

January 25, 2019

**KINGSPRY**

VIA E-MAIL: [REDACTED]  
and **FIRST CLASS MAIL**  
Robert A. Willig, Esquire  
Commonwealth of Pennsylvania  
Office of Attorney General  
Mezzanine Level  
1251 Waterfront Place  
Pittsburgh, PA 15222

Re: [REDACTED] o-Eldred Township-ACRE Case

Dear Attorney Willig:

This will serve as Eldred Township's (the "Township's") response to your November 29, 2018, correspondence in regards to the above-referenced matter. As an initial matter, thank you for providing me a 30-day extension to respond. The headings below correspond to the headings contained in your letter.

I. EROSION & SEDIMENTATION PLAN

Your comments on Township zoning requirements for an E&S Plan can be summed up with the following excerpt from your letter:

The Township may submit, at its own expense, an applicant's E&S Plan to the Conservation District to review compliance with the regulations; however, it may not impose that duty on the Applicant. Moreover, Eldred Township cannot impose E&S requirements more strict than state law.

To be clear, the Township does not impose E&S requirements in excess of DEP regulations. Does the Township desire for Conservation District to perform courtesy review of Plans? Yes. Conservation Districts are the recognized experts in this area, and delegated by DEP to review E&S Plans generally in the state to ensure compliance with Commonwealth regulations.

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As you note, a township cannot require a property owner to directly submit an E&S Plan to the Conservation District, when it is not required by state regulations, but the township can have a required E&S Plan reviewed by the Conservation District, or another professional. The only issue would be the cost of doing so.

While the Township may not be able to require an applicant to pay a fee directly to a third party for a review, the Township is authorized to charge fees to offset the cost of its zoning administration expenses.

The time it takes for a township official, or third party, to review and evaluate an E&S Plan, obviously, represents a cost to the township, and one that can be funded through the charge of a fee. Thus, the Township expects that it will raise the fee for Timber Harvest's Zoning Application/Permits to pay the cost of permit application review.

The Township cannot simply ignore situations like the [REDACTED] case where the E&S Plan was clearly inadequate under state law, based on even a cursory inspection by a township zoning officer, and is later determined to be so through an advisory Conservation District review. That would be a disservice to both the state and local residents. To be clear, the property owner, or its agents, was required to have an E&S Plan prepared in this case, fully compliant with state law. The purposes of ACRE do not include allowing a property owner to escape otherwise applicable land use regulations. That would be an unreasonable construction of laws. The issue in the [REDACTED] case was not the state laws, but the way the property owner, through its agents, went about its business, and thought it was immune from any type of review, which appears to have undermined its incentive to comply with township and state law.

In fact, the conduct of the individuals involved seems to demonstrate that they deliberately ignored Township requirements, with the idea that they could complete their logging operation before any enforcement activities could be completed. The local magistrate imposed a fine and reasonable attorney fees upon these individuals in the amount of approximately \$16,000.00, which is, by far, the largest fine/attorney fee award I have ever seen by a magistrate. The forester involved, was unapologetic about the matter. The Township's understanding is that the forester has been engaged in prior disputes

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with the County Conservation District concerning its regulatory powers/practices. This is not a fight that the Township asked for. The Township merely began a process of sending the property owner, and its agents, a Zoning Enforcement Notice because, among other things, the property owner and its agents had not obtained a Zoning Permit, which the Township clearly can require under the MPC, which permits reasonable regulation of forestry uses.

## II. PLOT PLAN

Your correspondence seems to indicate that the Township must eliminate certain provisions from the section in its Zoning Ordinance concerning applications for Zoning Permits. The allegedly offending provisions concern requirements for a plot plan. You conclude that the plot plan requirements are duplicative of an E&S Plan.

First, to be clear, the Township does not impose duplicate requirements on applicants. That does not make sense for Township residents or the Township, from an efficiency standpoint. To the extent that an E&S Plan (which is more than just a drawing) can meet the Zoning Ordinance's general requirements regarding a Plot Plan, the permit applicant could merely inform the Zoning Officer that the E&S Plan is also being submitted for Plot Plan purposes.

The Township cannot simply remove from its Ordinance general Zoning Permit application requirements for a Plot Plan. First, most Zoning Permit applications have nothing to do with timber harvesting. There may only have been one or two timber harvesting operations in the Township in the last three years or so. Second, the application/permit process under the Zoning Ordinance is fundamental to the operation of the zoning regulatory scheme. The Ordinance's general provisions on Zoning Permit applications, including a Plot Plan requirement, needs to be applicable to all potential situations. A Plot Plan is a basic, fundamental requirement for Zoning Permit application. Setbacks, which are a traditional feature of zoning regulation, need to be depicted on a drawing. A Plot Plan is required for that purpose, among others. A Plot Plan is even required for simple things such as the installation of a shed on a property. The level of detail, and preciseness, in a Plot Plan, of course depends on the nature of the application being made. In the case of an installation of a shed, it is often simply a hand-drawn plan, confirming the relation of the proposed structure to the property line.

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What the Township would be willing to do would be to clarify, through express language, that, to the extent that an E&S Plan contains necessary elements of a required Plot Plan, no separate Plot Plan would be required for a permit application. In such case, then, it would be up to the property owner to decide whether they want to incorporate any non-E&S Plan requirements into the E&S drawing, for the sake of showing compliance with Township zoning regulations.

As you noted previously, there may be elements in the Township zoning regulations that are not requirements for E&S Plans, and thus, do not need to be reflected on an E&S Plan. Nonetheless, a property owner could certainly incorporate such elements into the E&S Plan in an attempt to avoid submitting a separate Plot Plan.

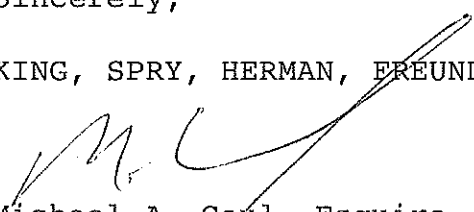
III. TWENTY-FIVE (25) FEET BUFFER ZONE-WATER BODY OR STREAM

The Township does not necessarily agree with your analysis concerning the validity of a 25' setback to a water body or stream for timbering operation. There are good, and valid, zoning reasons for having the setback. Further, the Township finds it difficult to understand how the state believes the need for timbering operations, and earth disturbance, within 25' of a water body, or even in it, outweighs the possible E&S harm in connection with the water body. However, this is not something the Township is going to fight about. The Township intends to delete the setback requirement.

The Township is grateful to the Office of the Attorney General for the way it has handled these discussions, and looks forward to your response. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

KING, SPRY, HERMAN, FREUND & FAUL, LLC



Michael A. Gaul, Esquire  
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MAG/rlh

cc: E. Ann Velopolcek, Township Secretary (for distribution to BOS & Zoning Officer)  
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