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May 29, 2014

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Re: **Model Riparian Buffer Protection Overlay District
Proposed Regulations for Use in a Municipal Zoning Ordinance
Brandywine Conservancy and Pennsylvania Land Trust Association
Edition of April 25, 2014**

John and Andy:

Per your request, I have reviewed the edition of April 25, 2014 of the Model Riparian Buffer Protection Overlay District draft, incorporating several of the questions and comments which I had raised in reviewing the prior drafts.

In my opinion, subject to individual tailoring of the model ordinance for compatibility with the existing zoning regulations of a particular municipality, the model ordinance is a strong and technically defensible regulation (as needed, given the importance of riparian buffers to stream quality) and not unreasonably restrictive of private property rights.

In particular, up to 20% of the area of the Zone 2 riparian buffer can be re-graded, filled or otherwise altered while still maintaining, within both Zone 1 and Zone 2, a forested buffer in accordance with the specifications set forth in the ordinance.

As is the case with any restrictive provision in a zoning ordinance, there may be individual cases where strict compliance with the regulations (for example, the planting requirements for restoration of a forested buffer area) may be so costly in comparison to the proposed use or improvement of the remainder of the tract, that the property owner will be entitled to relief. The ordinance recognizes this possibility, providing authority for the granting of modifications to the provisions of Sections 400 or 600, and also recognizing that any proposed modification of the use regulations of Section 500 will be treated as an application for a use variance, with the burden of proof upon the property owner to demonstrate unnecessary hardship.

John Theilacker, Brandywine Conservancy
Andrew Loza, PA Land Trust Association
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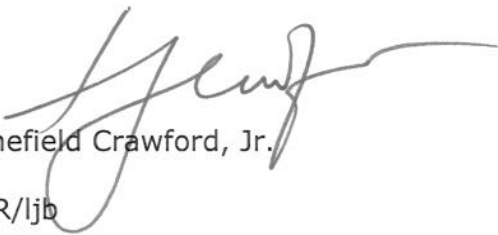
As you have articulated in the companion document (*Riparian Buffer Via Local Regulation—A Guide for Pennsylvania Municipalities*), the Pennsylvania Municipalities Planning Code provides ample authority for municipal zoning ordinances to restrict areas in close proximity to water bodies.

In my opinion, the fact that Pennsylvania Environmental Quality Board has enacted regulations within Chapter 102 to require the preservation of forested buffers adjacent to streams located within special protection water sheds (EV or HQ), does not have the effect of preempting municipal regulations that are not inconsistent with the DEP regulations. Historically, both the state (through DEP) and municipalities have complementary roles in protecting sensitive environmental features, and there is no reason to believe that the context of riparian buffer regulation would lead to a different result.

The guide for Pennsylvania municipalities that you have drafted as a companion document to the model ordinance constitutes a thorough documentation of the purposes to be served by enactment of riparian buffer protections as an overlay district within municipal zoning ordinances, and there is no need for me, at this point, to restate all of the thorough research which you have done in support of the model overlay district ordinance.

Please do not hesitate to contact me if you have any further questions at this stage.

Sincerely yours,



Fronefield Crawford, Jr.

FCJR/ljb