

[REDACTED]

March 22, 2024

**SENT VIA: Regular USPS and Electronic Mailing**

Pennsylvania Office of the Attorney General  
Attn: ACRE  
Strawberry Square, 15<sup>th</sup> Floor  
Harrisburg, PA 17120

Pennsylvania Office of the Attorney General  
Attn: ACRE  
[acre@attorneygeneral.gov](mailto:acre@attorneygeneral.gov)

**RE: ACRE Violation; Request for Review of Codorus Township Zoning Ordinance**

To whom this may concern:

The [REDACTED] represents [REDACTED] who owns a 12.6-acre tract of land located at [REDACTED] ("Property") within Codorus Township ("Township"), York County. Please accept this correspondence as [REDACTED] request for review of the Township's Zoning Ordinance ("Ordinance"), specifically § 250-14 (Use Regulations). Enclosed, please find a copy of the relevant section of the Ordinance for your review.<sup>1</sup>

**FACTUAL BACKGROUND**

[REDACTED] purchased the Property in June of 2023. [REDACTED] purchased the Property with the expectation that he would not only be able to use this land as a residence for his family, but as a sawmill as well. While [REDACTED] believed that his proposed use of the Property was a use permitted by right,<sup>2</sup> [REDACTED] was advised by the Township that he would need to apply for zoning relief. Accordingly, [REDACTED] did so and all seemed to be going well, as he obtained recommendations and approvals for this proposed use from all three branches of local government. On June May 30, 2023, the Township's planning commission recommended that a special exception sawmill use of the Property be authorized. On June 28, 2023, the Township's zoning hearing board granted the special exception allowing a principal sawmill use of the Property. The

---

<sup>1</sup> An electronically-accessible version of the Ordinance can also be found using the following link:  
<https://ecode360.com/34372391>.

<sup>2</sup> The proposed use would constitute an "agriculture" use, which is permitted by right in the Agricultural District. The Ordinance defines "agriculture" as "... the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, *silviculture*, and agricultural crops and commodities..." (*emphasis added*).

Board imposed certain conditions to mitigate against any impacts on the public health, safety, and wellness. On July 27, 2023, the Township's zoning officer issued a zoning permit for this use.

However, the zoning officer subsequently revoked the zoning permit issued to [REDACTED]. The rationale provided for this revocation was that there were not a sufficient number of "building rights" available for both a residential and sawmill use of the Property. Put differently, because the lot only had one building right, [REDACTED] had to choose between the residential use or the sawmill use – he could not do both at the Property.<sup>3</sup> [REDACTED] appealed the zoning officer's determination to the Township's zoning hearing board. [REDACTED] argued *inter alia* that the zoning officer's interpretation would cause the Ordinance to be an "unlawful local ordinance" that violates ACRE. Even when this issue was raised during the hearing, the Township's zoning hearing board upheld the determination of the zoning officer and denied [REDACTED] appeal.

### UNLAWFUL LOCAL ORDINANCE

§ 250-14 of the Ordinance sets forth the different uses permitted within the Township's Agricultural District. § 250-14 is divided into four subsections: (A) principal uses permitted by right; (B) accessory uses permitted by right; (C) principal uses permitted by special exception; and (D) accessory uses permitted by special exception. One of the principal uses permitted only by special exception in the Agricultural District is a "[m]ill, including, but not limited to, feed and grain mills."<sup>4</sup> The Township interprets this language to include a sawmill.

Not only is a principal sawmill use only permitted by special exception in the Agricultural District, the Ordinance also requires that a "dwelling unit" be available and forfeited to carry out a principal sawmill use. The concluding clause of § 250-14.C states as follows:

*All uses permitted by special exception, except use in Subsection C(12), must be located on land of low quality for agricultural use... Each such use excepting uses in Subsection C(3) and (5) shall reduce the number of dwelling units as set forth by § 250-16A permitted to be located upon the tract by one.*

§ 250-14 is an "unlawful local ordinance" because it prohibits and/or limits a "normal agricultural operation." Under Pennsylvania law, a sawmill is a normal agricultural operation. In fact, the statutory definition of a "normal agricultural operation" expressly identifies sawmills as an activity falling within the ambit of the term.<sup>5</sup>

§ 250-14 violates ACRE for two primary reasons. First, § 250-14 unlawfully imposes the heightened requirement of obtaining a special exception to carry out a principal sawmill use. Surely a normal agricultural operation (such as a sawmill) must be a use permitted by right within the Township's Agricultural District. To the contrary, § 250-14 mandates that a property owner

<sup>3</sup> Contextually, it is relevant that [REDACTED] stated in his application and testified at the June 28<sup>th</sup> ZHB hearing that he would be using the Property as both a residence and a sawmill. The ZHB expressly recognized this fact in its written decision. At no point did the ZHB state that its approval of the sawmill use would be conditioned upon the forfeiture of a dwelling unit.

<sup>4</sup> Notably, one of the other uses permitted only by special exception under § 250-14.C is a concentrated animal feed operation, or CAFO.

<sup>5</sup> 3 P.S. § 952.

obtain special approval and a zoning permit from the Township (including the payment of a \$650 application fee) in advance of using farmlands as a sawmill.

Yet even more significant, § 250-14 unlawfully limits the use of land as a sawmill by requiring that a "dwelling unit" be available and forfeited.<sup>6</sup> A cursory review of the MPC or the Ordinance<sup>7</sup> will reveal that a "dwelling unit" is a zoning tool that prevents development from occurring on lands where development is undesirable and steers development to lands where development is more desirable. The Ordinance accomplishes this goal by allocating a finite number of dwelling units to each lot based on the overall lot size – more land equals more dwelling units.

There is simply no justification for requiring the availability and forfeiture of a "dwelling unit" in order to use land located within the Township's Agricultural District for a "normal agricultural operation." Such a requirement imposes an insurmountable obstacle for many landowners. Dwelling units are scarce, dwelling units are expensive, and dwelling units are not easily transferable. Accordingly, requiring the forfeiture of a dwelling unit fails to promote the express purpose of the Township's Agricultural District – to promote agricultural activities upon the Township's most important natural resource (productive farmlands); rather, this dwelling unit forfeiture requirement entirely undermines this express interest. More substantially, this requirement contravenes the express limitations imposed by the MPC regarding the regulation of agricultural operations within this Commonwealth.<sup>8</sup>

For these reasons, [REDACTED] respectfully requests that the Office of the Attorney General intercede on his behalf to contact Codorus Township and to effect a change to the Ordinance regarding the dwelling unit requirement for a sawmill use in the Agricultural District, or in the alternative, to obtain confirmation from the Township that Mr. Stoltzfus need not obtain special exception approval nor forfeit a building right because he is engaged in a permitted agricultural use. I would appreciate confirmation that this correspondence has been received. Please advise if any additional information is needed to facilitate your review. Thanks in advance for your assistance, review, and involvement.

Very Respectfully,

[REDACTED]  
cc: Client via email

---

<sup>6</sup> The term "dwelling units," as used in this context, is synonymous with these other terms that are often used to describe this zoning tool: "building rights," "dwelling rights," and "development rights."

<sup>7</sup> See § 250-16A of the Ordinance.

<sup>8</sup> 53 P.S. § 10603(h). Zoning ordinances shall encourage the continuity, development and viability of agricultural operations. Zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present unless the agricultural operation will have a direct adverse effect on the public health and safety. Nothing in this subsection shall require a municipality to adopt a zoning ordinance that violates or exceeds the provisions of the act of May 20, 1993 (P.L. 12, No. 6), known as the "Nutrient Management Act," the act of June 30, 1981 (P.L. 128, No. 43), known as the "Agricultural Area Security Law," or the act of June 10, 1982 (P.L. 454, No. 133), entitled "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances."