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2024

March 19, 2023

By e-mail

Robert A. Willig
Senior Deputy Attorney General
PA Office of Attorney General
Litigation Section
Attention: ACRE
1251 Waterfront Place, Mezzanine Level
Pittsburgh, PA 15222

RE: ACRE Petition for review of Municipality of Monroeville Timbering Harvest Fee and Timber Ordinance on Website

Dear Senior Deputy Attorney General Willig,

The [REDACTED] (hereinafter [REDACTED], a group of 12 local residents) of Monroeville, Pennsylvania is following up on previous requests that were submitted on September 19, 2013 to Senior Deputy Attorney General [REDACTED] and June 15, 2022 to you with our requests for review and legal challenge of by the Office of the Attorney General (OAG) of the forestry related sections of the Municipality of Monroeville timber harvesting ordinance (former Ordinance 2529) and the associated fees and the enforcement of this local ordinance under the Pennsylvania's Agriculture, Communities and Rural Environments (ACRE) law, Act 38 of 2005.

The [REDACTED] requests another review and legal challenge by the Office of the Attorney General (OAG) of the Municipality of Monroeville Timbering Harvest fees and the regulation posted on the Monroeville website. This request is related to

- Fee Ordinance 2784 that was passed December 12, 2023.
- Previous fees that were paid based on timbering as a Conditional Use Application. These fees were based on ordinances that were passed by Monroeville Council.
- The continued oversight by Monroeville of posting the former Timber Harvest Ordinance 2529 on their website.

Each of the items in the bullets above have been reviewed by the OAG previously and Monroeville's response has been that it was an "oversight" and will be corrected. However, Monroeville has not corrected these "oversights". [REDACTED] is planning to submit a request for a timber permit either later this year or next year and several of these items have not been corrected by Monroeville. The [REDACTED] was negatively economically impacted by the previous timber harvesting ordinance and associated fees that included extra expenses that were not needed and is requesting another review and legal challenge.

Monroeville Timber Harvest Fee, Fee Ordinance 2784

[REDACTED] requested a review and legal challenge on June 15, 2022 (Attachment 1) of the Municipality of Monroeville's December 22, 2020 (Ordinance 2730) and December 14, 2021 (Ordinance 2754). [REDACTED] requested the review and legal challenge of the fee again and the statement under the fees of "Miscellaneous Fees: The municipality reserves the right to assess for engineering review, legal and expert service" when deemed necessary." After you contacted

the Monroeville solicitor, the fee requirements for the timber permit were corrected but they have not corrected the Miscellaneous Fees statement under the fees.

Monroeville passed the Timbering Harvest Fees for 2024 on December 12, 2023, Ordinance 2784 (Attachment 2). The timber harvesting permit fees are correct and reasonable however the statement "Miscellaneous Fees: The municipality reserves the right to assess for engineering review, legal and expert service" when deemed necessary." still remains even though you informed the Monroeville solicitor that the Miscellaneous Fees provision should be deleted.

Monroeville Previous Timber Harvest Fees

██████████ is providing a summary of some of the previous timbering harvest permit fees in the table below. When the OAG reviewed our original September 19, 2013 ACRE challenge, the initial response by the OAG on December 7, 2015 (Attachment 3) informed Monroeville that the "...Municipality's Zoning Ordinance improperly categorizes timber harvesting operations as requiring a conditional use... forestry activities, including timber harvesting, cannot be designated as conditional uses; rather, they must be allowed as permitted uses by right..."

TABLE OF TIMBER HARVEST PERMIT FEES			
Year	Major Timber Fee	Comment	Attachment
1997	\$150	Reasonable fee - 1 st ██████████ submitted timber application	4
2012	\$1000	Conditional Use Fee based on OAG letter/Monroeville ██████████ states in 2021 Council meeting fee reflects a conditional use application - 2 nd ██████████ submitted timber application	5
2015	\$2000	Conditional Use Fee/Monroeville's ██████████ states in 2021 Council meeting fee reflects a conditional use	6
2022	\$2000	ACRE challenge/Conditional Use Fee. Monroeville's ██████████ states in 2021 Council meeting fee reflects a conditional use	7
2023	\$200	ACRE Challenge - Miscellaneous Fee Statement	8
2024	\$200	ACRE Challenge - Miscellaneous Fee Statement	2

On June 15, 2022 ██████████ challenged the 2022 Major Timber Fee and with the help of the OAG Monroeville went through the process of making the change to the fee. During the March 9, 2021 Regular Council Meeting, ██████████ provided in his Director of Public Works and Engineer's Report that "there was an oversight in the fee schedule that the municipality passed in December [2020] for timber harvesting." He referred to the OAG office December 2015 letter that required Monroeville to change the timber harvesting rules and regulations and zoning ordinance. "He stated those fees still reflect when it was deemed a conditional use application...those fees no longer seem reasonable because administratively the application review is not as cumbersome." (Attachment 9).

When ██████████ decided to timber our property both times (1997 and finally in 2017 after ACRE challenge) we hired forestry consultants that graduated from Pennsylvania State University to

assist us in managing the timber on our property based on best forestry practices. For our 2012 permit along with paying a Conditional Use Fee in 2012, Monroeville required [REDACTED] attend several Planning Commission meetings (1 meeting included our forestry consultant) and attend several Council meetings (1 meeting included a PADCNR Forest Service personnel who was not allowed to speak) that is required for a Conditional Use type application.

Along with the \$1000 Conditional Use Fee to obtain a timber harvest permit that [REDACTED] paid, during the permit approval process [REDACTED] incurred additional costs that were not required for a timber harvest permit because Monroeville was reviewing the permit application as a conditional use type application. [REDACTED] hired a geotechnical engineer for his analysis of the proposed timbering activity as requested by Monroeville and had additional expenses for additional time/cost for the forestry consultant to attend the meeting and assist with the ACRE challenge, loss of trees, attorney fees, and a temporary illegal taking of the timber property totaling \$9,439.40 (Attachment 10).

[REDACTED] reviewed documents (Fact Sheet: PA ACREA Law and a Summary of Attorney General Positions on Timber Harvesting, ACRE Review Requests for Lower Saucon Township and North Coventry Townships, and newspaper article PA takes the ax to North Coventry Logging Law) as it relates to timber permit fees. [REDACTED] left a voicemail with the Monroeville Municipal Manager to providing information to him about the timbering permit fee in June 2020. The zoning office returned the call and the documents mentioned above were provided to him. [REDACTED] requested that the zoning officer provide us with feedback after the municipality had a chance to review the documents. No feedback was provided. Since no feedback was provided [REDACTED] requested a review and legal challenge on March 16, 2021 of the Municipality of Monroeville Timbering Harvest Fee of \$2000 with the Miscellaneous Fees statement that was part of Ordinance 2730 passed on December 22, 2020.

Monroeville overstepped its authority when [REDACTED] requested a timber permit in 2012 as indicated in the OAG letter from December 2015 (Attachment 1). In addition, Monroeville's timber harvest fee was based on a Conditional Use application from 2012 until 2022 as stated by [REDACTED] in the council meeting in March 2021 after the [REDACTED] requested another ACRE challenge and the OAG informed Monroeville of this continued issue. [REDACTED] indicated in the council meeting that this was an "oversight". [REDACTED] is again requesting an ACRE challenge because Monroeville's timber harvest fee has the Miscellaneous Fee statement that the OAG informed the Monroeville solicitor needed to be removed/deleted from the timber harvest fee.

ACRE confers upon the Attorney General (1) the power and duty to review local ordinances for compliance with State law, and (2) the authority and discretion to bring a legal action against a local government unit to invalidate or enjoin the enforcement of an unauthorized local ordinance. 3 Pa. C.S. §§ 314(b), 315(a). The Municipal Planning Code expressly prohibits townships from charging a landowner excessive fees for reviewing plans during the permitting process in administering a zoning ordinance and it is tantamount to unlawfully converting a permitted by right application to conditional use. Monroeville unlawfully converted the timbering application into one of conditional use (challenged in the original review) instead of a permitted use by right from 2012 to 2022. The fees that were paid were unlawful according to the Municipal Planning Code and an "oversight" by the Municipality of Monroeville.

As a result of the initial ACRE challenge and these additional ACRE challenges, [REDACTED] has been negatively economically impacted by the previous timber harvesting ordinance, conditional use fee, and expenses that were not needed for a timber harvest permit. We are requesting assistance by the OAG to obtain a refund of the illegally charged conditional use fee and the extra expenses that were not required.

Timber Harvest Requirements Monroeville's Webpage

If you go to the Monroeville website for the Building and Planning Department (<https://www.monroeville.pa.us/159/Building-Engineering>, Attachment 11) and you look at the requirements for Timber Harvesting, you download the Timber Harvesting Ordinance 2529 (<https://www.monroeville.pa.us/DocumentCenter/View/199/Timber-Harvesting-Ordinance-2529-PDF>, Attachment 12 – first page only) which is the “old,” non-complaint illegal ordinance that the OAG required change, not the ordinance that is in compliance with ACRE. Another “oversight” or Monroeville trying to limit timbering?

We believe that the Municipality of Monroeville continues to overstep its authority (these are not “oversights”). [REDACTED] are requesting that the OAG and AG Michelle Henry require the Municipality of Monroeville to provide refunds for the excessive Timbering Permits fees paid pre 2021 since the Municipality of Monroeville was unlawfully converting the timbering application into one of a conditional use. The Municipality of Monroeville needs to do the right thing based on the Municipal Planning Code, like local stores that sometimes overcharge a consumer occasionally.

The [REDACTED] brings this to your attention as we will be planning to timber our property again and these are issues that we do not want to address when we submit our Timber Harvest Permit Application. If you have any questions or require any additional information regarding this request, please contact [REDACTED] by the e-mail below.

Signed, .

[REDACTED]
[REDACTED]

cc:

[REDACTED]
[REDACTED]
[REDACTED]

12 Attachments