



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

November 5, 2019

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

East Earl Township Board of Supervisors
4610 Division Highway
East Earl, PA 17519

*Re: ACRE Review Request – [REDACTED]
East Earl Township-Lancaster County*

Dear Board of Supervisors,

Act 38 of 2005 (ACRE) requires that the Office of Attorney General (“OAG”), upon request, 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 an ACRE request from [REDACTED] of the [REDACTED] [REDACTED] is a company that harvests timber on private property located in Pennsylvania. A copy of the ACRE request is attached for your review (*See Exhibit A*). Please respond to the ACRE request within thirty days of receipt of this letter.

As you can see from [REDACTED] email, [REDACTED] specifically complains “that all Erosion and Sediment Control Plan[s] for [t]imber [h]arvesting [o]perations be approved by the Lancaster County Conservation District as a condition of approval for the timber harvesting permit in the township.” He also writes that “[t]here are several other items listed on the [logging] permit application that are questionable as well.” I reviewed the permit application as well as the East Earl timber harvesting ordinance. I agree that there are some issues in both the permit application and the ordinance that are problematic.

I respectfully submit that the following requirements are contrary to the ACRE law:

1. *Conservation approval of E&S Plan* – third requirement under the “Checklist” box on the Application for Logging Permit;
2. *Property damage and liability insurance* – fifth and sixth requirements under the “Checklist” box on the Application for Logging Permit;

3. *Permit applicant paying for engineering review costs* – found under the logging company contact information box on the Application for Logging Permit;

4. *Items that must be included in the logging plan* – found in Chapter 397, Timber Harvesting, §397-9.C (1)-(9), Logging Plans.

The OAG has an ACRE website resource center. Go to the OAG’s public website located at <https://www.attorneygeneral.gov/>. Click on the “Resources” tab. Under the “General Resources” heading one will see a link to the “ACRE-Agriculture, Communities and Rural Environment” resource center. Click on that link. The website includes all of the “Acceptance Letters” the OAG has sent to municipalities since the inception of the ACRE program in 2005. “Accepted” cases are those in which the OAG determines there are legal problems with the local ordinances. An “Acceptance Letter” is a letter brief notifying the municipality why its ordinance violates state law, as well as the specific steps the municipality must take to come into compliance with state law.

The OAG has addressed in the past the four issues listed above and has determined that ordinance provisions similar to East Earl’s did violate ACRE. When you go to the OAG ACRE website, I recommend that you review the following letters:

1. *Conservation approval of E&S Plan* – municipalities cannot require that the local Conservation District approve the E&S plan prior to granting a timber harvesting permit. *See* East Nantmeal Township, 4/13/16 Letter, pp. 6-7, 11-12; East Brandywine Township, pp. 5-6; Eldred Township, pp. 1-2; and North Coventry Township, pp. 4-5;

2. *Property damage and liability insurance* – such a requirement exceeds township authority. *See* East Nantmeal, 4/13/16 Letter, pp. 7, 8, 12; Municipality of Monroeville, p. 7; Lower Saucon Township, p. 6; North Coventry, pp 11-12;

3. *Permit applicant paying for engineering review costs* – a township cannot charge a permit applicant for expert review done at the township’s request. *See* Lower Milford Township; Pennsbury Township, p. 5; Lower Saucon, p. 3; North Coventry, pp 11-12; East Nantmeal, 4/13/16 letter, pp. 7 & 8; and

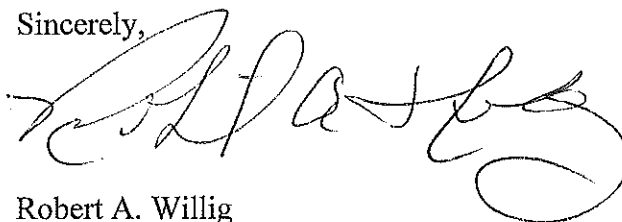
4. *Items that must be included in the logging plan* – the items East Earl requires in the logging plan are duplicative to those items already included in the E&S Plan. *See* East Brandywine, p. 6; Eldred, p. 3; Pennsbury, pp. 2-3.

The letters explain in detail why these four items found in the Earl East application and/or ordinances violate ACRE.

The OAG respectfully submits that a prudent course of action would be for it and East Earl Township to work together to amend the ordinances so that they comply with state law. In the past, the OAG and many municipalities have agreed to enact the Pennsylvania State University Model Timber Harvesting Ordinance with much success. I have attached the Penn State Extension’s *Forest Management and Timber Harvesting in Pennsylvania – Information for Citizens and Local Government Officials* publication for your review (*See* Exhibit B). It provides a wealth of information including the PSU Model Ordinance on pages 12-15.

I thank you for your consideration in this matter. Please do not hesitate to contact me with any information, concerns, or guidance that you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Willig", written in a cursive style.

Robert A. Willig
Senior Deputy Attorney General

[REDACTED]