

INFORMATION SHEET
DISTRICT TOWNSHIP AGRICULTURAL SECURITY AREA

The Commonwealth of Pennsylvania enacted the Agricultural Area Security Law in 1981. This law can be found in Purdon's Pennsylvania Statutes at 3 P.S. §901 and following. District Township implemented this law and presently maintains an Agricultural Security Area and this Information Sheet is provided to aid residents who have an interest in this topic. This Information Sheet is for the assistance of our residents and is not intended to be interpreted, nor shall it be legal advice. In addition, this Information Sheet only governs the highlights and it is not a comprehensive abstract of the entire law. The Township encourages all residents to consult with their attorney for assistance with applications, and understanding the full impact of the law and how it applies in District Township.

GENERAL OVERVIEW.

Section 905 of the law (referred to hereinafter for convenience as the Ag Security Law) allows the creation of an Agricultural Area Security District as long as there is a minimum of 250 acres in the District. District Township has created such a District.

The Ag Security Law provides that the Township may create an Agricultural Security Area Advisory Committee. The Committee consists of three active farmers, one citizen at large and one member of the Board of Supervisors who serves as the Committee's Chair. The Ag Security Committee advises the Supervisors about the Agricultural Security District and makes recommendations on Applications to include properties and to remove properties.

ELIGIBILITY

Landowners who wish to include their property in an Agricultural Security Area must prove that they meet all of the following requirements:

a. First, the land must be used for “agricultural production” or be “viable agricultural land” and may include “commercial equine activities.” The parcels must be at least ten (10) acres in size or they must produce at least \$2,000.00 per year from: “agricultural production of crops, livestock and livestock products...”

b. When an Application is submitted for a property to be included in an Agricultural Security Area, the Application is submitted to the Agricultural Security Area Advisory Committee, the Township Planning Commission, and the Supervisors for their review and comment.

c. A public hearing must be held and notice of the public hearing given in accordance with the Statute. At the public hearing, the proposed property is evaluated for compliance with the statutes. In addition to the size and/or economic relationship to agricultural production mentioned above, Section 907 of the Ag Security Law mandates considering additional evaluation criteria. That criteria includes:

“i. All land proposed for inclusion in an Agricultural Security Area shall have soils conducive to agriculture. Soils “conductive to agriculture” are those falling in Classes 1-4 of the Soil Conservation Service capability classes for agricultural soils. This requirement can also be satisfied for property “in active farm use and maintained in accordance with soil erosion and sedimentation plans consistent with farm use.”

ii. Land proposed for inclusion shall be compatible with the Township's Comprehensive Plan and the land must be in a zoning district that "permits agricultural use."

iii. Land proposed for inclusion in Agricultural Security Area shall be "viable agricultural land." Viable agricultural land is a defined term in the Statute.

iv. The extent and nature of farm improvements, anticipated trends in agricultural economics and technological conditions and other relevant matters may also be considered. Resource materials available to establish this criteria are specified in the Statute.

BURDEN OF PROOF

It is the landowner's burden to bring forth proof to satisfy all of these evaluation criteria. Copies of the Definitions Section, the Public Hearings Section and the Evaluation Criteria Section are attached.

SUMMARY ONLY

Please note this summary and selected copies of the law are provided as a starting point only. The Township strongly recommends that landowners consult with their attorneys or other knowledgeable individuals in evaluating and considering whether or not to apply for inclusion in the District Township Agricultural Security Area. In addition, the Statute should be regularly consulted for changes or updates in the law and the date of the attached photocopies were made. This Information Sheet does **NOT** purport to remain up to date regarding changes or additions to the Agricultural Security Law.

§ 903. Definitions

The following words and phrases when used in this act shall have the meanings given to them in this section, unless the context clearly indicates otherwise:

"Advisory committee." An Agricultural Security Area Advisory Committee.

"Agricultural conservation easement." An interest in land, less than fee simple, which interest represents the right to prevent the development or improvement of a parcel for any purpose other than agricultural production. The easement may be granted by the owner of the fee simple to any third party or to the Commonwealth, to a county governing body or to a unit of local government. It shall be granted in perpetuity as the equivalent of covenants running with the land. The exercise or failure to exercise any right granted by the easement shall not be deemed to be management or control of activities at the site for purposes of enforcement of the act of October 18, 1988 (P.L. 756, No. 108), known as the "Hazardous Sites Clean-up Act."¹

"Agricultural production." The production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of such crops, livestock or livestock products if more than 50% of such processed or merchandised

Title 3 Pa.C.S.A. follows Title 3 P.S.

products are produced by the farm operator. The term includes use of land which is devoted to and meets the requirements of and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government.

"Agricultural security area." A unit of 250 or more acres of land used for the agricultural production of crops, livestock and livestock products under the ownership of one or more persons and designated as such by the procedures set forth in this act or designated as such pursuant to the act of January 19, 1968 (1967 P.L. 992, No. 442), entitled "An act authorizing the Commonwealth of Pennsylvania and the counties thereof to preserve, acquire or hold land for open space uses,"² prior to the effective date of this amendatory act, by the governing body of the county or governing body of the municipality in which such agricultural land is located on the basis of criteria and procedures which predate the effective date of this amendatory act: Provided, That an owner of land designated as such under the authority of the act of January 19, 1968 (1967 P.L. 992, No. 442) may withdraw such land from an agricultural security area by providing written notice of withdrawal to the county governing body or governing body of the municipality in which such land is located within 180 days of the effective date of this amendatory act.

"Commercial equine activity." The term includes the following activities where a fee is collected:

- (1) The boarding of equines.
- (2) The training of equines.
- (3) The instruction of people in handling, driving or riding equines.
- (4) The use of equines for riding or driving purposes.
- (5) The pasturing of equines.

The term does not include activity licensed under the act of December 17, 1981 (P.L. 435, No. 135)³, known as the "Race Horse Industry Reform Act."

"County board." The County Agricultural Land Preservation Board.

"County governing body." The county board of commissioners or other designated council of representatives under home rule charters.

"County planning commission." A planning commission or agency which has been designated by the county governing body to

establish and foster a comprehensive plan for land management and development within the county.

"Crops, livestock and livestock products." Include but are not limited to:

- (1) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.
- (2) Fruits, including apples, peaches, grapes, cherries and berries.
- (3) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms.
- (4) Horticultural specialties, including nursery stock ornamental shrubs, ornamental trees and flowers.
- (5) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.
- (6) Timber, wood and other wood products derived from trees.
- (7) Aquatic plants and animals and their byproducts.

"Crops unique to the area." Include, but are not limited to, crops which historically have been grown or have been grown within the last five years in the region and which are used for agricultural production in the region.

"Department." The Department of Agriculture of the Commonwealth.

"Description of the proposed area." A complete and accurate list of the name or names of the owner or owners of each parcel of land to be included in the proposed agricultural security area, the tax parcel number or account number of each parcel and the number or account number of acres (including partial acres, to the nearest thousandth) contained in each parcel. Such description shall use county tax map references for determining boundaries of each parcel, and no survey of parcels shall be required, except when an individual parcel included in the agricultural security area shall represent less than the entire amount of contiguous land contained in the property of an owner.

"Eligible counties." Counties whose easement purchase programs have been approved by the State Agricultural Land Preservation Board. For the purpose of annual allocations, an eligible county must have its easement purchase program approved by the State Agricultural Land Preservation Board by January 1 of the year in

which the annual allocation is made. Counties of the first class are not eligible under any circumstances.

"Eligible nonprofit entity." An entity that provides the State board or an eligible county satisfactory proof of all of the following:

(1) That the entity is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)).

(2) That the entity has experience acquiring, whether through purchase, donation or other transfer, an agricultural or other conservation easement.

"Farmland value." The price as of the valuation date for property used for normal farming operations which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.

"Fiscal year." Fiscal year of the Commonwealth.

"Fund." The Agricultural Conservation Easement Purchase Fund established by the act of May 13, 1988 (P.L. 398, No. 64), entitled "An act amending the act of June 18, 1982 (P.L. 549, No. 159), entitled 'An act providing for the administration of certain Commonwealth farmland within the Department of Agriculture,' providing for the disposition of proceeds from the sale of certain land, equipment or facilities."⁴

"Governing body." The governing body of a local government unit.

"Immediate family member." A brother, sister, son, daughter, stepson, stepdaughter, grandson, granddaughter, father or mother of the landowner.

"Joint ownership." Joint tenancy in an agricultural conservation easement purchase as the interests of the parties appear.

"Local government unit." Any city, borough, township or town or any home rule municipality, optional plan municipality, optional charter municipality or similar general purpose unit of government which may be created or authorized by statute.

"Market value." The price as of the valuation date for the highest and best use of the property which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.

"Normal farming operations." The customary and generally accepted activities, practices, and procedures that farmers adopt, use, or engage in year after year in the production and preparation for market of crops, livestock, and livestock products and in the production and harvesting of agricultural, agronomic, horticultural, silvicultural, and aquacultural crops and commodities. The term includes the storage and utilization of agricultural and food processing wastes for animal feed and the disposal of manure, other agricultural waste and food processing waste on land where the materials will improve the condition of the soil or the growth of crops or will aid in the restoration of the land for the same purposes.

"Parcel." A tract of land in its entirety which is assessed for tax purposes by one county, including any portion of that tract that may be located in a neighboring county. The county responsible for assessing an entire tract, on its own or in conjunction with either the Commonwealth or a local government unit, or both, shall be eligible to purchase agricultural conservation easements covering the entire tract.

"Planning commission." A local government planning commission or agency which has been designated by the governing body of the local government unit to establish and foster a comprehensive plan for land management and development within the local government unit.

"Secretary." The Secretary of Agriculture of the Commonwealth.

"State board." The State Agricultural Land Preservation Board.

"Viable agricultural land." Land suitable for agricultural production and which will continue to be economically feasible for such use if real estate taxes, farm use restrictions, and speculative activities are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of urban and related nonagricultural development.

1981, June 30, P.L. 128, No. 43, § 3, effective in 60 days. Amended 1988, Dec. 14, P.L. 1202, No. 149, § 1, effective in 60 days; 1990, June 22, P.L. 142, No. 57, § 1, imd. effective; 1992, April 13, P.L. 100, No. 23, § 1, imd. effective; 1994, Nov. 23, P.L. 621, No. 96, § 1, effective Jan. 1, 1995; 1994, Nov. 23, P.L. 648, No. 100, § 1, effective Jan. 1, 1995; 1998, Dec. 21, P.L. 1056, No. 138, § 1, effective in 60 days; 2001, May 30, P.L. 103, No. 14, § 1, effective in 30 days; 2005, Nov. 1, P.L. 323, No. 61, § 1, effective in 60 days [Jan. 3, 2006]; 2006, May 15, P.L. 190, No. 46, § 2, imd. effective.

¹ 35 P.S. § 6020.101 et seq.

² 32 P.S. § 5001 et seq.

³ 4 P.S. § 325.101 et seq.

⁴ 3 P.S. § 1201 et seq.

Law Review and Journal Commentaries

Agricultural land preservation: Can Pennsylvania save the family farm? 87 Dick.L.Rev. 595 (1983).
 taking? Jennifer L. Beidel, 110 Penn St. L. Rev. 163 (2005).

Pennsylvania's Right-To-Farm Law: A relief for farmers or an unconstitutional

Library References

Environmental Law ¶43, 45.
 Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 130, 135, 167, 173.

§ 906. Public hearings

(a) **Hearings.**—The governing body shall hold a public hearing relative to the proposed agricultural security area upon receipt of the reports from the advisory committee and the planning commission or upon expiration of the 45-day period as provided in section 5.¹

(b) **Place of hearing.**—The hearing shall be held at a place within the proposed area or otherwise readily accessible to the proposed area, such as a municipal building.

(c) **Notice of hearing.**—Pursuant to the act of July 3, 1986 (P.L. 388, No. 84), known as the "Sunshine Act,"² a hearing notice shall be published in a newspaper having a general circulation within the proposed area. In addition, notice shall be given in writing to those landowners who proposed modifications pursuant to section 5(c) or whose land is included in proposed modifications, and to all landowners within the proposed agricultural security area. Notice also shall be given by posting such notice in five conspicuous places within, adjacent or near to the proposed area. Such notice shall contain the following information:

(1) A statement of the time, date and place of the public hearing.

(2) A description of the proposed area, any proposed additions or deletions and any recommendations of the planning commission or advisory committee.

(3) A statement that the public hearing will be held concerning:

(i) The original proposal.

(ii) Any written amendments proposed during the review period.

(iii) Any recommendations proposed by the Agricultural Security Area Advisory Committee and the planning commission.

1981, June 30, P.L. 128, No. 43, § 6, effective in 60 days. Amended 1988, Dec. 14, P.L. 1202, No. 149, § 1, effective in 60 days.

¹ 3 P.S. § 905.

² 65 P.S. § 271 et seq.; see now, 65 Pa.C.S.A. § 701 et seq.

Pennsylvania Code References

Public hearing by local government unit on agricultural security area proposal, see 7 Pa. Code § 1381.18.

Library References

Environmental Law ¶45.
Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 135,
167, 173.

§ 907. Evaluation criteria

(a) **Factors to be considered.**—The following factors shall be considered by the planning commission, advisory committee, and at any public hearing:

(1) Land proposed for inclusion in an agricultural security area shall have soils which are conducive to agriculture. This factor will have been satisfied without further consideration if at least 50% in the aggregate of the land to be included in an agricultural security area falls into one of the following categories: land whose soils are classified in Soil Conservation Service Capability Classes I through IV, excepting IV(e); land which falls within the Soil Conservation Service classification of "unique farm land"; or land whose soils do not meet Capability Classes I through IV but which is currently in active farm use and is being maintained in accordance with the soil erosion and sedimentation plan applicable to such land.

(2) Use of land proposed for inclusion in an agricultural security area shall be compatible with local government unit comprehensive plans. Any zoning shall permit agricultural use but need not exclude other uses.

(3) The landowner may propose to include all of his land, regardless of zoning, in an agricultural security area.

(4) The land proposed for inclusion in the agricultural security area, and any additions which are proposed subsequently, shall be viable agricultural land.

(5) Additional factors to be considered are the extent and nature of farm improvements, anticipated trends in agricultural economic and technological conditions and any other matter which may be relevant.

(b) **Resource materials.**—In considering the viability factors set forth in this section, various resource materials shall be used, including, but not limited to, the following:

(1) Soil surveys of the Pennsylvania State University.

(2) Soil surveys and other information provided by the National Cooperative Soil Survey.

(3) Soil survey maps prepared by the United States Soil Conservation Service.

(4) The United States census of agricultural categories of land use classes.

(5) Any other relevant published data, maps, charts, or results of soil or land use surveys made by any county, State or Federal agency.

1981, June 30, P.L. 128, No. 43, § 7, effective in 60 days. Amended 1988, Dec. 14, P.L. 1202, No. 149, § 1, effective in 60 days; 1994, Nov. 23, P.L. 648, No. 100, § 3, effective Jan. 1, 1995.

Pennsylvania Code References

Factors to be considered by local governments, planning commissions and advisory committees in reviews of agricultural security area proposals, see 7 Pa. Code § 1381.26.

Library References

Environmental Law ⇐45.
Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 135,
167, 173.

Notes of Decisions

Construction and application 1
Expert testimony 3
Land uses 2

1. Construction and application

Instead of remanding matter to township's board of supervisors, Commonwealth Court would order that landowner's property be included in agricultural security area (ASA) under state Agricultural Area Security Law (AASL) in landowner's appeal of board's denial of request to include property in ASA; board committed multiple errors of law, no new evidence was available, three of four relevant statutory criteria were satisfied, and board made no determination that property was inappropriate for agricultural uses generally. 41 Valley Associates v. Board of Sup'rs of London Grove Tp., 382 A.2d 5, Cmwlt.2005, reargument denied, reconsideration denied, appeal granted 898 A.2d 1073, 587 Pa. 717. Zoning And Planning ⇐ 749

With respect to proceeding before state Agricultural Land Preservation Board on

proposal to purchase agricultural conservation easement, state board should consider criteria set forth in section of the agricultural area security law relating to easement purchases, and neighboring landowner should not be permitted to raise issues more properly raised at another time or in another hearing. Lenzi v. Agricultural Land Preservation Bd., 602 A.2d 396, 144 Pa.Cmwlt. 571, Cmwlt.1992, appeal denied 616 A.2d 986, 532 Pa. 666. States ⇐ 85

2. Land uses

Hearing on inclusion of land in an agricultural security area (ASA) under state Agricultural Area Security Law (AASL) should remain focused on the land as conducive for the broad class of agricultural uses and not on any specific use. 41 Valley Associates v. Board of Sup'rs of London Grove Tp., 882 A.2d 5, Cmwlt. 2005, reargument denied, reconsideration denied, appeal granted 898 A.2d 1073, 587 Pa. 717. Zoning And Planning ⇐ 279