



COMMONWEALTH OF PENNSYLVANIA
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June 9, 2020

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Re: ACRE Request for Review – Providence Township, Lancaster County

Dear Board of Supervisors and [REDACTED]

[REDACTED] filed an Agricultural Communities and Rural Environment (“ACRE”)¹ request for review challenging Providence Township’s timber harvesting ordinance. A copy of that request for review is attached. An independent review of the Township’s ordinances reveals several problems.

The Office of the Attorney General (“OAG”) maintains a public ACRE website and Resource Center at <https://www.attorneygeneral.gov/resources/acre/>. This contains a list of the ACRE complaints filed with the Office in addition to our “Acceptance Letters.” After investigation, if the OAG determines that certain ordinances violate ACRE we draft Acceptance Letters which explain why the ordinances violate ACRE and what the municipality must do to remedy the situation. You will see that there are several timber harvesting cases listed with links to specific Acceptance Letters.

In her March 12, 2020 email, Providence Township Zoning Officer [REDACTED] informed [REDACTED] that his company’s “Erosion and Sedimentation [“E&S”] Control Plan is reviewed by the Lancaster County Conservation District for compliance.” The OAG has addressed this very same requirement in previous timber harvesting cases. While the Township may opt to have the local conservation district review the E&S Plan at its own expense, Providence cannot require conservation district review and approval of the Plan as a prerequisite to obtaining a timber harvesting permit. While Ordinance Section 432, Forestry Uses does not explicitly require prior

¹ 3 Pa.C.S. §311 *et. seq.*

review/approval of the E&S plan, to the extent Providence requires such preapproval through its zoning process, it cannot do so. The following list of cases on the OAG ACRE website describe why prior review/approval of an E&S Plan in order to secure a permit is unenforceable. *See* East Nantmeal Township, pp. 6-7, 11; East Brandywine Township, pp. 5-6; North Coventry Township, pp. 4-5; Eldred Township, pp. 1-2; & Clay Township, pp. 4-5. The analysis here is the same.

Ordinance Section 432.13 establishes mandatory “No Timber Harvesting Buffer Zones” around streams, other watercourses, and water sources. Once again, the OAG has addressed the issue of automatic, blanket buffer zones in riparian areas. Townships are prohibited from imposing such blanket buffer zones and Section 432.13 must be deleted. *See* East Nantmeal Township, pp. 14-16, 18; Borough of Monroeville, p. 11; North Coventry Township, pp. 10-11; Lower Saucon Township, pp. 3-4; and Eldred Township, pp. 3-4.

The ACRE statute provides that the OAG may consult with experts in the field “regarding the nature of normal agricultural operations in this Commonwealth.” 3 Pa.C.S. § 314(d), **Consultation**. The OAG has done so in the instant manner. Ordinance Section 432.11 provides that “[w]here possible, stream crossings shall be avoided, but where deemed necessary, crossings shall be made at a right angle across suitable culverts or bridges.” Our expert opines that stream crossing avoidance is a commonly recommended practice for timber harvesting operations; as well, right angle stream crossings, while generally not problematic, cannot be required in all situations. Best Management Practices (“BMPs”) generally recognize that when a stream crossing has to be installed the “ideal” crossing would be 90 degrees to the stream, at a point where the channel is narrow and straight, and the stream banks are even and well defined. *See* Pennsylvania Department of Environmental Protection (“DEP”), Bureau of Watershed Management, *Timber Harvesting Operations Field Guide for Waterways, Wetland and Erosion Control*, pp. 5, 27 (hereinafter “DEP Field Guide”). Under normal circumstances, a perpendicular crossing is not problematic as it typically is the easiest to construct under standard conditions. Nevertheless, each timber harvesting operation presents its own set of unique conditions and the textbook “ideal” stream crossing may not be possible. The potential always exists for outlier situations that occur where the topography or other conditions would either not allow for a right-angle crossing, or where a 90-degree crossing could increase the risk of sediment pollution (*e.g.* if the topography at the crossing location angled steeply towards the stream).

By way of example, the DEP’s general permit for temporary road crossings recognizes this issue by stating that “[r]oads must cross all watercourses at a right angle to the stream, unless it is physically impossible to cross at a right angel to the stream.” *See* DEP, Bureau of Waterways Engineering and Wetlands, General Permit, BWEW-GP-8, Temporary Road Crossings, §13.d, and “[a]ccess roads should not approach the stream channel directly downslope, but should traverse the slope obliquely to prevent high velocity road drainage flows from directly entering the stream channel.” *Id.*, §13.y (hereinafter “General Permit 8”). The OAG recommends a small change to Ordinance Section 432.11. That Section should be changed to read “[w]here possible, stream crossings shall be avoided, but where deemed necessary, unless it is physically impossible, crossings shall be made at a right angle across suitable culverts or bridges.”

Ordinance Section 432.12 prohibits skidding across “live or intermittent streams....” The OAG recognizes that prohibitions against skidding across streams is completely consistent with DEPs regulatory and permit programs, where this prohibition is well established. In General Permit 8 the DEP states that “[s]kidding across fords is prohibited.” *Id.*, §13.f. A “ford” is a “road crossing of a stream utilizing the existing stream bed.” *Id.*, §3. Timber harvesting BMPs also recognize that skidding across streams is prohibited. DEP Field Guide, p. 13. The DEP’s *Erosion and*

Sediment Pollution Control Program Manual, DEP Doc #363-2134-008, p. 297, states in bold, capital letters “*NEVER SKID THROUGH OR ACROSS STREAM CHANNELS, WETLANDS, OR SPRING SEEPS.*” DEP’s definition of a “Stream Channel” includes both perennial and intermittent flow.”

The sole issue with Section 432.12 is the use of the word “live” as in “live stream.” The OAG’s consulting expert explains that there is no such term as “live” in the existing BMPs or in DEP publications or regulations. According to the expert streams are either “perennial,” that is flowing throughout the year, or “intermittent” as in flowing just part of the year. So that there is no confusion, the OAG recommends that the word “live” be replaced with “perennial.”

I would greatly appreciate if Providence Township responded to this letter within thirty days of receipt and inform me how it wishes to proceed. Thank you for your consideration in this matter.

Sincerely,



Robert A. Willig
Senior Deputy Attorney General