



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

September 17, 2020

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

East Rockhill Township
ATTN: Board of Supervisors
1622 North Ridge Road
Perkasie, PA 19944

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

Re: ACRE Request for Review – East Rockhill Township, Bucks County

Dear Board of Supervisors and [REDACTED]

Act 38 of 2005 (“ACRE”), 3 Pa.C.S. §311, *et.seq.*, requires that the Office of Attorney General (“OAG”), upon request of an agricultural owner or operator, 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.

[REDACTED] filed an ACRE request for review challenging the legality of certain provisions of East Rockhill Township’s timber harvesting ordinances. A copy of the ACRE request is attached for your review. [REDACTED] complains generally about the “permit process [being] very lengthy and expensive.” Specifically, he mentions the requirement that the local County Conservation District (“CCD”) review and approve the Erosion and Sedimentation (“E&S”) Plan prior to the issuance of a timber harvesting permit as well as East Rockhill charging an escrow to cover various expenses. [REDACTED] also takes issue with what he believes are excessive permit fees.

The OAG has an ACRE website. Go to the OAG’s public website at <https://www.attorneygeneral.gov/>. Click on the “Resources” tab. You will see a link to the “Agricultural Communities and Rural Environment” website. Click on the ACRE link which will take you to the OAG’s ACRE Resource Center. Or you can go directly to the Resource Center by following this link. <https://www.attorneygeneral.gov/resources/acre/>. Therein you will see a list of the ACRE cases that have come into this Office along with what we call “Acceptance Letters.” If the OAG believes that certain ordinances violate ACRE we draft these Acceptance Letters explaining 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 the Acceptance Letters.

The OAG has already addressed two of the issues that [REDACTED] raises in this particular ACRE matter. I offer the following list of prior ACRE cases where the OAG has dealt with the same or similar issues:

1. *CCD Review and Approval of the E&S Plan.* While a Township may, at its own expense, have the local CCD review the E&S Plan, it cannot make CCD review and approval of the Plan a prerequisite for obtaining a timber harvesting permit. See East Nantmeal Township, 4/13/16 letter, pp. 6-7; East Brandywine Township, pp. 5-6; North Coventry Township, pp. 4-5; Eldred Township, pp. 1-2; and Clay Township, pp. 4-5. East Rockhill should return to [REDACTED] the \$200 charged for CCD review of the E&S plan.
2. *Requiring an Escrow.* A Township cannot charge a general escrow fee to cover expert/technical review nor to deplete the fee as sees fit. See Borough of Monroeville, p. 7; North Coventry, p. 11; East Nantmeal, 4/13/16 letter, p. 7; Pennsbury Township, pp. 5-6; Lower Saucon Township, p. 3; and Lower Milford Township. East Rockhill should return to [REDACTED] the \$1000 escrow as well as the \$100 escrow fee.

The OAG has generally addressed the matter of permit fees in those cases listed above concerning escrows. The OAG has not examined in detail the appropriateness of permit fees nor does it do so in this instant matter. The OAG simply offers the following for informational purposes only.

Section 617.3(e) of the Municipalities Planning Code ("MPC") provides that a municipality "may prescribe reasonable fees with respect to the administration of a zoning ordinance." 53 P.S. § 10617.3(e). "[T]his fee must be commensurate with the expense incurred by the [municipality] in connection with the issuance and supervision of the license or privilege." *Mastrangelo v. Buckley*, 433 Pa. 352, 385-86, 250 A.2d 447, 464 (1969) (footnote omitted) (emphasis added). However, a permit fee:

...is distinguishable from a tax which is a revenue producing measure characterized by the production of a high proportion of income relative to the costs of collection and supervision. Thus, if a license fee collects more than an amount commensurate with the expense of administering the license, it would become a tax revenue and cease to be a valid license fee.

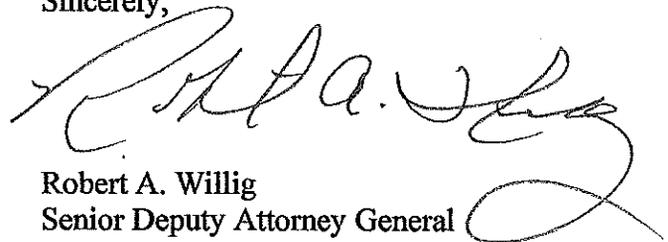
Talley v. Commonwealth, 123 Pa.Cmwlth. 313, 553 A.2d 518, 519 (Pa.Cmwlth. 1989)(citations omitted). [REDACTED] lists in his ACRE complaint several fees that he had to pay. The fees charged for the CCD E&S Plan review and \$100 filing fee for the escrow are covered above. That leaves the \$500 fee for the timber harvesting permit and the \$100 driveway permit fee. East Rockhill knows the true intent behind these fees. If they are meant to cover the Township's costs in administering the permitting process, the fees are proper. If, on the other hand, the fees are meant to be a revenue generating mechanism, they are improper.

In September, 2019, the Pennsylvania State University ("PSU") School of Agriculture

published "*Forest Management and Timber Harvesting in Pennsylvania.*" [https://extension.psu.edu/forest-management-and-timber-harvesting-in-pennsylvania.](https://extension.psu.edu/forest-management-and-timber-harvesting-in-pennsylvania) That document contains, amongst other valuable general information for municipalities, a recommended model timber ordinance that Townships can enact which will be in compliance with the ACRE law. The OAG recommends that East Rockhill enact this model ordinance to guarantee that it is in compliance with ACRE. The OAG further recommends that the Township return to [REDACTED] the \$1000 escrow, the \$100 escrow filling fee, and the \$200 charged for CCD review of the E&S Plan. It is up to East Rockhill to determine in good faith whether the other fees are actually "fees" or "taxes" as explained above.

If you can please respond to this letter within thirty days of receipt informing me how East Rockhill plans to proceed I would greatly appreciate it. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "R. A. Willig", written over a white background.

Robert A. Willig
Senior Deputy Attorney General