



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

October 24, 2019

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

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

*Re: ACRE Review Request
Middletown Township-Delaware County*

Dear [REDACTED]

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]. A copy of that request is attached for your review. We are in the process of reviewing Middletown Township's Chapter 186 Soil Erosion and Sedimentation Control and Chapter 198 Stormwater Management Ordinances pursuant to the ACRE law. 3 Pa.C.S. § 311, *et seq.* We write this letter in the meantime to alert the Township to some immediate and obvious problems as gleaned from the email traffic and correspondence attached to Mr. McCanna's ACRE complaint.

There are three (3) issues that are raised in the emails and correspondence: 1) whether timber harvesting is "agriculture" thereby exempting it from Chapter 186 requirements (§186-3.B, *Exemptions*); 2) blanket riparian buffer zones (§198-14.D, *Water Quality Requirements*); and 3) charging the company an escrow and making it pay for the expert review of the company's Erosion & Sedimentation ("E&S") Plan.

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 three issues listed above and has determined that ordinance provisions similar to Middletown’s did violate ACRE. When you go to the OAG ACRE website, I recommend that you review the following letters:

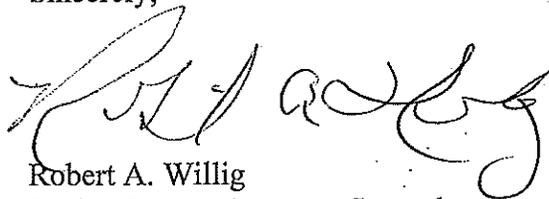
1. *Timber harvesting is unquestionably “agriculture.”* Clay Township, pp. 1-2; North Coventry Township, pp 3-4; East Brandywine Township, p. 2; Municipality of Monroeville, pp. 4-5; and Salem Township, pp. 1-2;
2. *Mandatory riparian buffer zones* – Eldred Township, pp. 3-4; Lower Saucon Township, pp 3-5; North Coventry, pp. 10-11; Monroeville, p. 11; East Nantmeal Township, 11/9/15 letter; and East Nantmeal, 4/13/16 letter, pp. 14-15;
3. *Escrow and expert review charges* – 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.

These letters explain in detail why timber harvesting is considered agriculture, why mandatory riparian buffer zones conflict with state law, and why a municipality may not charge escrow and expert review fees.

The OAG respectfully submits that a prudent course of action would be for it and Middletown Township to work together to amend the ordinances so that they comply with state law. While that process is ongoing, perhaps [REDACTED] and the Township can work together in deciding whether they can resolve their differences and have the timber harvest proceed.

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

Sincerely,



Robert A. Willig
Senior Deputy Attorney General

cc [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]