

[REDACTED]

December 4, 2019

Robert A. Willig, Senior Deputy Attorney General  
Office of Attorney General  
1251 Waterfront Place  
Mezzanine Level  
Pittsburgh, PA 15222

RE: ACRE Review Request – [REDACTED]  
– North Coventry Township, Chester County, PA

Dear Mr. Willig:

On behalf of the Township of North Coventry, I have reviewed your correspondence dated November 13, 2019 as well as the ACRE complaint. It is the Township's position that the complaint submitted by ACRE is not "new and distinct" from [REDACTED] previous submissions. I ask you to review your communications of June 8, 2018 to myself and prior counsel for ACRE. As you stated in your correspondence of June 8, 2018 to counsel, the complaint submitted by ACRE sets forth five (5) issues with the North Coventry Township Timber Ordinance. They were as follows:

1. E & S Plan – the North Coventry ordinance requires an E & S plan, duplicating an existing requirement under state Department of Environmental Protection regulations;
2. North Coventry's Woodlands and Timber Harvesting ordinances violate or exceed state law by:
  - a. requiring that a professionally developed timber harvesting plan be filed with the Township;
  - b. mandating the plan include all-natural features and topography of the property, along with the species of each tree to be harvested as well as those to be left standing;
  - c. having the timer harvester designate a time period to re-establish the forest canopy for approval by the Township.

3. North Coventry's prohibition on: (a) the removal of specimen vegetation unless the harvester demonstrates that such removal is necessary to eliminate a hazardous condition or demonstrate a financial hardship and (b) timber harvesting within riparian buffers and on slopes in excess of 25% exceeds state law;

4. North Coventry's requirements of liability insurance, onerous permit fees, and the payment of all Township permit and timber harvesting plan review expenses amounts to an unauthorized limitation on a Normal Agricultural operation; and

5. The Motor Vehicle Weight Limitation Ordinance as it is being applied to Mr. Westlake is contrary to state law.

As a result of your correspondence to the Township and prior counsel, the Township submitted a revised ordinance which would repeal the prior timber ordinance and substantially comply with your concerns in June 2018. It is our understanding it was adopted to the satisfaction of the Attorney General. It is the Township's position the issues set forth in the "new complaint" are substantially similar to the issues raised by [REDACTED] in his initial complaint last year. If, however, you believe the complaint submitted by [REDACTED] is a new and distinct complaint from his previous submissions, I, on behalf of North Coventry Township will respond to the four (4) issues asserted by [REDACTED] and they are as follows:

A. North Coventry Township's Zoning Ordinance Targets the Normal Agricultural Operation of Timber Harvesting.

B. North Coventry Township's Regulation of Timber Harvesting Violates the Requirement for Uniformity Under the Municipalities Planning Code.

C. Examples of North Coventry Township's Disparate Treatment and Unreasonable Restriction on Forestry Activities.

D. North Coventry Township Continues Its Non-Uniform Treatment of Weight-Restricted Road Signage Directly Impacting Normal Agricultural Operations.

[REDACTED] asserts North Coventry Township's Zoning Ordinance treats forestry/timber harvesting differently than other agricultural uses. He specifically asserts that the Township does not require a permit for other agricultural uses, a site plan, E & S Control Plan approved by the Chester County Conservation District, liability insurance or a non-refundable permit fee. He asserts the North Coventry permit and regulatory scheme is in violation of the law as set forth in the case of *Commonwealth v. East Brunswick Twp.*, 980 A.2d 720, 730 (Pa.Cmwlt. 2009).

In your communications to counsel on June 8, 2018 you did address this very issue. You stated: "Pennsylvania does not have license or registration requirement for foresters." You believed the prior ordinance was overly broad and unduly burdensome. In fact, you proposed language which you determined to be satisfactory. The Township did adopt said language in its revised ordinance presented in June 2018. The definition is based on the Pennsylvania Civil Services Commissions criteria which constitutes a professional forester.

With respect to the actual permit requirement, you asserted the requirement for an individual to petition the Board of Supervisors for approval prior to filing any permit or application is tantamount to requiring a conditional uses approval and is unlawful. As a result, the Township removed said language. It is our further understanding, based on your opinion of June 8, 2018 that a Township may enact a permit requirement as long as it is not unnecessarily restrictive and ambiguous. We believe the current ordinance is not unduly restrictive or ambiguous.

With respect to the Township requiring an Erosion and Sediment Control Plan approved by the Chester County Conservation District and reviewed and approved by the Township Engineer and Township Forester at the expense of the operator, as well as the requirement of liability insurance, this requirement does not contradict the holding in *Commonwealth v. East Brunswick Twp.* As you know, the Commonwealth Court specifically stated that a township could seek to enjoin a violation of the applicable state act but that it could not police the use of the biosolids by the landowner itself. By requiring the applicant to obtain approval by the County Conservation District and review by the Township Engineer and Forester, the Township is merely requiring the landowner to confirm it is not violating the applicable state law. We do not believe the requirement is unduly burdensome or broad. It does not give the Township additional police powers not provided by state law. As an aside, North Coventry Township did state that based on your prior review it was willing to reduce the past practices and review costs to \$500 for review of the permit application and did delete the liability insurance as part of its proposed ordinance submitted to you.

██████████ asserts North Coventry Township's regulation of timber harvesting violates the requirement for uniformity under the Municipality Planning Code.

The substance of this argument seems to be similar to the previous argument under the guise of "uniformity". In your opinion of June 8, 2018, you set forth language which you believed as discriminatory, arbitrary, vague or unreasonable including but not limited to the prohibition of specimen vegetation restriction on timber harvesting, definition of slopes in excess of 25% and riparian buffers, natural features/topography language and establishment of a forest canopy. The Township apprised you it was willing to amend or delete the language as you proposed. The current proposed ordinance does not contradict DEP regulations, nor does it require the harvester to submit to more stringent regulations other than what is established by state law. In

fact, the Township specifically stated it would agree to amend its ordinance so that it would not conflict with state law or standards. See Township letter of June 28, 2018.

[REDACTED] then provides you with examples of North Coventry Township's alleged disparate treatment and unreasonable restrictions on forest activities. Again, it is merely a recitation of the arguments previously submitted in its original complaint. Each one of the alleged issues raised in his "new" complaint was addressed by you in your letter of June 8, 2018 including but not limited to slopes, specimen vegetation, forest canopy and riparian buffer. Again, the Township as set forth in its correspondence to you of June 28, 2018 was willing to revise its ordinance in accordance with your recommendations. [REDACTED] uses the heading of examples to which the Township use disparate treatment but the substantive portion of his correspondence does not give any example where the Township attempted to enforce the timber ordinance contrary to what had been submitted to you as a proposed ordinance in June 2018 by the Township which, the Township asserts satisfies your concerns.

Finally, [REDACTED] asserts that North Coventry Township continues its non-uniform treatment of weight-restricted road signage directly impacting normal agricultural operations. Again, this issue was brought to your attention in the initial complaint. The Township's position was the motor vehicle weight limitation is not part of the timber harvesting ordinance. It is a separate ordinance enacted in accordance with the Second-Class Township Code and PennDOT regulations. The signage that the Township established is in conformance with the PennDOT regulations. Furthermore, the Township did not require [REDACTED] contractor to establish any security or make a claim that the operation was subject to the weight limitation ordinance. You specifically addressed the aforesaid in your correspondence to counsel on June 8, 2018. You specifically stated "in order to be in compliance with state law and its own ordinance, North Coventry has to put the "local deliveries exempt" language on the signs. At not time has [REDACTED] or his contractors been prohibited from driving their vehicles on weight restricted roads. The Township ordinances do reflect the "local deliveries exemption". Nevertheless, the Board of Supervisors have determined that if you believe signage must specifically state "local deliveries exempt" on all its restricted weight roadways, it will comply.

Very truly yours,

[REDACTED]  
[REDACTED]  
[REDACTED]