

■ Title Policies

County Approval Required for Access Easement Over Land Burdened by Open Space Easement

A school district sought to acquire an easement, over privately-owned property on which the county possessed an open space easement, for the purpose of providing an access road to a school. After the county refused to approve the easement, the school district filed a declaratory judgment action requesting the court to declare that county approval was not required for the proposed access easement and that the proposed easement did not violate the open space easement agreement. HELD: The county's approval of the proposed access easement was required under both the Open Space Lands Act and the express language of the open space easement agreement. Ephrata Area School District v. County of Lancaster, 938 A.2d 264 (Pa. December 27, 2007).

In 2000, the Ephrata School District purchased approximately 80 acres of land in Ephrata Township, Lancaster County, to construct a public elementary school. The School District proposed primary access to the school from Market Street, a public road. However, both Ephrata Township and Ephrata Borough objected to the use of Market Street, citing serious traffic and safety concerns. The Township and Borough instead recommended primary access through Hummer Road and a secondary access through Meadow Valley Road. In response, the School District entered into an agreement to purchase a 50-foot easement totaling 1.4 acres from David and Irma Lauver for the purpose of constructing a secondary access road to the new school from Meadow Valley Road. However, School District faced a significant problem -- the Lauver property was subject to an open space conservation easement granted in 1984 to the Lancaster County Agricultural Preserve Board, a county agency.

The School District requested the County to approve the School District's acquisition of an access easement over the Lauvers' property, but the County refused. Thereafter, the School District filed a declaratory judgment action against the County in the Court of Common Pleas of Lancaster County requesting the Court to declare that the County's approval was not required for the School District's acquisition of an easement over the Lauvers' property and that, in any event, the proposed easement did not violate the County's open space easement agreement.

The trial court granted the County's cross-motion for summary judgment and held that, under §5011 of the Open Space Lands Act, 32 P.S. §5001 *et seq.*, the County's approval was required. On appeal, the Pennsylvania Commonwealth Court, in a divided opinion, reversed the trial court's ruling, holding that the County's approval was *not* required because it did not hold fee simple title to, but merely an easement over, the Lauver property. The

County then appealed to the Pennsylvania Supreme Court.

On appeal, the Pennsylvania Supreme Court reversed the Commonwealth Court's decision and held that the County's approval was required in order for the School District to acquire an easement over the Lauver property. The Supreme Court began its analysis by reviewing §5011 of the Open Space Lands Act which provides in pertinent part:

“(a) The ownership by the Commonwealth or a local government unit of an open space property interest shall not preclude the acquisition, by lease, purchase, or eminent domain, and use of rights of way or underground storage rights in such property by a public utility or other body entitled to exercise power of eminent domain. . . . *In the case of an acquisition from a local government unit by a body other than a public utility, such acquisition shall occur only if the governing body, after public hearing with notice to the public, shall approve such acquisition.*” (emphasis added).

The School District argued that, under §5011, government approval is required only when the *government unit* is conveying the easement. Because the land in question is privately owned, the School District contended that it was seeking to acquire right-of-way *from a private party*, and not the County, and therefore the County's approval was not required under §5011.

Noting that the question was one of “first impression” in Pennsylvania, the Pennsylvania Supreme Court rejected the School District's arguments. The Court stated that §5011 talks in terms of “open space property interests”, and not fee simple ownership. In light of the language and structure of §5011, the Court held that the “acquisition” of interest being spoken of “plainly is not the acquisition of a property interest from a fee simple owner, but the acquisition of an interest affecting the open space property inter-

est already owned by the governmental entity.” According to the Court, this construction of §5011 “makes perfect sense since the statute is concerned with preserving existing, governmentally owned open space interests.” Accordingly, the Court agreed with the trial court's holding that the “plain language” of §5011 requires approval of the local governmental unit, the County in this instance, before the School District can acquire an easement over the Lauvers' property.

The Court also rejected the School District's argument that the proposed access easement did not violate the County's open space easement agreement. Under that agreement, the use of the Lauvers' property was “restricted to agricultural and directly associated uses” as defined in the agreement. The agreement then listed seven specific, agricultural-type uses which were permitted. The agreement also contained a “catch-all” provision which provided that “other similar uses may be considered upon written request to the Lancaster County Agricultural Preservation Board”. The Court stated that there was “no question” that the School District's proposed easement was not an “agricultural or directly associated use”. At best, the School District's proposed use -- an access road to a school -- can only be considered under the “catch-all” provision of the agreement which, in any event, requires the approval of the Lancaster County Agricultural Preservation Board. Consequently, the Court held that the School District was required to obtain the County's approval under *both* §5011 and the express language of the open space easement agreement.

This case highlights the challenges facing title agents and underwriters who are requested to insure access or other easements over land encumbered by open space conservation or land preservation easements. ■

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