

Law Offices

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RECEIVED
Rob Willig
SEP 10 2018

Office of Attorney General
Constituent Services

September 7, 2018

PA Office of the Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Re: [REDACTED]
Pocopson Township, Chester County, PA

Ladies/Gentlemen:

My name is Matthew J. Canan, Esquire. I represent a timber harvesting operation, [REDACTED] that is operating a timber harvest in Pocopson Township, Chester County, Pennsylvania. Pocopson Township has required my client to sign a Professional Services Agreement before they will issue the necessary permits for them to begin the timber harvest. I have enclosed a copy of the Professional Services Agreement for your review, as well as Section 250-87.L of the Code of the Township of Pocopson, which is referenced in the Professional Services Agreement. The Professional Services Agreement requires my client to pay for an engineer to review his permit application and inspect his site. It further requires my client to pay all reasonable fees, legal and otherwise, for professional consultants retained by the township to review and comment on the plan, survey the premises, inspect improvements to be constructed, prepare documents, attend meetings or provide other services relating to the subdivision and/or development of the premises. It additionally requires my client to pay all administrative costs and expenses, which the township may incur by reason of the Professional Services Agreement. Please read Page 2, Paragraph 2 of the Agreement.

My client requests that this ordinance and this Professional Services Agreement be reviewed for compliance with the ACRE Law. I believe that this Agreement requiring that my client escrow funds to pay for an engineer to review his timber harvesting plan and inspect his site is not authorized by the MPC. See 53 P.S. § 10617.3(e), which expressly prohibits townships from charging a landowner expenses for engineering or other technical consultants costs in administering the zoning ordinance. Although we are providing a copy of the Zoning Ordinance referenced in the Professional Service Agreement, the ordinance does not mention the Professional Services Agreement. Nonetheless, the township is refusing to allow my client to begin a timber harvesting operation until the Agreement is signed and the \$890.00 escrow fee is paid.

PA Office of the Attorney General
September 7, 2018
Page - 2

I respectfully request a review of the Zoning Ordinance and the Professional Services Agreement for compliance with ACRE, that the Attorney General issues a letter to Pocopson Township advising them of their violation of ACRE, and directing Pocopson Township to return the escrowed fees to my client.

Thank you for your attention to this matter.

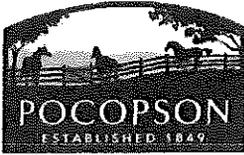
Sincerely,

A handwritten signature in black ink, appearing to read 'MJC', written over a horizontal line.

Matthew J. Caran, Esquire

MJC/lt

cc: Mr. Timothy S. Nilan
Pocopson Township



**POCOPSON TOWNSHIP
PROFESSIONAL SERVICE AGREEMENT (PSA)**

THIS AGREEMENT made this _____ day of _____ 20____, by and between Pocopson Township, Chester County, Pennsylvania (hereinafter referred to as "Township") and [REDACTED] of [REDACTED] (hereinafter referred to as "Applicant").

WHEREAS, Applicant desires to undertake a Timber Harvest Operation on certain real estate located at Tax Parcel [REDACTED] Pocopson Township, Chester County, Pennsylvania and commonly referred to as "Premises" with a street address of [REDACTED] and

WHEREAS, Applicant has need of and has requested Township to review the proposed Timber Harvest Plan for compliance with the Timber Harvest Plan requirements of Section 250-87.L. of the Code of the Township of Pocopson; and

WHEREAS, the term "Professional Consultants" as used herein shall mean such persons or entities which provide expert or professional advice, including but not limited to, attorneys, engineers, geologists, land surveyors, architects, landscape architects and planners, including their employees; and

WHEREAS, Applicant now requests that Township have its Professional Consultants, Castle Valley Consultants, Inc. review said plans and provide such services as are required by Township; and

WHEREAS, Castle Valley Consultants, Inc. proposes to review the application for compliance with the following requirements: **Section 250-87.L. Timber Harvesting Operations of the Code of the Township of Pocopson.** The following costs shall be deposited in escrow prior to the beginning of the reviewing process:

| | |
|--|---------------------------------|
| 1. Permit Review for Section 250-87.L. Compliance: | \$ 350.00 |
| 2. Four (4) Site Inspections: | \$ 540.00 |
| <u>Total Escrow for Timber Harvest Review</u> | <u>\$ 890.00 **; and</u> |

** Supplements for this application may be required when the above required Escrow diminishes to \$00.00 or less. Supplement requirements shall not exceed \$350 per plan iteration. The Professional Consultant may require additional escrow for future iteration of the proposed application review.

Should the applicant decline to pay the additional supplements required, the Professional Consultant reserves the right to withhold the required application review and the Township Board of Supervisors has the right to decline the proposed application.

WHEREAS, Township has authorized such professional services upon execution of this Agreement by Applicant, and the deposit of the required funds as hereinafter set forth.

NOW THEREFORE, the parties, with the intention of being legally bound, agree as follows:

1. Township hereby authorizes Its Professional Consultants to review the Applicant's plans, and to make recommendations on the design, specifications, and architectural requirements and to make any and all engineering surveys and field inspections that are required by the Township pursuant to its rules, regulations or proper engineering standards in order to ensure that final plans reflect proper engineering practices and comply with all Township ordinances, rules and regulations.
2. Applicant agrees to pay all reasonable fees, legal and otherwise, for the Professional Consultants retained by the Township for reviewing and commenting on the plans, surveying the Premises or inspecting the improvements to be constructed, preparing documents, attending meetings or providing other services relating to the subdivision and/or development of the Premises; and also all administrative costs and expenses which the Township may incur by reason of this Agreement. All charges and fees shall be paid by the Applicant as required by the Township and in accordance with Paragraph 3 set forth herein.
3. Applicant hereby agrees to deposit with the Township the sum of **eight hundred and ninety (\$890.00)** as security for the payment of all costs and expenses, charges and fees, as set forth in Paragraph 2 above, upon execution of this Agreement (the "Plan Review Escrow"). It is agreed and understood by the parties that no action will be taken on Applicant's application or plans until the required funds have been deposited with the Township.
4. In the event that Professional Consulting fees or administrative costs and expenses exceed or are expected to exceed the deposit required in Paragraph 3 hereof, Applicant agrees to deposit, within ten (10) days after notice, such additional sum as is required to pay said expenses. A detailed statement of account shall be provided to the Applicant upon request. In the event any required deposit is not made, it is understood and agreed that no further work will be performed on the review of the Applicant's plans or application and Applicant releases Township from any claims for delay and/or other type damages that might be incurred by the Applicant.
5. Services will be provided to the Applicant in accordance with the review procedures established herein and by the Township from time to time. Plans or designs shall not be reviewed until the Plan Review Escrow has been paid as provided in this Agreement.
6. Applicant shall pay all reasonable fees and costs which the Township may incur by reason of or in connection with the review of plans or construction of the proposed improvements or other work either on Applicant's Premises or off-site, as required by the plans submitted.
7. Applicant shall pay any and all Professional Consulting fees and costs incurred by the Township for reviews and inspections which may be required for the purpose of ensuring compliance with the plans as filed, the rules and regulations of the Township, the ordinances and codes of the Township,

and any other laws and regulations of the Commonwealth of Pennsylvania, the United States of America or any other regulatory body having jurisdiction over the work to be performed at the Applicant's premises.

8. Upon receipt by the Township of itemized bills for Professional Consulting services, the Township shall have the right to deduct said amounts from the Plan Review Escrow. The Township shall provide copies of the itemized bills to the Applicant. The Applicant shall have forty-five (45) days after receipt of the bill to notify the Township and the Township's professional Consultants that such fees are disputed and the basis for the objection to those fees. Failure of the Applicant to dispute a bill within the forty-five (45) days shall be a waiver of the Applicant's right to arbitration of that bill under Section 510(g) of the Pennsylvania Municipalities Planning Code 53 P.S. 10510(g). In the event that the Township's Professional Consultant and the Applicant cannot agree on the amount of the review fees, the Applicant and the Township shall follow the procedure for dispute resolution set forth in Section 510(g), provided that the arbitrator resolving such dispute shall be of the same profession as the professional consultant whose fees are being disputed.
9. Subsequent to a decision on an application, the governing body shall submit to the Applicant an itemized bill for review fees, specifically designated as a final bill. The final bill shall include all review fees incurred at least through the date of the decision on the application. If for any reason additional Professional Consultant review is required subsequent to the decision, including inspections and other work to satisfy the conditions of the approval, the review fees shall be charged to the Applicant as a supplement to the final bill.
10. Applicant further agrees that this Agreement and the Professional Consulting services authorized by it in no way be construed as allowing any construction of improvements prior to Applicant receiving all required Township, County, State and Federal approvals and/or permits and execution of such Development and Financial Security Agreements with the Township as the Township may require.
11. Applicant may, at any time, give written notice to the Township that it does not desire to proceed with the work, and upon receipt of such notice by the Township, the Applicant shall only be liable to the Township for its fees, costs and expenses incurred up to and including the date of the Township's receipt of the notice.
12. The Township shall use its best efforts to give Applicant as much advance notice as possible that Applicant's liability will exceed the Plan Review Escrow posted with the Township.
13. All notices to be given by any of the parties hereto shall be in writing and mailed via US Postal Service to the address of each party set forth in the heading hereof (or to such other address as may be furnished in writing for such purpose) to the attention of the individual named in the heading, if any.
14. The Township, in the exercise of its responsibilities, may call upon the services of outside Professional Consultants as it may deem necessary to properly review Applicant's proposals, all of which shall be paid from the Plan Review Escrow.

15. When all professional services on behalf of the Township have ceased and all invoices for professional services paid, the Township will refund to Applicant any balance remaining in the Plan Review Escrow.

16. Applicant and Township acknowledge that this Agreement represents the full understanding between them on the issues set forth herein, shall be interpreted in accordance with the laws of the Commonwealth of Pennsylvania and will be honored by both of them, each of whom agree to be legally bound by its terms.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused their signatures to be affixed their hands and seals hereto the day and year first above written. See next page.

ATTEST:

Signature: _____

Print: _____

POCOPSON TOWNSHIP:

Signature: _____

Print: _____

APPLICANT (S):

Signature: _____

Print: _____

Phone: _____

Email: _____

Signature: _____

Print: _____

Phone: _____

Email: _____