



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

December 21, 2021

Office of the Attorney General
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222

[REDACTED]

[REDACTED]

Re: ACRE Request for Review – Municipality of Murrysville, Westmoreland County

Dear [REDACTED] and [REDACTED]

The purpose of this letter is two-fold. First - Under the ACRE statute, within 120 days of the filing of the ACRE complaint the OAG will give the complainant an update on the status of the case. The OAG is still in the process of reviewing the complaint, the parties' submissions, the ordinances, and the applicable state law.

Second – I want to thank Murrysville for its responses to the ACRE complaint as well as to the OAG's September 27, 2021 letter. The OAG agrees with Murrysville's basic point that simply because the MPC states that timber harvesting is a use as of right in all zoning districts a person seeking to harvest timber can do anything he wants without any government oversight. Murrysville correctly notes that the MPC permits a local municipality to place "reasonable restrictions" on timber harvesting or any other agricultural activity for that matter. The question in ACRE timber harvesting cases is whether the township's restrictions are "reasonable."

The OAG's position is that the Pennsylvania State University School of Agriculture's Model Timber Harvesting Ordinance by its very existence shows that municipalities can regulate timber harvesting to some degree and that the restrictions found in the Model Ordinance are "reasonable" under the law. The PSU Model Ordinance and a wealth of information concerning timber harvesting can be found in the school's 2019 publication *Forest Management and Timber Harvesting in Pennsylvania: Information for Citizens and Local Government Officials*. This document can be found at [EE0249 Timber Harvesting_Final.pdf \(pa.gov\)](#)

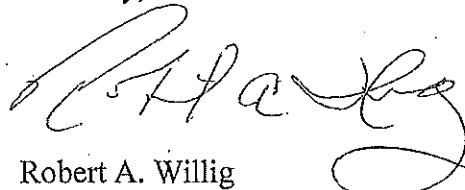
The ordinance at issue is §220-31.N.1-4. Subsection (1) seeks to protect water resources. A laudable and important goal no doubt. But the Commonwealth's Erosion and Sedimentation Plan regulations already account for water quality issues. See 25 Pa.Code § 102.

Subsections (2) and (3) require the timber harvesting permit applicant to provide proof that he will not harm rare, threatened, or endangered plants or animals needing protection. Again an obviously worthy goal. Nevertheless, the OAG fails to see how that requirement can actually be satisfied. How can the applicant know what plants and animals are rare, threatened, or endangered? How can the applicant possibly know if these plants and/or animals are even present at the harvest site? What does "adversely impact" even mean? See *Commonwealth v. Richmond Township*, 2 A.2d 678, 681 (Pa.Cmwlt. 2010) citing to *Exton Quarries, Inc. v. Zoning Board of Adjustment*, 228 A.2d 169, 178 (Pa. 1967) ("A local government unit has no authority to adopt an ordinance that is arbitrary, vague or unreasonable or inviting of discriminatory enforcement.").

Finally, subsection (4) requires the applicant to provide a forestry plan to the Westmoreland County Conservation District that it must approve. It has been the OAG's consistent view that a township can require a forestry plan and it can even have the local CCD review the plan at the municipality's own expense. But it cannot make CCD approval of a forestry or E&S Plan a prerequisite for obtaining a logging permit. See e.g. the following Acceptance Letters at the OAG's ACRE website <https://www.attorneygeneral.gov/resources/acre/>: *East Nantmeal Township, April 2016 Letter*, pp. 6-7, 11; *Salem Township*, p. 4; *East Brandywine Township*, pp. 5-6; *North Coventry Township, 2017*, pp. 4-5; *Eldred Township*, pp. 1-2; *Clay Township*, pp. 4-5.

The OAG proposes what it respectfully submits is a simple solution. The PSU Model Ordinance recognizes and balances the interests of both the local municipality and the timber harvesting community. If Murrysville adopts the PSU Model as its timber harvesting ordinance the OAG will close this case. Please give me your thoughts and of course do not hesitate to contact me with any questions, concerns, or information that you may have.

Sincerely,



Robert A. Willig
Senior Deputy Attorney General



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

September 27, 2021

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

Municipality of Murrysville
ATTN: Board of Supervisors
4100 Sardis Road
Murrysville, PA 15668

[REDACTED]
[REDACTED]
[REDACTED]

Re: ACRE Request for Review – Municipality of Murrysville, Westmoreland 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] a consulting forester, filed an ACRE request for review challenging several provisions of the Borough’s timber harvesting ordinance. A copy of the ACRE request is included for your review.

As a general matter, silviculture¹ 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

¹ “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). 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."

██████████ refers to the *Pennsylvania Sustainable Forestry Initiative's FACT SHEET- Pennsylvania's ACRE Law and a Summary of Attorney General Positions on Timber Harvesting*. [http://paforestproducts.org/files/200622_SIC_ACRE_FACT_SHEET%20\(1\).pdf](http://paforestproducts.org/files/200622_SIC_ACRE_FACT_SHEET%20(1).pdf). The PaSFI is not affiliated with the OAG. The PaSFI simply lifted language from the OAG's Acceptance Letters found at the OAG's ACRE website (more on that below). As the PaSFI notes at the beginning of its Fact Sheet, its document "is provided...for informational purposes only, and should not be construed as legal advice. Information was summarized directly from the [OAG] website and individual ACRE Acceptance Letters."

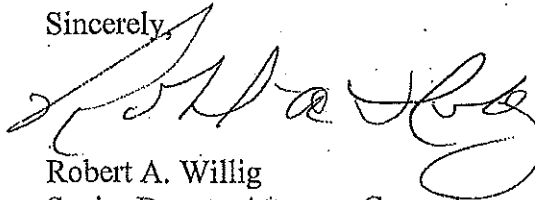
The OAG's ACRE website is located at <https://www.attorneygeneral.gov/resources/acre/>. Therein you will see a list of the ACRE cases that have come into this Office along with what we call "Acceptance Letters." If the OAG believes that certain ordinances violate ACRE we draft these Acceptance Letters explaining why the ordinances violate ACRE and what the municipality must do to remedy the situation. The OAG has dealt with many timber cases throughout the years:

Salem Township, 2007 & 2015; East Nantmeal Township, 2015 & 2016; Borough of Monroeville, 2015 & 2021; East Brandywine Township, 2016; North Coventry Township, 2017 & 2021; Lower Saucon Township, 2019; Pennsbury Township, 2017; Lower Milford Township, 2019; Eldred Township, 2018; Clay Township, 2018; Pocono Township, 2020; Middle Smithfield Township, 2020; Upper Saucon Township, 2019; Hellam Township, 2020; East Rockhill Township, 2020; Industry Borough, 2021; Unity Township, 2021; Pine Township, 2021; and Canton Township, 2021.

In order to make an informed response to the ACRE complaint, perhaps Murrysville will want to read through these Acceptance Letters to see how the OAG has handled timber harvesting issues in the past. After reading through these letters, the Municipality will be able to make a decision on whether it agrees or disagrees with ██████████'s claims.

If you can please respond to [REDACTED] ACRE complaint within thirty (30) days of receipt of this letter I would greatly appreciate it. Thank you for your prompt response and assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Willig', written in a cursive style.

Robert A. Willig
Senior Deputy Attorney General