



KINGSPRY

August 29, 2018

VIA E-MAIL: [REDACTED]

and **FIRST CLASS MAIL**

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Commonwealth of Pennsylvania
Office of Attorney General

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[REDACTED]

Re: [REDACTED] Eldred Township-ACRE Case

Dear Attorney Willig:

As you know, this firm is the appointed Solicitor to Eldred Township (the "Township"), Monroe County, Pennsylvania. This will serve to acknowledge the Township's receipt of your correspondence, dated July 6, 2018, in regards to the above-referenced matter. The Township Board of Supervisors ("BOS") requested that I respond, on behalf of the Township, to your correspondence. Thank you for your courtesy in allowing an extension in regards to the time for my response.

I will make several preliminary comments/observations.

First, the Township Ordinance of which [REDACTED] complains is a Zoning Ordinance enacted by the Township under the authority of the Pennsylvania Municipalities Code ("MPC"), and Pennsylvania Second Class Township Code. Under Secs. 603 and 604 of the MPC, a municipality is clearly authorized to enact zoning regulations that affect forestry activities.

Second, the only limitation on zoning ordinances in the MPC in regards to forestry is that the zoning ordinance may not unreasonably restrict forestry activities. See, Sec. 603(f). That subsection further provides that timber harvesting shall be a permitted use by right in all zoning districts in every municipality. In accordance with that requirement, the Eldred Township Zoning Ordinance permits, by right, forestry in every Zoning District in the Township.

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Third, the Township is not hostile to agricultural uses in the Township. The Township has large areas of rural/agricultural properties. For the most part, it is not in the path development, and remains a smaller Township population-wise, particularly in light of its geographical size.

Fourth, in no way has the Township attempted to use zoning regulations to affirmatively single out and prevent forestry activities. In fact, the Township is part of a multi-municipal, regional planning organization in the West End area of Monroe County, consisting of Chestnuthill, Eldred, Ross, and Polk Townships. The Townships have enacted similar Zoning Ordinances, with shared uses.

Fifth, as detailed in the chronology set forth below, the Township has been communicative and responsive to the applications and concerns of [REDACTED] and his agent, [REDACTED] of [REDACTED]. It is [REDACTED] and [REDACTED] who have failed to act in a reasonable fashion, and to use available remedies to them.

Next, [REDACTED] ACRE Complaint is somewhat ambiguous, based on the enclosures to your July 6, 2018, correspondence. The best way to respond is to provide a chronological outline of his dispute with the Township.

On February 6, 2018, [REDACTED] filed an Application for a Zoning Permit to perform tree harvesting on the [REDACTED] property located at [REDACTED] in the Township (the [REDACTED] Property"). A copy of the Application is enclosed under Tab "A".

On February 22, 2018, the Zoning Officer sent a denial letter. A copy of the letter is enclosed under Tab "B".

On March 9, 2018, [REDACTED] responded to the Zoning Officer's correspondence of February 22, 2018. A copy of the correspondence is enclosed under Tab "C". [REDACTED] correspondence challenges the Zoning Officer's Decision, and the validity of the Township's Ordinance. However, neither [REDACTED] nor [REDACTED] filed an Appeal with the Zoning Hearing Board criticizes the Zoning Officer's decision, or challenging the substantive validity of the Township's Ordinance.

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On April 16, 2018, after the Township received additional e-mail correspondence from [REDACTED] dated March 28, 2018 and March 29, 2018, the undersigned sent [REDACTED] the correspondence, enclosed in Tab "D". Please note that my letter, on page 3, specifically states that "I anticipate the Township Officials would have no objection to the Pennsylvania Department Environmental Protection, or the Penn State Extension, reviewing the Township's forestry regulations, and making suggestions about possible new or different regulations to be considered. The BOS would then evaluate those suggestions similar to any other comments regarding Township ordinances and policies, and determine what the Board believes is in the best interest of the Township and its taxpayers." Neither [REDACTED] nor [REDACTED] responded to, or took up my suggestion, that the parties engage in an interactive process utilizing the review and comments of a third party knowledgeable in the needs and impacts of the forestry industry.

On April 18, 2018, [REDACTED] responded to my correspondence, acknowledging that its prior Zoning Application was deficient. A copy of [REDACTED] correspondence is enclosed under Tab "E".

Instead of filing a new Application for Zoning Permit, and obtaining a Zoning Permit, [REDACTED] began timber harvesting operations on the [REDACTED] Farm property. The undertaking of a timber harvest on the [REDACTED] Farm would have required a Zoning Permit, under Secs. 1200.3 and 815.1 of the Township Zoning Ordinance. A requirement that a landowner obtain a permit for a new or change in use of a property, including forestry, is a universal requirement in zoning ordinances. In fact, it is difficult to understand how a zoning regulatory system could exist, without a permitting process.

On April 24, 2018, as a result of the commencement of a timbering harvest on the [REDACTED] property without a permit, among other things, the Zoning Officer sent an Enforcement Notice to [REDACTED]. A copy is enclosed under Tab "F". The Enforcement Notice was never appealed to the Zoning Hearing Board.

In the meantime, the Monroe County Conservation District had also inspected the property on the same date, and found the operations there non-compliant with the state's Erosion and Sediment Regulations under 25 Pa. Code Chapter 102. A copy of the MCCD's Earth Disturbance Inspection Report is enclosed under Tab "G".

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On April 26, 2018, the Township received a second Application for Zoning Permit from [REDACTED] in regards to timber harvesting on the [REDACTED] property. A copy of the second Application is enclosed under Tab "H".

On May 15, 2018, the Zoning Officer denied the second Application. A copy of his denial letter is enclosed under Tab "I". Neither [REDACTED] nor [REDACTED] appealed the denial, nor communicated any further with the Township.

[REDACTED] or its subcontractor, [REDACTED] acknowledges that it continued with the actual harvesting of trees at the [REDACTED] property until June 1, 2018, and that additional timber harvest operation-related activities continued on the property until June 14, 2018.

On May 29, 2018, MCCD was at the property again for inspection, and found violations. A copy of the report is enclosed under Tab "J".

By way of e-mail correspondence, dated May 31, 2018, MCCD also confirmed that the E&S plan submitted by [REDACTED] to the Township as part of its second Application for Zoning Permit did not meet the requirements of Chapter 102. A copy of MCCD's e-mail correspondence is enclosed under Tab "K".

In summary, the Township respectfully submits that its Zoning Ordinance does not unreasonably restrict forestry activities in Eldred Township. The Township has been responsive to the property owner, and open to discussing the matter further, and even having its zoning regulations reviewed by other governmental or industry organizations familiar with the needs and impacts of forestry activities. The Township respectfully submits that, in this case, it was the property owner, or its agent, that has acted in an unreasonable fashion.

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If you need anything further, please do not hesitate to contact me.

Sincerely,

KING, SPRY, HERMAN, FREUND & FAUL, LLC

[REDACTED]

MAG/rlh

Encl.

CC:

[REDACTED] (For distribution to BOS & Zoning Officer)