserting that the "ordinance is foolhardy and impetuous with regard to professional, well managed timber harvesting and modern silvicultural practices."¹ In response, I point out that the ordinance is a timber harvesting ordinance and not a silvicultural management ordinance. By definition timber harvesting does not include removal of dead or diseased trees. The ordinance recognizes that trees may have to be removed because they are dead or diseased and the removal of same is exempt from the provisions of the ordinance and "shall not be considered a timber harvesting operation." While we agree with [REDACTED] that forest lands should be well managed and subject to principles of conservation to achieve a healthy and sustainable resource, the management of woodlands is not regulated by the ordinance. Those particulars are left to the discretion of the owner/operator. By definition, timber harvesting is the disturbance for commercial purposes of more than four (4) trees or greater than six (6) inches DBH per acre. See the definition of timber harvesting operation, page 5 of the ordinance. We are pleased by the fact that [REDACTED] having criticized almost everything else, does not criticize the Township in second guessing and regulating the management of his woodlands and Christmas tree farm. Assuredly, the Township would be criticized and there would be an ACRE challenge if it had an ordinance that regulated silvicultural management beyond timber harvesting.

As to [REDACTED] assertion that the motor vehicle weight limitation ordinance of North Coventry permits and impedes normal agricultural operations, I respond as follows: The ordinance was adopted in accordance with the provisions of the Second Class Township Code. The ordinance was enacted pursuant to the authority under the "Vehicle Code" Act of 1976, June 17, P.L. 1962 No. 81, Section 1, effective July 1, 1977, 75 Pa.C.S.A. Sec. 101 et seq., as amended was intended to include and be subject to the provisions of Section 4902 of the "Vehicle Code", 75 Pa.C.S.A. Section 4902 and all Pennsylvania Department of Transportation regulations were to promulgated under the "Vehicle Code." The draft of the ordinance was in accordance with the requirements of the Vehicle Code and the PennDOT regulations.² The requisite engineering studies were made prior to the adoption of the ordinance. A copy of the LTL review letter dealing with its studies as mandated under the Vehicle Code accompanies this letter.

[REDACTED] and his contractors are not precluded from using the Township roads with respect to timber harvesting. If the vehicles that are being used exceed the weight limits, the ordinance requires security to assure that the Township is indemnified for any damages that incur to the applicable Township roadways. With due respect, the taxpayers of North Coventry

¹ We believe that he means that those who drafted the ordinance are foolhardy and impetuous. The ordinance is a document that cannot be foolhardy and impetuous.

² See Chapter 212 Section 212.117(a),(b),(c),(d); MUTCD Section 2B.49; PUB 46 Chapters 2.4, 11.7.2 and 11.7.3; Vehicle Code Title 75 Pa.C.S. §4902(a),(b) and 6109(a)(7)(13); Pa. Code Title 67 Pa.C.S. Chapters 189, 191 and 193; PUB 23 Chapter 15.2; PUB 238 Chapter 4; BRIDGE MGMT. SYSTEM Items 4A02, 4A10, 4A15, VPO2, VP03, VP04, VP05.

should not bear the risk of damages occurring to applicable Township roads caused by using overweight vehicles in timber harvesting operations. The application of the ordinance is not a discrimination with respect to silvicultural uses. The weight limit provisions apply to all overweight vehicles that use the applicable roads in the Township without regard to the type of use. However, as [REDACTED] properly points out, under Section E(2), local traffic is exempt unless the Board of Supervisors determines that any local traffic is likely to damage the road. Section F of the ordinance provides for a permitting and security arrangement if a user seeks to exceed the posted weight limits under the ordinance. The security is for "costs of anticipated or probable repairs and restoration necessitated by the permitted movement of vehicles" in accordance with the rules and regulations adopted by PennDOT under Title 67 of the Pennsylvania Code.

[REDACTED] does not assert that the Township is denying permits for timber harvesting vehicles. It is not. He complains about the signage although the signage is clearly in accordance with PennDOT regulations and the Vehicle Code.

ADDENDUM

In establishing reasonable regulations for land use planning, preventing soil erosion, minimizing pollution of surface waters, reducing flooding, preserving stream banks, and maintaining water flows and head waters, North Coventry Township has adopted a Comprehensive Plan. The Plan reflects the extensive studies made by the township in an effort to adopt reasonable regulations. The Plan recognizes the intertwining of land and water resources and how the uses and activities on the land affect the watershed. Recognizing this interconnection, the Comprehensive Plan notes that "land resources need to be protected not only for their production value (agriculture, forest, meadows), but because inappropriate uses and poor maintenance practices can lead to degradation of water, wildlife and plant resources." (Comprehensive Plan, Chapter 3, p. 3-15). Indeed, appropriate silviculture recognizes the same. "[B]ecause land is a finite, nonrenewable resource, once it is degraded, it may never fully recover." (Id.)

The Plan recognizes the varying nature of the topography of North Coventry with elevations ranging from a low point of 155 feet above sea level to a high point of 843 feet. The Plan also notes that "steep land is subject to severe erosion, which results in shallow soils and stream sedimentation." (Id.) To prevent soil erosion, minimize pollution of surface water, reduce flooding, preserve stream banks, and maintain water flow in head waters, the regulation of development on steep slopes is important as noted in the Plan (Comprehensive Plan, Chapter 3, p. 3-16). The Plan provisions, thus, provide: "Ideally, steep slopes should be maintained under a forest or meadow cover to prevent erosions, stream sedimentation and other problems associated with their development. Section 902 of Zoning Ordinance defines and limits the disturbance of steep slopes." (Id.). Steep slopes cover approximately 14% of the township. They are in the broad belt in the southwestern portion of the township and scattered areas along streams (Id.).

Indeed, an appropriate objective of municipal regulations is to preserve and protect the land for production. See for example, the Act 67 revision to the Municipalities Planning Code.

There are biotic resources that consist of plant and wildlife in the Township to be protected. The Plan discusses the importance of maintaining the natural diversity, major habitat areas, and significant plant and animals that are identified for special protection (Comprehensive Plan, Chapter 3, p. 3-17).

Significantly, the Comprehensive Plan recognizes that "biodiversity is total variety and variability of living organisms and the ecological habitats in which they occur." (Id.). A healthy and diverse landscape is necessary to be sustained to maintain sufficient areas to interconnect habitat networks throughout the Township.

The Plan then reviews primary habitats which consist of woodlands, wetlands and stream corridors, hedgerows, open lands, special habitats (Comprehensive Plan, Chapter 3, p. 3-18).

"Woodlands provide protective cover for steep slopes, contribute to stream quality, provide important wildlife habitat and offer recreational opportunities. Canopies of trees play an important function by reducing the amount of intensity of rainfall, providing shade, and reducing the effect of extreme temperatures. Wooded areas serve as buffers from cold, northwesterly winds, visual intrusions, and noise while providing scenic relief and increasing land value. Wooded areas along stream corridors provide particularly valuable wildlife habitat in addition to shading stream water, preventing erosion, and filtering out pollution and sediment before it reaches the stream water. Because of the many valuable functions [that] woodlands provide, the destruction of these resources should be minimized as much as possible. The protection of woodlands is particularly critical where they overlap with other sensitive land areas such as steep slopes, head waters and stream corridors." (Comprehensive Plan, Chapter 3, p. 3-18).

The conclusion is obvious: for the Township to balance the need to regulate land resources to protect the environment and other considerations so referenced above. In so doing the same, the Township needs to balance the right of property owners to use their land with reasonable regulations to protect the environment and the community. Moreover, the Township is charged with promoting productivity of the land and sustaining the natural resources to assure effective, agricultural uses, timber harvesting, and mineral extraction.

The Township is cognizant of its obligations and has prudently effected the balance that is reasonably maintained. Its regulations relate to a thorough and comprehensive study of natural resources in the Township. The zoning regulations adopted are in accord with the Municipalities Planning Code and the state law. Its regulations are not capricious or arbitrary. They are based upon actual studies to assure the values that the citizens of this Commonwealth are so protected as mandated under the Pennsylvania Environmental Rights Amendment of the Pennsylvania Constitution, Article I, Section 27. At the same time, the Township has been mindful of its obligation to be reasonable in its regulation so as not to preclude timber harvesting. Recognizing the case by case issues that may arise under a myriad of factual situations, the Township has provided in its timber harvesting ordinance a reasonable procedure for a property owner or operator to seek a waiver of conditions.

The Township takes its obligations very seriously. Any suggestion that its regulations are motivated by bad faith is inappropriate and an indignity to those who have strived to serve the

public well and to protect the environment while assuring the right to timber harvest. Casting unreasonable aspersions is improper and counterproductive. Unfortunately, it is easy to parse and complain when the full picture is not presented and discussed.

The Comprehensive Plan, Chapter 10, well establishes the measure of regulation for resource protection measures:

“The existing protection measures in the Township’s Zoning and Subdivision and Land Development Ordinances (respectfully updated in 1996 and 1999) contain protection measures for a relatively wide range of natural resources including: floodplains, watercourses, wetlands and wetland margins, steep slopes, woodlands and specific scenic areas. In addition, the stormwater management revisions and erosion control standards in the Subdivision Ordinance underwent substantial revisions to promote the Township’s goals of water recharge, reduced run-off, and reduction of erosion and stream sedimentation.”

Thus, the Township has insured that existing protection measures are being effectively and uniformly enforced, measures have been adopted to improve specific resources and the protection thereof. The interconnection has been studied and noted. For example, with respect to riparian buffers, “[b]y protecting these buffers of trees, shrubs and other vegetation, waterways can be protected from impacts of human activities such as farming, grassing, lumbering and development.” (Comprehensive Plan, Chapter 10, p. 10-3). Riparian buffer standards have been implemented through the zoning and subdivision ordinances. Those regulations contain the minimum requirement and standards mandated by the U.S. Department of Interior Fish and Wildlife Service as well as federal, state and local regulations concerning clean water.

Under the circumstances and for the reasons as set forth, the Township asserts that the ACRE challenge is unfounded, baseless, and contrary to the very values that protect ██████████ woodlands, Christmas tree farm, and wetlands.³ The challenge should be dismissed.

For the reasons as set forth, the Township believes that the assertions made by ██████████ ██████████ in his two letters of March 8, 2017 concerning the ACRE challenges are not sustainable and should be dismissed.

Very truly yours,
Lawrence Sager
Lawrence Sager
LS/am

³ When ██████████ requested a license to go over Township lands for his timber harvesting, he was invited to meet with the solicitor to discuss the same. Instead of discussing the license, ██████████ asserted that the timber harvesting ordinance was inappropriate and objected to the security provisions with respect to vehicle weight limits on certain Township roads. ██████████ was invited to set forth his issues in writing so that the solicitor could present the same to the Board of Supervisors and obtain authority to discuss fully his specific complaints. Instead of doing so, ██████████ chose to file his ACRE challenges. The Township’s position is that a lot more is achieved by reasonable dialogue. Collaboration rather than confrontation is the key to good government and civic involvement.