



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

March 21, 2019

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

Patrick M. Armstrong, Esq.
Grim, Biehn & Thatcher
104 South Sixth Street
P.O. Box 215
Perkasie, PA 18944-0215

Re: ACRE Request – South Londonderry Township – Lebanon County [REDACTED]

Dear Mr. Armstrong,

Thank you for your letter of March 14, 2019 wherein you explain that South Londonderry “is currently in the process of reviewing its Zoning Ordinance and intends to amend certain sections in the near future. Therefore, in the event you believe any of the existing forestry use provisions within the Township’s Zoning Ordinance is inconsistent with State Law, please let us know so that we can consider incorporating the appropriate revision(s) to ensure the Township’s Zoning Ordinance is compliant.” That is a prudent course of action and I applaud the Township’s proactive approach. I propose that South Londonderry and the Office of the Attorney General (“OAG”) work together to draft a timber ordinance that complies with state law.

As a starting point, the OAG has an ACRE website with resources that may be of assistance to you. Go to the OAG’s public website at www.attorneygeneral.gov. Under the “Resources” tab, you will see a link to the “ACRE-Agricultural Communities and Rural Environment” resource center. Click on that link. That takes you to the OAG’s ACRE website. You will see on the right side of the page in orange letters “2006 to Present ACRE Acceptance Letters.” Click on that link. You will find numerous letters that the OAG has sent to municipalities addressing shortcomings/flaws in their timber harvesting ordinances. I recommend using these letters to guide South Londonderry’s efforts in amending its timber harvesting ordinance.

The ACRE complainant, [REDACTED] contends that various sections of the South Londonderry timber harvesting ordinances violate ACRE.¹ The OAG has addressed in the past several of the issues currently raised and has determined that

¹ §§ 487.B.1.A & B & C, 487.B.1.F, 487.C, 487.D, and Ordinance #210.

ordinance provisions similar to South Londonderry's did violate ACRE. When you go to the OAG ACRE website, I recommend that you review the following letters:

1. *Forest Regeneration Requirements*: Pennsbury, pp. 4-5; Lower Saucon, p. 8; North Coventry, p. 8; East Brandywine, p. 7; and East Nantmeal, p. 10;
2. *Site Plan Requirements*: Pennsbury, pp. 2-3; East Brandywine, p. 6;
3. *Forestry Practices Requirements*:
 - A. Eldred, pp. 3-4; Lower Saucon, pp. 3-5; Monroeville, p. 11; and East Nantmeal, 11/9/15 Letter (buffer zones);
 - B. Lower Saucon, pp. 11-12; East Brandywine, pp. 3-4 (tops & slash).

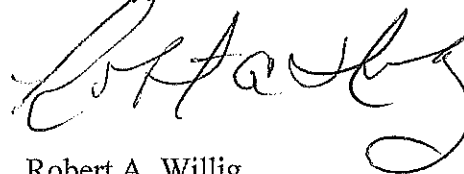
One of the earlier timber harvesting cases of particular note is the Monroeville Township case of December 2015. The OAG worked closely with Township officials in drafting a timber harvesting ordinance that complied with state law. I have attached for your review a copy of the Monroeville amended ordinance.

You will see in the OAG timber harvesting letters that we recommend to townships that they enact the Penn State University's ("PSU") Model Ordinance. I have attached for your review the PSU Model Ordinance that I have sent to numerous other municipalities.

I propose that before South Londonderry enacts a new forestry ordinance that we work together, just as Monroeville Township did, to guarantee that the ordinance complies with ACRE. If I can review the proposed ordinance before it is enacted that would prevent South Londonderry from expending time, money, and resources on passing an ordinance that may not comply with state law. By working together at this stage of the ordinance amendment process, we can prevent future challenges to the timber harvesting ordinance.

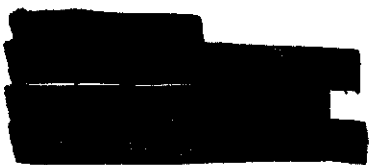
Does this sound like a good plan to you? Please let me know what you think.

Sincerely,



Robert A. Willig
Senior Deputy Attorney General

cc



MUNICIPALITY OF MONROEVILLE
ALLEGHENY COUNTY, PENNSYLVANIA

ORDINANCE NO. 2653

AN ORDINANCE AMENDING ORDINANCE 2529 REGARDING TIMBER HARVESTING REGULATIONS BY AMENDING SECTION 002-1(C)(4) TO NOT REQUIRE CONDITIONAL USE APPROVAL FOR MAJOR TIMBERING OPERATIONS; DELETING IN THEIR ENTIRETY SECTIONS 002-5(A) THROUGH 002-5(E) TO ELIMINATE ADDITIONAL REVIEW REQUIREMENTS; SECTIONS 002-6(A)(2) REQUIRING THE PROVISION OF A BOND AND INSURANCE; SECTION 002-6(A)(4) ESTABLISHING PERMIT DEADLINES; SECTION 002-6(A)(7)(c) REQUIRING ADDITIONAL DRAINAGE FACILITIES; SECTION 002-6(A)(7)(d) RESTRICTION OF TRAFFIC PATTERNS OF TRUCKS AND EQUIPMENT AND SECTION 002-10 REQUIRING A PERFORMANCE BOND; AMENDING SECTION 002-12(A) TO REQUIRE TIMBERING OPERATIONS TO COMPLY WITH THE REGULATIONS OF THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION; AMENDING SECTION 002-13(D) TO IMPOSE PENALTIES FOR VIOLATIONS OF THE ORDINANCE; AMENDING SECTION 003-1(A)(2) TO ADDRESS TIMBERING ON LANDSLIDE PRONE SOILS; AND AMENDING SECTIONS 003-1(A)(5)(a) AND 003-1(A)(5)(b) TO ADDRESS BUFFER ZONES.

WHEREAS, Ordinance 2529 is in conflict with certain provisions of the Agriculture, Communities and Rural Environment Act of July 6, 2005, No. 38, 2005 Pa. Laws 112 (hereinafter "ACRE") as they relate to the regulation of timbering activities in the Municipality of Monroeville;

WHEREAS, in order to resolve the conflicts with the provisions of ACRE, it is necessary to amend Ordinance 2529; and

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

Section 1. ADDITIONS, DELETIONS AND CHANGES.

A. Section 002-1(C)(4) of the Ordinance, which currently states:

The Timber Harvesting Permit for a major timbering operation is issued only after review by the municipal engineer, municipal planning commission and approval by the Council of the Municipality of Monroeville as provided for in Section 002-5 of this Ordinance.

is hereby deleted in its entirety and replaced with the following:

The Timber Harvesting Permit for a major timbering operation shall be issued administratively by the zoning officer following the applicant's submittal of a forest plan prepared by a Professional Forester, proof of a written E&S Plan, and, only if required, an E&S Permit issued by the Pennsylvania Department of Environmental Protection.

- B. Sections 002-5(A) through 002-5(E) are deleted in their entirety.
- C. Sections 002-6(A)(2), 002-6(A)(4), 002-6(A)(7)(c) and 002-6(A)(7)(d) are deleted in their entirety.
- D. Section 002-10 is deleted in its entirety.
- E. Section 002-12(A) of the Ordinance, which currently states:

The owner of any property on which a timber harvesting operation has been undertaken shall maintain the site in good condition including all aspects discussed in Article III of this Ordinance or as otherwise a part of the permit requirements and/or conditions.

1. All drainage courses, ditches, culverts, pipes and structures shall be adequately maintained by the property owner and shall be kept open and free flowing at all times.
2. All graded surfaces, erosion and sedimentation (E&S) control devices, drainage structures and similar protective devices, plantings and ground cover installed pursuant to any required permit shall be continuously maintained and kept in good repair by the owner.
3. Adequate provisions shall be incorporated to prevent the infiltration of sediment into existing streams.
4. Where the Municipality finds evidence of any situation which threatens to damage nearby properties, they shall direct the property owner to affect adequate remedies within a reasonable period of time.

is hereby deleted in its entirety and replaced with the following:

The owner and/or operator of the timber harvesting operation shall provide the Municipality with copies of all documentation required

by the Pennsylvania Department of Environmental Protection to be kept on the site during earth disturbance activities.

F. Section 002-13(D) which currently states:

Any person who or which shall violate the provisions of this Ordinance shall upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not more than five hundred (\$500) dollars. In default of payment of the fine, the members of such corporation shall be liable to imprisonment for not more than ninety (90) days. Each day that a violation is continued shall constitute a separate offense.

is hereby deleted in its entirety and replaced with the following:

Any person who or which shall violate the provisions of this Ordinance shall upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not more than five hundred (\$500) dollars. If the person neither pays the fine nor timely appeals the conviction, the Municipality may enforce such non-payment pursuant to applicable law. Each day that a violation is continued shall constitute a separate offense.

G. Section 003-1(A)(2) of the Ordinance which currently states:

Timber harvesting operations may not be performed on landslide prone areas out of a concern for destabilizing the earth.

is hereby deleted in its entirety and replaced with the following:

An applicant proposing to engage in timber harvesting on landslide prone soils must provide a forestry plan prepared by a professional forester that describes the best management practices to be employed to ensure stabilization of soils and demonstrates compliance with the Penn State College of Agricultural Sciences publication entitled "Best Management Practices for Pennsylvania Forests".

H. Section 003-1(A)(3) of the Ordinance which currently states:

The clear-cutting or seed-tree cutting methods, or any other method deemed by the Municipality to be similarly intensive, may not be performed on areas with a slope exceeding 4H:1V out of a concern for destabilizing the earth. These methods may also not be performed unless the Forest Management Plan indicates that the method is required to manage the specific species composition of the site.

Timber harvesting on slopes exceeding 4H:1V, or utilizing the clear-cutting or seed-tree cutting methods or any other method deemed by the Municipality to be similarly intensive requires a Major Timber Harvesting Permit in accordance with Section 002-1.C.

is hereby deleted in its entirety and replaced with the following:

The clear-cutting or seed-tree cutting methods, or any other method deemed by the Municipality to be similarly intensive, may not be performed on areas with a slope exceeding 4H:1V out of a concern for destabilizing the earth, unless the applicant can demonstrate that the proposed method employs best management practices to ensure stabilization of the slope and is the method recommended by the professional forester to sustain the forest.

I. Section 003-1(A)(5)(a) which currently states:

Along abutting properties and streets: 25 feet

is hereby deleted in its entirety and replaced with the following:

Along abutting properties and streets: 25 feet, unless a reason for harvesting within the buffer zone exists and is explained in the forestry plan.

J. Section 003-1(A)(5)(b) which currently states:

Around wetlands, vernal pools, lakes, ponds, creeks, streams, or other "Waters of this Commonwealth", a 150 foot buffer shall exist where neither timber harvesting nor disturbance can take place.

is hereby deleted in its entirety and replaced with the following:

Around wetlands, vernal pools, lakes, ponds, creeks, streams, or other "Waters of this Commonwealth", an applicant shall provide proof that the buffer distances that are required under the Pennsylvania Department of Environmental Protection's regulations and those recommended in the Penn State College of Agricultural Sciences publication entitled "Best Management Practices for Pennsylvania Forests" are included in the forestry and E&S plans.

Section 2. Except as specifically and expressly amended herein, Ordinance 2529, as amended, shall remain in full force and effect and shall not be deemed to be in conflict with any of the provisions set forth in this Ordinance.

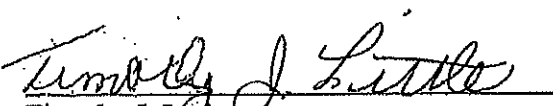
Section 3. Any ordinance, chapter, section, sub-section, paragraph, sentence, clause, phrase or portion of the Ordinance 2529 conflicting with the provisions set forth in this Ordinance are hereby repealed to the extent of such conflict.

Section 4. If any section, sub-section, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

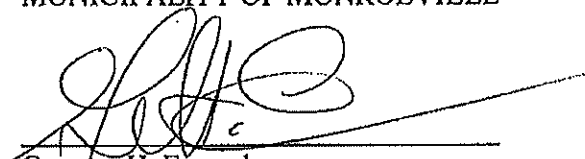
ORDAINED AND ENACTED this 12th day of July, 2016.

ATTEST:

MUNICIPALITY OF MONROEVILLE



Timothy J. Little
Municipal Manager



Gregory H. Erosenko
Mayor

ENTERED INTO LEGAL BOOK: July 22, 2016

PENNSYLVANIA MODEL FORESTRY REGULATIONS

Using the Model

Before deciding to adopt any ordinance regulating forestry activities, your community should carefully weigh the questions raised in “Timber Harvesting in Pennsylvania.”¹ Adoption of local regulations is not the answer for all communities.

If your community decides that regulations are necessary, the following model ordinance may be helpful. It was first developed in 1994 by a team of professional foresters led by Penn State’s School of Forest Resources and was updated in January 2000 to conform to the new forestry-related changes to the Municipal Planning Code effected by Acts 67 and 68 of 2000.

The model is intended to address fairly the needs and concerns of local citizens as well as forest landowners and the forestry industry. It is also designed to be consistent with the so-called “Right to Practice Forestry” provision (P.S. §10603(f)) of the Municipalities Planning Code.

This model is best applied with the assistance of a professional forester who has the expertise to help ensure that the final regulations are tailored to your community’s particular circumstances. “Timber Harvesting in Pennsylvania” provides information on how to make contact with a professional forester. Other interested members of the forestry community, such as landowners, loggers, and forest products manufacturers, should also be given an opportunity to become involved in developing the ordinance.

¹This informational booklet, published by the Penn State School of Forest Resources, is available from the Pennsylvania State Association of Township Supervisors (telephone: 717-763-0930; Pennsylvania Department of Community and Economic Development, Governor’s Center for Local Government Services (telephone: 717-783-0176); Pennsylvania Department of Agriculture, Hardwoods Development Council (telephone: 717-772-3715); Penn State School of Forest Resources (telephone: 814-863-0401); Pennsylvania Department of Conservation and Natural Resources, Bureau of Forestry District offices; Pennsylvania Forestry Association (telephone: 717-766-5371);

and the Hardwood Lumber Manufacturers Association of Pennsylvania (telephone: 717-312-1244)

Model Regulations

Section 1. Policy; Purpose. In order to conserve forested open space and the environmental and economic benefits they provide, it is the policy of the Township [Borough] of _____ to encourage the owners of forest land to continue to use their land for forestry purposes, including the long-term production of timber, recreation, wildlife, and amenity values. The timber harvesting regulations contained in sections 1 through 8 are intended to further this policy by (1) promoting good forest stewardship; (2) protecting the rights of adjoining property owners; (3) minimizing the potential for adverse environmental impacts; and (4) avoiding unreasonable and unnecessary restrictions on the right to practice forestry.

Section 2. Scope; Applicability. To encourage maintenance and management of forested or wooded open space and promote the conduct of forestry as a sound and economically viable use of forested land throughout the township [borough], forestry activities, including timber harvesting, shall be a permitted use by right in all zoning districts. Sections 1 through 8 apply to all timber harvesting within the Township [Borough] where the value of the trees, logs, or other timber products removed exceeds \$1,000. These provisions do not apply to the cutting of trees for the personal use of the landowner or for pre-commercial timber stand improvement.

Section 3. Definitions. As used in Sections 1 through 8, the following terms shall have the meanings given them in this section.

- a. "Felling" means the act of cutting a standing tree so that it falls to the ground.
- b. "Forestry" means 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.²
- c. "Landing" means a place where logs, pulpwood, or firewood are assembled for transportation to processing facilities.
- d. "Litter" means discarded items not naturally occurring on the site such as tires, oil cans, equipment parts, and other rubbish.
- e. "Lop" means to cut tops and slash into smaller pieces to allow the material to settle close to the ground.

² Only forests and timberlands subject to residential or commercial development shall be regulated under the township's [borough] land development and subdivision ordinance.

- f. "Operator" means an individual, partnership, company, firm, association, or corporation engaged in timber harvesting, including the agents, subcontractors, and employees thereof.
- g. "Landowner" means an individual, partnership, company, firm, association, or corporation that is in actual control of forest land, whether such control is based on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner, and any agents thereof acting on their behalf, such as forestry consultants, who set up and administer timber harvesting.
- h. "Pre-commercial timber stand improvement" means a forest practice, such as thinning or pruning, which results in better growth, structure, species composition, or health for the residual stand but which does not yield a net income to the landowner, usually because any trees cut are of poor quality, too small or otherwise of limited marketability or value.
- i. "Skidding" means dragging trees on the ground from the stump to the landing by any means.
- j. "Slash" means woody debris left in the woods after logging, including logs, chunks, bark, branches, uprooted stumps, and broken or uprooted trees or shrubs.
- k. "Stand" means any area of forest vegetation whose site conditions, past history, and current species composition are sufficiently uniform to be managed as a unit.
- l. "Stream" means any natural or artificial channel of conveyance for surface water with an annual or intermittent flow within a defined bed and banks.
- m. "Timber harvesting," "tree harvesting," or "logging" means that part of forestry involving cutting down trees and removing logs from the forest for the primary purpose of sale or commercial processing into wood products.
- n. "Top" means the upper portion of a felled tree that is unmerchantable because of small size, taper, or defect.
- o. "Wetland" means areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions including swamps, marshes, bogs, and similar areas.

Section 4. Notification; preparation of a logging plan.

- a. **Notification of commencement or completion.** For all timber harvesting operations that are expected to exceed ___ acres, the landowner shall notify the township [borough] enforcement officer at least ___ business days before the

operation commences and within ____ business days before the operation is complete. No timber harvesting shall occur until the notice has been provided. Notification shall be in writing and shall specify the land on which harvesting will occur, the expected size of the harvest area, and, as applicable, the anticipated starting or completion date of the operation.

- b. Logging plan.** Every landowner on whose land timber harvesting is to occur shall prepare a written logging plan in the form specified by this ordinance. No timber harvesting shall occur until the plan has been prepared. The provisions of the plan shall be followed throughout the operation. The plan shall be available at the harvest site at all times during the operation and shall be provided to the township [borough] enforcement officer upon request.
- c. Responsibility for compliance.** The landowner and the operator shall be jointly and severally responsible for complying with the terms of the logging plan.

Section 5. Contents of the logging plan.

- a. Minimum requirements.** As a minimum, the logging plan shall include the following:
 - (1) Design, construction, maintenance, and retirement of the access system, including haul roads, skid roads, skid trails and landings;
 - (2) Design, construction, and maintenance of water control measures and structures such as culverts, broad-based dips, filter strips, and water bars;
 - (3) Design, construction, and maintenance of stream and wetland crossings; and
 - (4) The general location of the proposed operation in relation to municipal and state highways, including any accesses to those highways.
- b. Map.** Each logging plan shall include a sketch map or drawing containing the following information:
 - (1) Site location and boundaries, including both the boundaries of the property on which the timber harvest will take place and the boundaries of the proposed harvest area within that property;
 - (2) Significant topographic features related to potential environmental problems;
 - (3) Location of all earth disturbance activities such as roads, landings, and water control measures and structures;

- (4) Location of all crossings of waters of the Commonwealth; and
 - (5) The general location of the proposed operation to municipal and state highways, including any accesses to those highways.
- c. Compliance with state law.** The logging plan shall address and comply with the requirements of all applicable state laws and regulations including, but not limited to, the following:
- (1) Erosion and sedimentation control regulations contained in 25 Pennsylvania Code, Chapter 102, promulgated pursuant to the Clean Streams Law (35 P.S. §§691.1 et seq.);
 - (2) Stream crossing and wetlands protection regulations contained in 25 Pennsylvania Code, Chapter 105, promulgated pursuant to the Dam Safety and Encroachments Act (32 P.S. §§693.1 et seq.); and
- d. Relationships of state laws, regulations, and permits to the logging plan.** Any permits required by state laws and regulations shall be attached to and become part of the logging plan. An erosion and sedimentation pollution control plan that satisfies the requirements of 25 Pennsylvania Code, Chapter 102, shall also satisfy the requirements for the logging plan and associated map specified in paragraphs (a) and (b) of this section, provided that all information required by these paragraphs is included or attached.

Section 6. Forest practices. The following requirements shall apply to all timber harvesting operations in the Township [Borough].

- a. Felling or skidding on or across any public thoroughfare is prohibited without the express written consent of the Township [Borough] or the Pennsylvania Department of Transportation, whichever is responsible for maintenance of the thoroughfare.
- b. No tops or slash shall be left within twenty-five feet of any public thoroughfare or private roadway providing access to adjoining residential property.
- c. All tops and slash between twenty-five and fifty feet from a public roadway or private roadway providing access to adjoining residential property or within fifty feet of adjoining residential property shall be lopped to a maximum height of four feet above the surface of the ground.
- d. No tops or slash shall be left on or across the boundary of any property adjoining the operation without the consent of the owner thereof.
- e. Littering resulting from a timber harvesting operation shall be removed from the site before it is vacated by the operator.

Section 7. Responsibility for road maintenance and repair; road bonding. Pursuant to Title 75 Pennsylvania Consolidated Statutes, Chapter 49; and Title 67 Pennsylvania Code, Chapter 189, the landowner and the operator shall be responsible for repairing any damage to Township [Borough] roads caused by traffic associated with the timber harvesting operation to the extent the damage is in excess of that caused by normal traffic may be required to furnish a bond to guarantee the repair of such damages.

Section 8. Enforcement.

- a. Township [Borough] Enforcement Officer.** The _____ shall be the enforcement officer for sections 1 through 8.
- b. Inspections.** The township [borough] enforcement officer may go upon the site of any timber harvesting operation before, during, or after active logging to (1) review the logging plan or any other required documents for compliance with sections 1 through 8 and (2) inspect the operation for compliance with the logging plan and other on-site requirements of these regulations.
- c. Violation notices; suspensions.** Upon finding that a timber harvesting operation is in violation of any provision of sections 1 through 8, the township [borough] enforcement officer shall issue the operator and the landowner a written notice of violation describing each violation and specifying a date by which corrective action must be taken. The township [borough] enforcement officer may order the immediate suspension of any operation upon finding that (1) corrective action has not been taken by the date specified in a notice of violation; (2) the operation is proceeding without a logging plan; or (3) the operation is causing immediate harm to the environment. Suspension orders shall be in writing, shall be issued to the operator and the landowner, and shall remain in effect until, as determined by the township [borough] enforcement officer, the operation is brought into compliance with sections 1 through 8 or other applicable statutes or regulations. The landowner or the operator may appeal an order or decision of an enforcement officer within thirty days of issuance to the governing body of the Township [Borough].
- d. Penalties.** Any landowner or operator who (1) violates any provision of sections 1 through 8; (2) refuses to allow the township [borough] enforcement officer access to a harvest site pursuant to paragraph (b) of this section or who fails to comply with a notice of violation or suspension order issued under paragraph (c) of this section is guilty of a summary offense and upon conviction shall be subject to a fine of not less than one hundred dollars nor more than three hundred dollars, plus costs, for each separate offense. Each day of continued violation of any provision of sections 1 through 8 shall constitute a separate offense.