

[REDACTED]

May 21, 2024

To: Office of the Attorney General  
Attn: Robert Willig, Sr. Deputy Attorney General  
Strawberry Square 15<sup>th</sup> Floor  
Harrisburg, Pennsylvania 17120  
*Via regular mail and email to [REDACTED]*

From: [REDACTED] Codorus Township Solicitor

Re: ACRE Complaint - Codorus Township - York County - [REDACTED]

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Mr. Willig,

Please accept this letter as Codorus Township's response to [REDACTED] ACRE complaint submitted by his attorney, [REDACTED] on March 22, 2024 (the "[REDACTED] Letter"). In [REDACTED] letter, [REDACTED] challenges the enforceability of §250-14 of Codorus Township's Zoning Ordinance as applied to a sawmill that is located within the Township's Agricultural District.

The Township does not dispute the fact that its Zoning Hearing Board revoked [REDACTED] permit. However, in addition to not having sufficient dwelling units to allow his property to be used for both his home and a sawmill, [REDACTED] is using his sawmill to process timber harvested offsite and delivered to his property. The genuine issue is not that [REDACTED] has been denied a permit to use his 12.6-acre parcel for normal agricultural purposes, it is that [REDACTED] is using his 12.6-acre lot for commercial timber processing. As outlined below, the Township's opinion is two-fold: 1) §250-14 complies with Act 38 of 2005 ("ACRE"), 4 Pa C.S. §311, *et. seq.*, and 2) [REDACTED] does not meet the minimum requirements for a mill on his property pursuant to §250-14. Moreover, [REDACTED] is seeking to invalidate an otherwise lawful and often exercised section of the Township's Zoning Ordinance in lieu of moving his commercial sawmill operation to one of Codorus Township's General Commercial Zones where such activities are expressly permissible.

**§250-14 Compliance:**

A local ordinance is unauthorized when it "1) [p]rohibits or limits a normal agricultural operation unless the local government unit has expressed or implied authority under State law to adopt the ordinance and is not prohibited or preempted under State law from adopting the ordinance . . ." 4 Pa C.S. §312. "Normal agricultural operation" is defined as, "[t]he activities, practices, equipment and procedures that farmers adopt, use or engage . . . in the production,

harvesting and preparation for market or use of agricultural [and] silvicultural crops and commodities." 3 P.S. § 952.

The Township does not dispute that a sawmill falls under the definition of normal agricultural operation, however, in the instant case, the Township has expressed authority under a special carve-out provision found in §953 to limit [REDACTED] commercial sawmill operation in its Agricultural Zone. §953 provides that, "[d]irect commercial sales of agricultural commodities upon property owned and operated by a landowner who produces not less than 50% of the commodities sold shall be authorized, notwithstanding municipal ordinance, public nuisance or zoning prohibitions. Such direct sales shall be authorized without regard to the 50% limitation under circumstances of crop failure due to reasons beyond the control of the landowner." 3 P.S. § 953. [REDACTED] does not meet this minimum "not less than 50%" requirement to be protected from restrictions imposed by §250-14 because [REDACTED] "does not prepare for market products that are harvested on his land. The testimony from the June 2023 hearing indicated that logs are brought to the site from third parties to be cut and sold. Accordingly, [REDACTED] operation would not fall within the ACRE definition of "normal agricultural operations." Application No. 2024-01, Codorus Township Hearing Board, p.9 (attached). Additionally, nothing in the record indicates that [REDACTED] presented evidence that he has experienced a recent crop failure.

Therefore, based on [REDACTED] testimony, his agricultural operations expressly fall under § 953(b) and the Township is authorized by State law to prohibit or limit his operations.

#### **Prohibitions and Limitations:**

Although the Township's Ordinance expressly allows sawmills in its General Commercial Zone where they are included as a "principal use," here the issue is whether the Township may *limit* the use of sawmills on the subject 12.6 acre parcel located in the Township's agricultural Zone. Codorus Twp. Code § 250-29(A)(23).

The Township revoked [REDACTED] zoning permit when it became aware that its initial decision was in direct violation of § 250-14(C) pertaining to special exception uses, which reads in relevant part, "[e]ach [special exception] use [including mills,] shall reduce the number of dwelling units as set forth by §250-16A permitted to be located upon the tract by one." According to § 250-16(A) of the Code, [REDACTED] property has only one available dwelling unit. Read together, an authorized special exception use reduces [REDACTED] Dwelling Units by one, meaning [REDACTED] does not have authority to use the property as both a principal dwelling *and* a sawmill. "A municipality has the right to enact zoning ordinances and establish areas within which certain types of buildings may be constructed." *Zarrinnia v. Zoning Hearing Bd. of*

*Abington Twp.*, 162 Pa. Cmwlth. 690, 695, 639 A.2d 1276, 1278 (1994), (citing *Village Of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926)).

It is reasonable for the Township to limit the number of uses permitted by special exception to be operated by [REDACTED] on his 12.6 acre parcel. In contrast, it would be unreasonable for the Township to allow any landowner to engage in all 15 of the permissible uses on 12.6 acres, including, *inter alia*, kennels, wind farms, medical centers, bed and breakfast, automotive sale, etc. Therefore, The Township's Ordinance is both lawful and reasonable, and [REDACTED] must elect to use his remaining Dwelling Unit for either residential or sawmill purposes.

Respectfully submitted,

[REDACTED]  
[REDACTED]  
[REDACTED]