

COVENANTS TO PRESERVE LAND USE - PROPERTY TAX ASSESSMENTS

Act of Jan. 13, (1966) 1965, P.L. 1292, No. 515

Cl. 16

AN ACT

Enabling certain counties of the Commonwealth to covenant with land owners for preservation of land in farm, forest, water supply, or open space uses.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Definitions.--For the purposes of this act the following definitions shall apply:

(1) "Farm land." Any tract or tracts of land in common ownership of at least twenty acres in area, used for the raising of livestock or the growing of crops. ((1) amended Oct. 26, 1972, P.L.1030, No.254)

(2) "Forest land." Any tract or tracts of land in common ownership of at least twenty-five acres in area used for the growing of timber crops.

(3) "Water supply land." Any land used for the protection of watersheds and water supplies, including but not limited to land used for the prevention of floods and soil erosion, for the protection of water quality, and for replenishing surface and ground water supplies.

(4) "Open space land." Any land, including farm, forest and water supply land, in common ownership, of at least ten acres in area, in which site coverage by structures, roads and paved areas does not exceed three percent. Open space land includes land the restriction on the use of which could (i) conserve natural or scenic resources, including but not limited to soils, beaches, streams, wetlands, or tidal marshes; (ii) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations, or other public open spaces; (iii) augment public recreation opportunities; (iv) preserve sites of historic, geologic, or botanic interest; (v) promote orderly urban or suburban development; or (vi) otherwise preserves open space without structures, roads and paved areas exceeding three percent of site coverage. ((4) amended Oct. 26, 1972, P.L.1030, No.254)

(5) "Municipality." Any city, borough, town or township.

Section 2. Planning Requirements.--No land shall be subject to the provisions of this act unless designated as farm, forest, water supply, or open space land in a plan adopted following a public hearing by the planning commission of the municipality, county or region in which the land is located.

(2 amended Dec. 28, 1972, P.L.1656, No.352)

Section 3. Covenant for Farm, Forest, Water Supply or Open Space Uses.--All counties are hereby authorized to enter into covenants with owners of land designated as farm, forest, water supply, or open space land on an adopted municipal, county or regional plan for the purpose of preserving the land as open space. Such covenants and extensions thereof shall take effect

upon recording in the office of recorder of deeds. The land owner may voluntarily covenant for himself and his successors and assigns in right, title and interest that the land will remain in open space use as designated on the plan for a period of ten years commencing with the date of the covenant. The county shall covenant that the real property tax assessment, for a period of ten years commencing with the date of the covenant, will reflect the fair market value of the land as restricted by the covenant. The board to which assessment appeals are taken shall take into consideration the covenant's restriction upon the land in fixing the assessment.

(3 amended Oct. 26, 1972, P.L.1030, No.254 and Dec. 28, 1972, P.L.1656, No.352)

Section 4. Renewal and Termination of Covenant.--Each year on the anniversary date of entering the covenant, it shall be extended for one year unless:

(1) At least thirty days prior to any anniversary date of entering the covenant the land owner notifies the county that he wishes to terminate the covenant at the expiration of ten years from the anniversary date, or

(2) At least thirty days prior to an anniversary date of entering the covenant the county notifies the land owner that it wishes to terminate the covenant at the expiration of ten years from the anniversary date, on the sole ground that the plan designating the land as farm, forest, water supply, or open space land has been amended officially so that the designation is no longer in accord with the plan.

Notification of the desire to terminate the covenant shall be by registered mail.

(4 amended Oct. 26, 1972, P.L.1030, No.254)

Section 5. County Procedures.--The county governments shall establish procedures governing covenants between land owners and counties for preservation of land in the uses covered by this act.

Section 6. Breach of Covenant by Land Owner.--(a) If the land owner, his successors or assigns, while the covenant is in effect, alters the use of the land to any use other than that designated in the covenant, such alteration shall constitute a breach of the covenant and the land owner at the time of said breach, shall pay to the county, as liquidated damages, the difference between the real property taxes paid and the taxes which would have been payable absent the covenant, plus compound interest at the rate of five percent per year from the date of entering the covenant to the date of its breach or from a date five years prior to the date of its breach whichever period is shorter. Such liquidated damages shall be a lien upon the property collectible in the manner provided by law for the collection of unpaid real property taxes. The acquisition by lease, purchase or eminent domain, and use of rights of way or underground storage rights in such land by a public utility or other body entitled to exercise the power of eminent domain or by a wireless or cellular telecommunications provider who satisfies the conditions under subsection (b) shall not constitute an alteration of use or a breach of covenant.

(b) Use of the land covered by the covenant by a wireless or

cellular telecommunications provider shall not constitute an alteration of use or breach of the covenant when the following conditions are satisfied:

- (1) The land so used does not exceed one-half of one acre.
- (2) The land does not have more than one communication tower.
- (3) The land is accessible.
- (4) The land is not sold or subdivided. A lease of land shall not be considered a subdivision under this clause.
- (c) Use of land under this section for wireless services other than wireless telecommunications may only qualify if such wireless services share a tower with a wireless telecommunications provider as provided for in subsection (b).
- (d) A landowner may lease a tract of land restricted by an open-space covenant under the provisions of this act for wireless or cellular telecommunications purposes without subjecting the entire tract to liquidated damages, provided that the conditions of subsection (b) are satisfied. Liquidated damages shall be imposed upon the tract of land leased by the landowner for wireless or cellular telecommunications purposes, and the fair market value of that tract of land shall be adjusted accordingly.

(e) The wireless or cellular communications provider shall be solely responsible for obtaining required permits in connection with any construction on a tract of land which it leases pursuant to the provisions of this section for telecommunications purposes. No permit requested pursuant to this section shall be denied by a municipality for any reason other than failure to strictly comply with permit application procedures.

(6 amended May 31, 1996, P.L.332, No.50)

Section 7. Severability ; Inconsistent Laws.--If any section, provision or clause of this act shall be declared invalid or inapplicable to any persons or circumstances such action shall not be construed to affect the rest of the act or circumstances not so affected. All laws or portions of laws inconsistent with the policy and provisions of this act are hereby repealed to that extent.

Section 8. Effective Date.--This act shall take effect immediately.