



Lehigh Valley Planning Commission

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BRIEF

July 31, 2018

Amendments to Woodlands Guidance

Summary

The Lehigh Valley Planning Commission (LVPC) staff was contacted by Plainfield Township due to a resident complaint concerning the forestry provisions of the municipal ordinance. Plainfield Township knew the LVPC had developed a *Woodlands Model Ordinance* and reached out as the resident concern was complicated by new information from the Pennsylvania Attorney General.

LVPC Staff has reviewed information pertaining to correspondence from the PA Office of Attorney General dated April 13, 2016 addressing an Agriculture Communities and Rural Environment Act (P.a. Law Act 38 of 2005) Review Request in East Nantmeal Township, Chester County (available at: <http://www.lvpc.org/e-guides---model-regs.html>). That letter was reviewed carefully against the LVPC *Model Woodlands Ordinance*. The April 13, 2016 letter also referenced another piece of correspondence from the Attorney General, dated November 9, 2015 (available at: <http://www.lvpc.org/e-guides---model-regs.html>). LVPC staff acquired that letter and incorporated those comments in this review as well.

Utilizing the letters from the Office of Attorney General as a guide, we have found the following consistencies and inconsistencies with the *Woodlands Model Ordinance* LVPC published in 2009:

- The documents are in agreement on what regulatory powers are granted to municipalities (through the MPC) regarding forestry activities, as well as all regulations and case law that were highlighted.
- In the portion of the letter identified as "II. Legal Problems with Zoning Ordinance," the Attorney General outlines issues with a number of terms, including 'High Value Species,' 'Professional Consulting Forester,' 'Selective Cutting,' and 'Specimen Vegetation.' None of these terms are in the Model Woodlands Ordinance. Additionally, the suggested definition for the term 'Timber Harvesting Operation' is the same as is in the Model Woodlands Ordinance.
- The letter from the Attorney General goes on to address timber harvesting permits. Though they have no objection to Township's requiring a permit for timber harvesting, the letter is clear that the permitting process cannot be overly restrictive. Those issues are addressed below.
- Under the permit section of the letter, the Attorney General references a requirement to submit an erosion and sedimentation (E&S) plan to the County Conservation District for

review and approval as overly restrictive. The *Woodlands Model Ordinance* does not have that requirement. The Attorney General continues on to allow the Township to require a copy of the written E&S plan, which is included in the *Woodlands Model Ordinance*.

- The Attorney General also addresses the following requirements of the East Nantmeal Township ordinance: proof of insurance, escrow for reviewing fees, and imposition of liability. These are all found to be overly restrictive and none are in the *Woodlands Model Ordinance*.
- Section C of the letter refers to the review of a timber harvesting permit application. The Township is not permitted to charge fees or expenses to review as doing so goes above municipal authority. This procedure is not in the *Model Woodlands Ordinance*.
- Again in section C, part 2 speaks to the Code Enforcement Officer approving or denying a timber harvesting application. It is unclear if this refers to the permitting process, or to the timber harvesting plan. The *Woodlands Model Ordinance* requires that the timber harvesting plan be submitted to the municipality for review for compliance no less than 45 days prior to commencement, and within 30 days the plan shall be approved, denied or approved subject to reasonable conditions. This may be too restrictive as the MPC provides that timber harvesting is a permitted use by right in all districts. By reviewing the plan for compliance, the use is being put into a special exception or conditional use category. The plan can only be reviewed against the requirements set forth in the ordinance, but the zoning officer has no authority to determine reasonable conditions outside of the ordinance. The *Woodlands Model Ordinance* is not in line here (Section 700, part A). The portion of Section 700, part A that states “or approved subject to reasonable conditions” **needs to be removed**.
- Section D of the letter addresses the timber harvesting plan. Part 1 discusses the identification of a timber harvesting operator. It seems that requiring the name, address and telephone number of the timber harvesting operator in the timber harvesting plan is cumbersome, as in typical timber harvests the landowner first obtains the permit before the bid goes out. This makes the information on the harvesting operator unavailable prior to the permit being issued. The *Woodlands Model Ordinance* also has this requirement listed in Section 700, B2. It can be remedied by **revising the section** to “provide that the identity and contact information for the timber harvesting operator shall be provided to the township upon award of the bid for the timber harvest covered by the approved timber harvesting permit.”
- Section D also addresses commencement and completion dates. The *Woodlands Model Ordinance* holds up to those comments. Regarding the identification of tree totals, the *Woodlands Model Ordinance* does not require a count of the residual trees so it is not in conflict with the Attorney General’s letter. The letter specifically states that a timber harvesting contract will describe the trees to be cut so that information is not unreasonable. Section D4 speaks to woodlands management plans. The *Woodlands Model Ordinance* does not require one of those plans specifically, but it does require a reforestation narrative as part of the submission requirements as part of a permit application. The difference between ‘reforestation’ and ‘forest regeneration’ is explained in detail in this section of the AG letter. **In reading this, Section 700.B.6 in the *Woodlands Model Ordinance* needs to be deleted**. Additionally, the *Woodlands Model Ordinance* does not require a site plan that identifies all specimen vegetation, as the East Nantmeal Township ordinance did. The AG also identifies concerns with

requiring topographic maps with five foot intervals. The issue is not with the topographic map, but with the size of the intervals. The *Woodlands Model Ordinance* does not specify a size for the intervals on the topographic map and therefore is in line with the letter. Though the AG letter addresses the erosion and sedimentation control plan, it primarily speaks to the duplication of DEP's regulatory requirements. This is not something that the *Woodlands Model Ordinance* does.

- The letter from the Attorney General goes on to address timber harvesting operational requirements in Section E. The *Woodlands Model Ordinance* does not have an imposition of liability included. However, the *Woodlands Model Ordinance* clearly prohibits clear cutting on areas with slopes of 25% or greater (Section 800.C). Section E.2 of the Attorney General's letter determines that a prohibition on clear-cutting is an unreasonable restriction on timber harvesting. The letter goes on to state that prohibiting timber harvesting on slopes exceeding 25% or greater is an unreasonable restriction on forestry activities which is in violation of the MPC because it conflicts with Best Management Practices (BMPs) recognized in the field of forestry. **This section of the *Woodlands Model Ordinance* will need to be updated** with the following from the letter "Any timber harvesting proposed on slopes of 25% or greater must provide an explanation of the Erosion and Sediment Control best management practices to be employed on the slopes, the reasons for harvesting on the slopes, and method for retrieving the logs that are felled on the slopes."
- Regulations prohibiting timber harvesting in the floodplain and wetlands directly conflicts with the DEP's Erosion and Sediment Control and Waterway Management regulatory schemes, which allow timber harvesting activities near water sources using required best management practices that depend upon the unique site conditions of a specific property. **This needs to be changed in the *Model Woodlands Ordinance*.** The new suggested language is "A Timber Harvesting Plan proposing to engage in timber harvesting activities near a floodway, 100 year floodplain, zone one riparian buffer, wetland, or other water sources shall include a description of the best management practices required for the activity under both an Erosion and Sediment Control Plan and pursuant to the Dam Safety and Waterway Management regulations and best practices manual for timber harvesting operations."
- Regulations pertaining to stream crossings are regulated under DEP's Erosion and Sediment Control and Waterway Management; additionally the US Army Corps of Engineers regulates any crossings that impact wetlands. Therefore, the municipality does not have authority to impose any requirements. This is not addressed in the *Woodlands Model Ordinance* so it is in compliance.
- The Attorney General addressed restrictions on silvicultural methods. These are not part of the *Model Woodlands Ordinance*, so it is in compliance.
- The marking of trees to be harvested was too specific in the East Nantmeal Township ordinance. The *Woodlands Model Ordinance* is in line with the AG recommendation.
- The regulations of roads and skid trails that East Nantmeal Township enacted is not in the *Woodlands Model Ordinance* that LVPC created. No changes needed.
- Both the East Nantmeal ordinance and the *Woodlands Model Ordinance* place restrictions on skidding trees, though East Nantmeal is more restrictive. However, the *Woodlands Model Ordinance* does need to be changed in section 800.A. It is too restrictive regarding a buffer area and is duplicative to DEP regulations. **References to watercourses and wetlands need to be deleted.**

- The letter dated November 9, 2015 from the Attorney General’s office addresses requiring buffer zones along streets and property lines. In response to that letter, **section 800.A should be deleted**, as no buffer zones are allowed per the letter.
- The *Woodlands Model Ordinance* does not impose a restriction on cutting of large diameter trees. This is in line with the letter.
- Regulations requiring the removal of tops and slash from water sources again are not within municipal regulatory abilities. The *Woodlands Model Ordinance* does have this regulation listed for floodplain and wetlands and **needs to be deleted (800.F.3)**
- The *Woodlands Model Ordinance* has a provision that there is to be no onsite processing of harvested trees. The Attorney General’s office suggests adding “The processing of firewood for the landowner’s personal use is permitted.” Processing includes chipping of wood. **That would fit into 800.M in the model and should be added.**
- The retirement of haul roads, skid roads, landings, and other access systems are regulated by the DEP’s Erosion and Sediment Control and Waterway Management regulatory schemes. The *Woodlands Model Ordinance* addresses this in section 800.L and should not, therefore section 800.L should be deleted. **The suggested change is** “Proof of the plans to retire all access systems, including access roads, haul and skid trails, and landing areas shall be provided to the municipality through the Timber Harvesting Plan and/or Erosion and Sediment Control Plan and shall be in conformance with the Department of Environmental Protection’s best management practices under its regulatory programs,” and fits in section 700.B.14.
- The Attorney General proposes that municipalities consider enacting the “Pennsylvania Model Forestry Regulations” developed by the Penn State School of Forest Resources.

In summary, to meet the requirements of the Attorney General each of the ten changes listed in bold above needs to be made to the *Model Woodlands Ordinance*. Likewise, a municipality has the choice to replace the forestry regulations portion of the *Woodlands Model Ordinance* with the Pennsylvania Model Forestry Regulations. It is not recommended to completely remove the LVPC *Woodlands Model Ordinance* language, as that ordinance addresses tree protection in construction related activities in addition to forestry.

Resources

- _____. *Woodlands Model Ordinance*. Lehigh Valley Planning Commission, 2009.
Available at: <http://www.lvpc.org/pdf/woodlands.pdf>
- Bucknum, Susan L. Letter. Commonwealth of Pennsylvania, Office of the Attorney General. Harrisburg, PA. April 13, 2016.
Available at: <http://www.lvpc.org/e-guides---model-regs.html>
- Bucknam, Susan L. Letter. Commonwealth of Pennsylvania, Office of the Attorney General. Harrisburg, PA. November 9, 2015.
Available at: <http://www.lvpc.org/e-guides---model-regs.html>