



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

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ATTORNEY GENERAL

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

Hellam Township Board of Supervisors
44 Walnut Springs Road
York, PA 17406
[REDACTED]
[REDACTED]
[REDACTED]

Re: ACRE Request for Review – Hellam Township, York County, [REDACTED]

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 Hellam Township’s timber harvesting ordinances. A copy of the ACRE request is attached for your review. [REDACTED] contends that the Township’s ordinances violate ACRE in five areas: 1) improper road posting and bonding; 2) requiring a bond and/or security to guarantee that reseeded and reforestation is done; 3) improper tops and slash mandates; 4) illegal riparian “no cut” zones; and 5) imprisonment for violations of the timber harvesting ordinances.

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 reviewed Hellam Township's timber harvesting ordinances and found several provisions that may violate ACRE. The OAG has addressed these same issues in previous timber harvesting cases. I offer the following list identifying the potentially troublesome Hellam Township ordinances along with references to prior ACRE cases where the OAG has dealt with the same or similar issues:

1. Section 444-8.H – Road Bonding. The OAG has dealt informally with road posting/bonding issues meaning the OAG has resolved matters with various townships prior to the filing of an ACRE request for review. Townships can require road bonding to cover damage to roads but there are constraints and a specific process that municipalities must follow in order to impose such bonding. I recommend Hellam review PennDOT LTAP, Technical Information Sheet #158, *Posting and Bonding Procedures for Municipal Roadways*. https://gis.penndot.gov/BPR_pdf_files/Documents/LTAP/TechSheets/TS_158.pdf. Therein you will find a summary of what must be done in order to post and bond as well as citations to applicable law. What ██████████ claims Hellam required appears to run contrary to state law.
2. Section 444-8.D(3) – Bond/Security for Restoration and Reseeding –A bond/security, other than legally sufficient road bonds, is no different than townships requiring an escrow which they cannot do – Borough of Monroeville, p. 7; North Coventry Township, p. 11; East Nantmeal Township, 4/13/16 letter, p. 7; Pennsbury Township, pp. 5-6; and Lower Milford Township. There is a difference between “reforestation/reseeding” and “regeneration.” Regeneration is the best method. East Brandywine Township, p. 7; Lower Saucon Township, pp. 8 & 11;
3. Section 444-8.G(2) – Tops and Slash – there can be no blanket, automatic prohibition on the presence of tops and slash. East Nantmeal, 4/13/16 letter, p. 19; East Brandywine, pp. 3-4;
4. Section 444-8.G(2) & (3) – Riparian Buffer Zones – there can be no blanket, automatic riparian buffer zones. Eldred Township, pp. 3-4; Lower Saucon, pp. 3-5; North Coventry, pp. 10-11; Monroeville, p. 11; East Nantmeal, 11/9/15 letter; and East Nantmeal, 4/13/16 letter, pp. 14-15; and
5. Section 444-10 – Imprisonment - Hellam cannot imprison those who violate the ordinances; Monroeville, p. 9

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>. 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. In light of the list of potentially troublesome ordinance provisions noted above, it is my recommendation that Hellam Township repeal its current timber harvesting ordinances and

pass the PSU model. If Hellam does that the OAG will consider this matter closed and will take no further action. Please let me know how you wish to proceed. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Willig', with a large, sweeping flourish extending from the end of the signature.

Robert A. Willig
Senior Deputy Attorney General