



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO  
ATTORNEY GENERAL

February 11, 2019

Office of Attorney General  
1251 Waterfront Place  
Mezzanine Level  
Pittsburgh, PA 15222  
[REDACTED]

Middle Smithfield Township Board of Supervisors  
147 Municipal Drive  
East Stroudsburg, PA 18302

Re: *ACRE Request* - [REDACTED]  
*Middle Smithfield Township-Monroe County*

Dear Board of Supervisors,

Act 38 of 2005 (ACRE) requires that the Office of Attorney General, upon request of a farm owner or operator, review a local government ordinance for compliance with Act 38. The Act authorizes the Office, in its discretion, to file a lawsuit against the local government unit if, upon review, the Office believes that the ordinance unlawfully prohibits or limits a normal agricultural operation.

We write to inform you that we received a request from [REDACTED] Inc. requesting review of the Township's forestry ordinances. I attach for your review a copy of the ACRE complaint [REDACTED] filed with this Office. Stone specifically complains of: 1) the requirement that the E&S plan be reviewed and approved by the County Conservation District; 2) the prohibition of logging within 25 feet of a stream; 3) setbacks for tops and slash; and 4) a canopy minimum requirement.

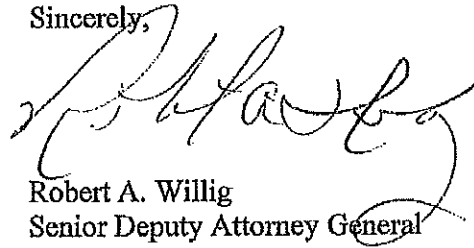
The Office of the Attorney General ("OAG") has dealt with these and similar issues in the past. I attach for your review prior letters that we have sent to various municipalities explaining the OAG's position on these issues:

1. *Eldred Township* – E&S Plan review and approval by the local Conservation District (pp. 1-2) and 25 feet buffer zone from water body or stream (pp. 3-4)(Attached as Exhibit A);
2. *East Brandywine Township* – a Pennsylvania State University professor's information concerning tops and slash (pp. 3-4)(Attached as Exhibit B); and
3. *Clay Township* – Canopy requirement (pp.6-8)(Attached as Exhibit C).

We will write to you again when we have completed our review. In the meantime, please send to me within thirty days of the receipt of this letter any information that you believe will assist us in our review.

Please be assured that if our review of the ordinance(s) leads us to question the legality of an ordinance, we will afford the Township an opportunity to provide information and to meet with us before we take any action. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. Willig". The signature is written in black ink and is positioned above the printed name and title.

Robert A. Willig  
Senior Deputy Attorney General



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO  
ATTORNEY GENERAL

April 17, 2020

Office of Attorney General  
1251 Waterfront Place  
Mezzanine Level  
Pittsburgh, PA 15222

[REDACTED]

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*ACRE Request for Review – Middle Smithfield Township, Monroe County*

Dear [REDACTED] and [REDACTED]

As we know [REDACTED] filed an ACRE request for review challenging certain provisions of Middle Smithfield’s timber harvesting ordinances. The Office of the Attorney General (“OAG”) sent a letter to the Middle Smithfield Board of Supervisors stating that the Township’s ordinance provisions concerning Conservation District (“CD”) approval of E&S plans, logging within 25 feet of a stream, setbacks for tops and slash, and a canopy minimum requirement were problematic. [REDACTED] responded to my letter explaining the Township’s position. I greatly appreciate Middle Smithfield Township’s (“MST”) response and apologize for the delay in getting back to the parties. If my reading of the Township’s response as noted below is incorrect by all means please correct me.

**Conservation District Approval of E&S Plans** MST agrees to remove from its ordinances the requirement that the local CD must approve the E&S plan before a timber harvesting permit may be issued. That is certainly acceptable to the OAG. [REDACTED] explains that MST will probably require the landowner/applicant to submit any state required E&S Plans/Stormwater Management Plans to the Township. If the Board of Supervisors so requires, that is acceptable to the OAG as well. MST writes that while state law does not allow CD preapproval of the E&S Plan in order to get a permit the Township can submit the Plan to the CD for review at the Township’s expense. That is correct. That is certainly within MST’s authority. A problem may arise, however, with MST’s observation that it “is authorized to charge fees to offset the cost of its zoning administration expenses,” *i.e.* the cost of the CD review of the E&S Plan.

As a general proposition that is true. A Township may require permits and charge a fee to secure that permit. Permitting is required for numerous activities; charging a fee to process the application for the permit is accepted practice. The Municipalities Planning Code (“MPC”) states a Township “may prescribe reasonable fees with respect to the administration of a zoning ordinance....” 53 P.S. § 10617.3(e). *See Golla v. Hopewell Township Board of Supervisors*, 452 A.2d 273 (Pa.Cmwlt. 1982) (A municipality has authority under the MPC to impose a reasonable fee with respect to applications.) The MPC expressly prohibits, however, Townships from charging a landowner “expenses for engineering...or other technical consultants...costs” in administering a zoning ordinance. 53 P.S. § 10617.3(e). Having the experts at the local CD review the E&S Plan falls within the ambit of engineering and technical consultation. MST cannot simply transfer the cost of the CD review into its fee for processing timber harvesting permit applications. Perhaps MST can increase the timber harvesting permit fee by *some* amount to help defray *some* of the costs of CD review, but MST cannot increase the permit fee for the entire CD review cost. That would violate the MPC. I welcome a suggestion from MST as to how we should handle the costs/fee issue.

**25 Feet Buffer Zone from Streams** MST writes that it “is amenable to deleting the setback requirement.” That is certainly acceptable to the OAG.

**Tops/Slash Setbacks** The OAG withdraws its challenge to this portion of MST’s ordinances. Since the OAG sent its letter to MST questioning the tops/slash setback requirement, professionals and experts in the timber harvesting industry have concluded that such setbacks are reasonable.

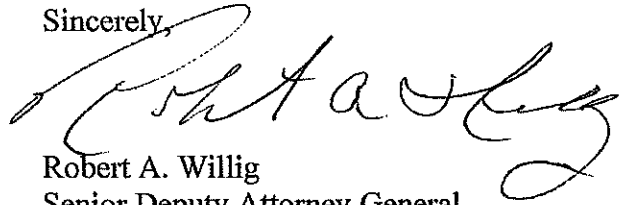
**Canopy Minimum Requirements** MST cites to the *Chrin Brothers, Inc. v. Williams Township Zoning Hearing Board*, 815 A.2d 1179 (Pa.Cmwlt. 2003) case as support for its canopy minimum requirements. *Chrin* has no applicability beyond the limited facts of that particular case. On appeal from the Zoning Hearing Board’s (“ZHB”) decision, the Court of Common Pleas heard no evidence. The Common Pleas Court based its decision only on what had been adduced at the ZHB proceeding. The *Chrin* Court noted that in that instance when the evidentiary record is so scant its “scope of review is limited....” *Id.*, at 1182. In *Chrin* the landowner called an expert who opined that canopy requirements were unreasonable. Williams Township offered an expert who said that canopy requirements were reasonable. It was a commonplace “battle of the experts” whose opinions were based entirely on the specific facts of that case. The Commonwealth Court never concluded that canopy requirements were acceptable in all situations. All the Commonwealth Court did in *Chrin* was say that based on the very limited factual record before it the Court could not say that the township acted unreasonably.

If we ever get to the point where a factual record has to be developed in this case, the OAG is confident that it will establish a formidable record supporting the contention that blanket canopy requirements applicable in all situations violate ACRE. The ACRE statute provides that “[t]he secretary [of the Pennsylvania Department of Agriculture] and the dean of the College of Agricultural Sciences at The Pennsylvania State University shall, upon request of the Attorney General, provide expert consultation regarding the nature of normal agricultural operations in this Commonwealth.” 3 Pa.C.S. §314(d), **Duties of the Attorney General, Consultation**. In the past, the OAG has consulted with numerous forestry and timber harvesting experts at both the Department of Agriculture and at Penn State, in addition to speaking to many experts in the

private sector and at non-profit organizations, and we have found that the overwhelming weight of expert opinion supports the position that automatic, blanket canopy requirements like MST's are unreasonable.

It appears that what remains of this ACRE matter are: 1) how, and if, MST can include some of the CD's E&S Plan review costs in its permit application fee; and 2) whether MST wants to keep its blanket canopy provision in place. Please let me know how MST wants to proceed. Thank you for all of your patience and consideration in this matter. I greatly appreciate it.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert A. Willig".

Robert A. Willig  
Senior Deputy Attorney General