



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

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May 6, 2021

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Pine Township  
ATTN: Board of Supervisors  
230 Pearce Mill Road  
Wexford, PA 15090

[REDACTED]  
[REDACTED]  
[REDACTED]

*Re: ACRE Request for Review – Pine Township, Allegheny County*

Dear Board of Supervisors and [REDACTED]

Act 38 of 2005, the Agricultural Communities and Rural Environment (“ACRE”) law, 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 Pine Township’s timber harvesting ordinance. A copy of the ACRE request is attached for your review. [REDACTED] [REDACTED] consulting forester, provided the OAG with more information about the proposed timber harvest. His email is attached to this letter as well.

Silviculture<sup>1</sup> is a “normal agricultural operation” (“NAO”) and “[f]orestry and forestry products” are agricultural commodities as defined by the Right to Farm Act (“RTFA”). 3 P.S. § 952. The Municipalities Planning Code (“MPC”), 53 P.S. §§ 10101-11202, explicitly addresses the considerable limitations on municipal authority to regulate timber harvesting as it provides:

[z]oning ordinances may not unreasonably restrict forestry activities. To encourage maintenance and management of forested or wooded open space and promote the conduct of forestry as a sound and economically viable use of forested land

<sup>1</sup> “Silviculture is defined as the art and science of controlling the establishment, growth, composition, health, and quality of forests and woodlands to meet the diverse needs and values of landowners and society on a sustainable basis.” USDA Forest Service, White Paper, F14-SO-WP-SILV-34, p.2.

throughout this Commonwealth, forestry activities, including but not limited to, timber harvesting, shall be a permitted use of right in all zoning districts in every municipality.

53 P.S. § 10603(f)(emphasis added). This provision clearly indicates the intent of the General Assembly to encourage and promote timber harvesting throughout the Commonwealth as a use of right. Moreover, the intent of the General Assembly to generally encourage and promote all types of agriculture is made perfectly clear in the RTFA, 3 P.S. § 951, and other provisions of the MPC. 53 P.S. §§ 10105 & 10603(h). Indeed, the General Assembly's Historical and Statutory Notes to ACRE declare that the Commonwealth has a "vested and sincere interest in ensuring the long-term sustainability of agriculture and normal agricultural operations" and "[i]n furtherance of this goal...has enacted statutes to protect and preserve agricultural operations for the production of food and other agricultural products."

The OAG has combined the issues that [REDACTED] and [REDACTED] raise in their respective letters/emails. It appears that they are challenging the following provisions of the timber harvesting ordinances: 1) the fifty (50) foot no cut buffers along roadways and property lines; 2) providing a stamped legal survey of the property or a drawing from a surveyor as well as a map that has been sealed by engineer(s) and/or surveyor(s) of record; 3) trees must be GPS located within one meter of the location; 4) slope restrictions; and 5) excessive insurance and bond requirements.

The OAG has an ACRE Resource Center. You can go there at 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 many timber harvesting cases listed with links to the Acceptance Letters. The OAG has addressed in the past the five issues noted above and found them to be in violation of ACRE. I direct the Township's attention to the following Acceptance Letters with pinpoint cites:

1. **No Cut Buffer Zones, §84-51D(7):** See *East Nantmeal Township*, November 2015 Letter; *East Nantmeal Township*, April 2016 Letter, p. 18; *Monroeville Borough*, p. 11; and *Lower Saucon Township*, pp. 3-4;
2. **Map/Survey, §84-51C(2):** Pine Township's map/survey requirements are analogous to similar topographical/natural feature map requirements that the OAG has previously concluded violate ACRE. See *East Nantmeal*, April 2016 Letter, p. 10; *North Coventry Township*, p. 7; and *Lower Saucon*, p. 5-6;

**GPS Located, §84-51C(2)(f):** Likewise, Pine's "one meter of accuracy"<sup>2</sup> requirements are similar to ordinances mandating unreasonable, overly restrictive, and overly specific identification of trees on the harvest site. See *East Nantmeal*, April 2016 Letter, p. 5 (selective cutting, high grading, diameter limit cutting, specimen vegetation), p. 9 (tree totals and the enumeration versus plot based methods), p. 18 (tree marking requirements); *East Brandywine*

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<sup>2</sup> The OAG presumes that is what [REDACTED] and [REDACTED] mean when they speak of GPS location. The OAG presumes that the only way to arrive at that level of accuracy is with a GPS.

*Township*, pp. 7-8 (specimen vegetation, diameter at breast height-“DBH”); *North Coventry*, pp. 8-9 (specimen vegetation); *Pennsbury Township*, pp.3-4 (specimen vegetation, DBH); and *Clay Township*, pp. 3-4 (enumeration method and DBH), pp. 6-8 (amount and type of trees to be harvested);

3. **Slope Restrictions, §§84-51(C)(2)(m) & (D)(8):** *East Nantmeal*, April 2016 Letter, pp. 13-14; *Monroeville*, pp. 9-10; *East Brandywine*, p. 5; *North Coventry*, pp. 9-10; and *Lower Saucon*, p. 8;
4. **Insurance/Bond/Escrow, §84-51(B)(4):** *East Nantmeal*, April 2016 Letter, pp. 7, 8, 12; *Monroeville*, p. 7; *North Coventry*, p. 11; *Lower Saucon*, p. 6; and *Pennsbury*, pp. 5-6.

██████████ writes in his ACRE complaint that in addition to the issues he specifically identifies he contends that “many [other] ordinance stipulations” are questionable. The OAG has reviewed the remainder of Pine’s timber ordinances and tends to agree. For example, §84-51(C)(1)(d) requires a “reforestation narrative outlining” how revegetation of the harvest site will be accomplished. The OAG has addressed the “reforestation” versus “regeneration” matter several times concluding that reforestation mandates are unreasonable and unwise from a silvicultural standpoint. See *East Nantmeal*, April 2016 Letter, p. 10; *East Brandywine*, p. 7; *Lower Saucon*, p. 8. Pine Township states that “at least 30% of the forest cover (canopy) shall be preserved....” §84-51(D)(1). Not only is such a canopy requirement in violation of ACRE, it too, can be unwise from a silvicultural standpoint. See *East Nantmeal*, April 2016 Letter, pp. 16-17; *Clay*, pp. 6-8; *Middle Smithfield Township*, pp 2-3. The Township includes several mentions of tops and slash in the ordinances. §§85-41(D)(13), (14), and (17). Tops and slash are good for the environment— not bad. See *East Nantmeal*, April 2016 Letter, p. 19; *East Brandywine*, pp. 3-4; *Lower Saucon*, pp. 11-12. This is but a short list of the potential additional problems in the Pine Township Ordinance. This list is not all inclusive.

According to ██████████ ██████████ is a responsible steward of the property. Anundson writes:

██████████ wants to perform a carefully managed single tree selective harvest...selected trees will be felled and their merchantable portions will be removed from the site. Remaining treetops will be in place as deer browse deterrents, and some will be made into brush piles for rabbit and other small wildlife habitat structures. I anticipate a range of value from 30 to as much as 40 thousand dollars in today’s very robust timber markets. But more important than the value of his timber, ██████████ wants to improve the health of his forest and also provide habitat for small game.

██████████ explains in his ACRE complaint that “[t]here are several trees that are blowing over and/or dying from natural causes. This includes rot, oak wilt, ash bore, and bug infestation.” ██████████ explains “that a carefully managed harvest would significantly improve the health of [the] forest and also help ██████████ realize an income from the timber for years to come.” ██████████ raises beagles and trains them on rabbits. “Brushy thick woods” are good rabbit habitat. The proposed

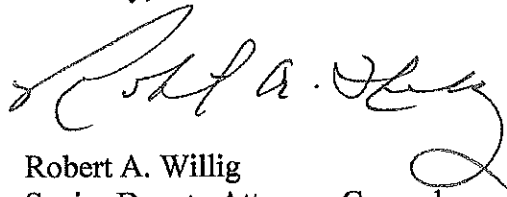
harvest would allow him to use “the tops of the trees to make brush piles” as well as open up a plot of land for deer hunting.

The economic value of the select number of trees to be harvested, including those dying or already dead, is considerable. Putting \$30,000 to \$40,000 into a landowner’s and taxpayer’s pocket is certainly consistent with the MPC’s goal of having “economically viable use of forested land.” 53 P.S. § 10603(f). As ██████████ so correctly notes, however, more important than the money is the fact that the proposed harvest would be good for the environment. The harvest would “improve the health of ██████████ forest,” deter deer browsing, and create wildlife habitat. These positive ecological results further the MPC’s goal of “encourage[ing] maintenance and management of forested or wooded open space...” *Id.*

In light of all of the above, the OAG respectfully submits two proposals. First, perhaps Pine Township and ██████████ could work together to agree on a mutually acceptable way to proceed with the proposed timber harvest. That would be a private matter between the Township and ██████████. Second, the OAG would engage with the Township in drafting and enacting a legally sufficient timber harvesting ordinance that replaces the current problematic one. I attach for Pine Township’s review the Penn State Extension’s 2019 publication “*Forest Management and Timber Harvesting in Pennsylvania, Information for Citizens and Local Government Officials.*” This document includes a wealth of information on timber harvesting including a proposed Model Timber Harvesting Ordinance, pp. 12-15. The OAG has worked with several municipalities in the past using the model ordinance as a template to draft and enact legally sufficient timber ordinances. I suggest that Pine Township and the OAG work together to do the same and bring this ACRE matter to a successful resolution.

If you could please respond to the ACRE complaint and this letter within thirty (30) days of receipt of this letter I would greatly appreciate it. Thank you.

Sincerely,



Robert A. Willig  
Senior Deputy Attorney General