Conservation Easements in Court

A Review of Conflicts and Litigation Outcomes in Pennsylvania

A review of Pennsylvania judicial decisions reveals that conservation easement holders and the conservation values they uphold prevail when a dispute leads to litigation. Courts respect the text of easement documents and their conservation purposes. This guide reviews eleven cases where the interpretation or enforcement of a conservation easement was at the center of litigation.

Introduction

Across Pennsylvania, hundreds of thousands of acres of land are encumbered by conservation easements. Each easement's granting document sets forth conservation objectives and restrictions to protect natural or scenic values particular to the eased property. When a landowner wishes to undertake activities contrary to the conservation objectives and restrictions, conflicts can arise. While easement holders have interest in resolving disputes amicably, legal action is sometimes the only route to a resolution.

A review of Pennsylvania judicial decisions reveals that conservation easement holders and the conservation values they uphold generally prevail in the end when a dispute regarding interpretation or enforcement leads to litigation. If structures have been built in violation of an easement, courts can and do order their demolition at the violator's expense. If parties enter an agreement in violation of an easement, the courts will vacate that agreement. In many cases, the courts order the violator to pay the easement holder's attorney fees and costs incurred in enforcing the easement.

In preparing this report, the authors identified eleven instances where conflicts concerning the interpretation or violation of a conservation easement led to litigation in Pennsylvania courts:

- Four cases were initiated by landowners after an easement holder informed them a certain land use was prohibited by the conservation easement encumbering their property.
- Five cases were initiated by an easement holder upon learning of a proposed or ongoing violation of the conservation easement encumbering the property.
- One case was initiated by the local district attorney as a criminal matter.
- One case was initiated by a neighboring property owner.

From the outcomes of these cases, we learn that in every instance the language of the easement document is central

to the court's analysis. In Pennsylvania, the courts interpret conservation easement provisions following the rules for interpretation of a contract. This means that plain language in the written recorded document controls. Further, per Pennsylvania's Conservation and Preservation Easements Act (Act 29 of 2001), any ambiguity in the restrictive language is resolved in favor of the conservation objectives of the easement and conservation purposes of the Act.[1] The outcomes of these cases demonstrate a clear pattern of favorable outcomes for conservation easement holders.

Detailed descriptions of each of the cases reviewed are provided below in chronological order from the date of final resolution.

Natale v. Schwartz [2]

In *Natale*, the easement holder filed suit against the landowner after learning the landowner obtained building permits to construct a home on the encumbered parcel. The trial court ruled in favor of the landowner by denying the easement holder's request for an injunction and the landowner constructed the house. Subsequently though, on appeal the Superior Court reversed the trial court's decision, permanently prohibiting use of the parcel for residential purposes and requiring the landowner to pay the cost of demolishing the home.

Detail

The Natales purchased a property subject to a conservation easement in 1989. The conservation easement held by the French and Pickering Creeks Conservation Trust stated that:

> [t]he property shall be restricted to farming or to use as a wildlife sanctuary or nature conservation area, and for study of natural history. No buildings or structures shall be placed thereon, other than small buildings or structures accessory to such uses and for the exclusive use of the property.

Months after purchasing the property, the Natales obtained a building permit from the Township to construct a house. The Trust subsequently initiated a lawsuit in Chester County Court of Common Pleas to obtain an injunction and prevent construction of the house. The County Court initially rejected the request for an injunction, and the Trust appealed to the Pennsylvania Superior Court. Not waiting for the Superior Court decision, the Natales built a 4900 square foot farmhouse on the property.

In 1993, the Superior Court reversed the lower court decision and ruled the easement would be enforced as written. On remand back to the county court, an order was entered in 1996 permanently enjoining the Natales from using the property for residential purposes and requiring that the house already constructed be removed within six months. In 1998, the Common Pleas Court awarded the Trust $100,000 in damages to fund removal of the house. When the Natales failed to remove the house on their own, the Trust obtained a demolition permit from East Vincent Township. Upon notice that the demolition permit had been issued, the Natales filed a petition for a stay, but the Court of Common pleas denied the petition. The Trust ultimately took action and demolished the house and its contents.

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[1] As discussed below in the description of *Naylor*, this favorable standard has been called into question for conservation easements recorded prior to the effective date of the Conservation and Preservation Easements Act.

[2] French and Pickering Creeks Conservation Trust, Inc. and Lester Schwartz v. Augustine Natale, Kathleen Natale, Ronald Natale and Janet Natale, Court of Common Pleas of Chester County, Civil Division No. 89-09574 (Oct. 5, 1993); French and Pickering Creeks v. Natale, 638 A.2d 273 (Pa. Super. 1993); Natale v. Schwartz, 1999 U.S. Dist. LEXIS 18933 (Pa. E.D. 1999); In re Natale, 280 Fed. Appx. 227 (3rd Cir. 2008); In re Natale, 237 B.R. 865 (Pa. E.D. 1999) (affirmed by the District Court and Third Circuit); Natale v. Schwartz, 151 F. Supp. 2d 563 (Pa. E.D. 2001).

Before the Trust could be reimbursed for its $30,000 demolition expense, the Natales filed for Chapter 13 bankruptcy protection. The Bankruptcy Court found that the mortgage obtained for construction of the home took priority over the Trust's damages for demolition of the home because the mortgage was recorded prior to the court order granting the Trust damages.

The Natales filed suit against the Trust in federal court alleging civil rights claims and violations of due process rights for deprivation of their personal property, their water well, electricity, and growing wheat crop, among other claims against the Trust for demolishing the house. The Trust generally argued they were just carrying out the order issued by the state court. The Natales argued, in part, that the underlying state court action was pursued with malice, not because the Trust wanted to preserve the character of the land, but instead because they did not like the Natales and wished to cause them harm. Ultimately, in 2001 the Federal Eastern District Court dismissed all the Natales' claims in summary judgment, ruling in favor of the Trust.

Lancaster Farmland Trust v. Petersheim [3]

In *Lancaster Farmland Trust*, the easement holder filed suit against the landowner who had subdivided their parcel and started constructing a residence, barn, shop, and associated stormwater infrastructure. After three years of litigation, the parties executed a settlement agreement whereby the landowner agreed to remove all violating structures, restore the property to agricultural use, execute a revised conservation easement, and pay for the easement holder's attorney fees and costs.

Detail

As alleged in the Complaint filed with the Lancaster County Court, in 1990 the Lancaster Farmland Trust accepted a donated conservation easement restricting the use of a farm in Lancaster County for "agricultural and directedly associated uses." As stated in the grant of easement, the easement's purpose is to ensure that the farm will "be retained forever in its agricultural and open space condition and to prevent any use that will impair [those values on] the Property." The easement specifically restricts the use of the farm to "agricultural and directly associated uses." Between 2000 and 2001, the farm subject to the conservation easement was transferred to the King family. Subsequently, the Kings leased the farm to Jacob Petersheim for agricultural purposes. Around 2006, Petersheim proposed purchasing a tract of the farm from the Kings. The Kings inquired with the Trust regarding whether the farm could be subdivided into two parcels. The Trust conditionally agreed to a subdivision but required an amended conservation easement. In 2007 the Trust prepared a draft amended easement, but never received a response from the Kings so assumed the subdivision idea was abandoned.

In 2008, however, the Trust became aware that a 10-acre parcel was subdivided from the property and sold to Petersheim. Approximately 17% of that parcel covered by the easement was to be used for the purposes of constructing new buildings and a required stormwater basin and berm. Petersheim had constructed a 3100 square foot residence and was in the process of constructing a 1700 square foot horse/carriage barn and a 5844 square foot industrial/commercial facility (to construct and sell prefabricated horse barns) with a 21,000 square foot macadam driveway. Although only approximately 3 acres of

[3] Lancaster Farmland Trust v. Jacob Petersheim and Naomi Petersheim, Lancaster County Court of Common Pleas, Case No. CI-09-02326 (Consent Decree entered Feb. 22, 2012).

the parcel were now used for agricultural purposes, no efforts were made by Petersheim or the Kings to contact the Trust.

After notifying the parties of easement violations and attempting to find a resolution, in 2009 the Trust filed suit for trespass and a preliminary and permanent injunction prohibiting use or occupancy of the facilities and enjoining any further work on the property. Ultimately, in 2012 the parties to the lawsuit executed a consent decree with the Court (a settlement agreement) which required Petersheim to remove the structures in violation of the easement and convert over 20,000 square feet of gravel back into agricultural use within 120 days. (Petersheim was allowed to retain the residential house constructed on the property after the Trust's Board determined that if Petersheim had sought approval, it would have permitted construction of the dwelling because it conformed with the easement.) All restoration of the property was to be conducted at Petersheim's sole expense, and he was required to execute a new conservation easement prohibiting any further subdivision.

Petersheim failed to meet the deadline for structure removal and restoration. He was found in contempt of court twice (and faced jail time) before finally removing the structures and restoring the land to the Trust's satisfaction.

In addition to the expense of structure removal and restoration, Petersheim was required to pay $71,077 to the Trust for attorney fees and costs incurred in enforcing the easement.

Northampton Twp. v. Parsons [4]

In *Northampton Township*, an easement holder filed suit against a landowner after the landowner built a pole barn on a portion of the parcel subject to open space restrictions. The court ultimately ruled in favor of the easement holder and required the landowner to dismantle and remove the pole barn at their own expense.

Detail

In 2000, Northampton Township purchased two lots (totaling approximately 50 acres) funded in part through the Bucks County Municipal Open Space Program. As a condition of receiving county funding, the Township entered into a Declaration of Covenants, Conditions and Restrictions which provided the property was to be maintained for "wildlife refuge, sanctuary, open space, agricultural, recreational, historical, cultural, or natural resource conservation purposes." In 2005, Northampton Township sold the property to Parsons, subject to the recorded restrictions, but the Township agreed to seek a modification of the Declaration. However, their requested modification was ultimately denied by the County. Subsequently, in 2008 the Township received a report that a two-story 14,000 square foot pole barn was under construction in the restricted "open space" area of the property. When Parson did not cease construction following a notice of violation, the Township filed suit for violating the Declaration of Covenants, Conditions, and Restrictions and a claim of damages for failure to comply with the local construction codes and permitting requirements.

The trial court found that Parsons believed this type of recreational structure would be permitted, and he chose to build the approximately $1 million structure on the preserved land because an existing horse barn was already there and they matched in height. Parsons testified that "he believed under his open space covenant, the basketball facility was a 'recreational facility' and that he was entitled to build a recreational facility in the open space." The Bucks County Open Space Coordinator testified that the program is built on the concept that "once the land is

[4] Northampton Twp. v. Parsons, 2010 Pa. Dist. & Cnty. Dec. LEXIS 607, Bucks County Court of Common Pleas No. 08-12048 (2010); (Reversed by Northampton Township v. Parsons, 2011 Pa. Commw. Unpub. LEXIS 549* (July 12, 2011); Petition for Allowance of Appeal denied by Northampton Twp. v. Parsons, 2012 Pa. LEXIS 321 (Pa. 2012)).

preserved, it remains open with no improvements" and under the terms of the grant, the funding was provided to the Township to acquire the property for "passive recreation such as trails, passive fields, ball fields and agriculture, not to erect structures such as a basketball facility." In 2010 the trial court agreed with Parsons finding that construction did not violate the Declaration, relying on testimony that the basketball facility would be open to the community at no charge.

On appeal, however, the Commonwealth Court overturned the trial court decision finding that "[a]t the time the Open Space grant was obtained, the Township sought to preserve a 50-acre farm which consisted of vacant land, a portion of which was farmed by a local farmer" and *the construction of the pole barn contradicted the express language of the Declaration*. Since "endorsement of the Parsons' conduct would be harmful to the integrity of Open Space programs and Commonwealth land preservation goals," Commonwealth Court granted the Township's request for relief and ordered Parsons to dismantle and remove the pole barn.

Ray v. Western Pennsylvania Conservancy [5]

In *Ray*, the landowners disagreed with the easement holder's interpretation of the conservation easement's restrictive covenants. The landowners filed suit for declaratory relief, intending to confirm that the easement did not prevent them from allowing horizontal drilling for natural gas below the surface of the land, since all surface activities related to the drilling would occur on an adjacent parcel. The trial court and the Superior Court upheld the easement holder's interpretation of the easement language, which explicitly prohibited removing resources, including gas, from the property.

Detail

The Westmoreland County Court and the Pennsylvania Superior Court evaluated whether the terms of the conservation easement encumbering the Rays' land prohibited them from permitting horizontal natural gas drilling below the surface of their land from a neighboring property.

The Rays purchased the parcel subject to the conservation easement in 2006. In 2009, the Rays contacted the easement holder, the Western Pennsylvania Conservancy, advising of their intent to explore for natural gas on the conserved property and seeking confirmation that "horizontal drilling, from an adjacent property under the Conserved Property, would not violate the easement." The Western Pennsylvania Conservancy informed the Rays that the proposed drilling would violate the conservation easement restrictions. Subsequently, in 2011 the Rays filed suit for declaratory relief with the Westmoreland County Court of Common Pleas. At the close of the pleadings the parties effectively agreed on the facts of record and therefore the Rays filed a Motion for Judgment on the Pleadings. After briefing and a hearing, the trial court denied the Rays' motion finding that:

> It is the judgment of this Court that [the Rays] are not permitted to remove or extract any gas, minerals or any other similar materials from the real estate in question by drilling or any other method of removal or extraction, including but not limited to, horizontal drilling, as those activities would be violative of the [Conservation Easement] herein.

On appeal to the Superior Court, the Rays argued that the easement only applied to the surface of the property because it sought to protect conservation values "over" and

[5] Ray v. Western Pa. Conservancy, 2011 Pa. Dist. & Cnty. Dec. LEXIS 367* (Westmoreland County Court of Common Pleas 2011) (affirmed by Ray v. Western Pa. Conservancy, 2013 Pa. Super. Unpub. LEXIS 3969 (Pa. Super. 2013)).

"across" the Conserved Property and the baseline survey for the easement "catalogued only the surface features of the Conserved Property." The declaration of restrictions provision in the conservation easement, however, explicitly prohibited "drilling... or other removal of... gas... from the Real Estate." Since the language of the easement clearly and unambiguously prohibited drilling or removal of gas from the property and was not limited to prohibiting surface activities on the property, in February 2013 the Superior Court upheld the trial court's declaratory judgement that the Rays "are not permitted to remove or extract any gas, minerals or other similar materials from the real estate in question... as those activities would violate the [Conservation Easement]."

Stockport Mt. Corp., LLC v. Norcross Wildlife Foundation, Inc [6]

In *Stockport*, the landowner filed a complaint against the easement holder seeking a declaratory judgment contending that the conservation easement encumbering the property did not prohibit natural gas drilling. The court ruled in favor of the easement holder finding that the easement's prohibition on "industrial or commercial uses of any kind" clearly applied to natural gas development. The court also required the landowner to pay the easement holder's attorney fees and costs.

Detail

This is a case involving a conservation easement that did not explicitly prohibit gas and oil drilling and exploration but did prohibit activities that gas and oil drilling would require such as building structures and long-term easements. Ultimately, the court construed the easement to also prohibit gas and oil drilling and exploration.

In 2002, the parties executed a conservation easement which contained the following prohibitions:

> Prohibited Uses. The following activities and uses are expressly prohibited: a) All uses and activities in the Conservation Reserve Areas, except as permitted under Section(s) 4(m) and 5(b).... c) Industrial or commercial uses of any kind, including commercial recreation, except home occupations that do not involve more than two outside employees, and do not involve outside storage of materials or supplies, equipment or products... This is intended to also prohibit commercial structures of any kind, including any commercial communication devices, signs, or billboards... f) Depositing, dumping, abandoning, or release of any solid waste or debris, or liquid wastes or chemical substances on the property... i) Temporary housing... l) New roads, except to provide low-impact temporary access to logging.

Except as otherwise permitted for personal use and in conformance with enumerated limitations, the conservation easement also prohibited commercial mining quarrying and timber harvesting. The easement was silent regarding the ability to engage in the exploration for natural gas. The easement also reserved rights for the landowner, "including the right to engage in or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein." Between 2002 and 2007 the parties existed in "relative harmony." However, in 2007, Stockport advised Norcross of interest in leasing the property to natural gas developers. Norcross responded with a letter stating that such activities were prohibited by the conservation easement. In 2011, Stockport filed a complaint against Norcross seeking a declaratory judgment contending that the conservation easement does not prohibit

[6] Stockport Mt. Corp. LLC v. Norcross Wildlife Found., Inc., 2012 U.S. Dist. LEXIS 27433 (M.D. Pa. March 1, 2012); Stockport Mt. Corp. LLC v. Norcross Wildlife Found., Inc., 2013 U.S. Dist. LEXIS 121321 (M.D. Pa. August 27, 2013); Stockport Mt. Corp., LLC v. Norcross Wildlife Found., Inc., U.S. Dist. LEXIS 3694 (M.D. Pa. January 13, 2014).

natural gas drilling. Stockport argued the landowner had the right to engage in activities not expressly prohibited by the easement, that some commercial and industrial activities are permitted by the easement like timbering and quarrying, and the easement is ambiguous because it did not explicitly prohibit natural gas drilling. The court stated that:

> It would be unreasonable of the court to require conservation easements to enumerate every conceivable prohibited activity. Stockport's interpretation of the easement would render section 4(c) meaningless, and the ten[e]ts of Pennsylvania contract law prevent the court from construing the easement in such a way."

Relying on the objective meaning of the words in the easement, the Conservation and Preservation Easement Act of 2001, and the extrinsic evidence of the parties' intentions in entering the conservation easement agreement, the court ultimately decided that the easement indeed prohibited such activity. Specifically, the court found that section 4(c)'s prohibition on "industrial or commercial uses of any kind" clearly applied to natural gas development. The court also awarded Norcross with $184,775.66 in attorney fees and costs associated with defending the action and enforcing the conservation easement.

Commonwealth of Pennsylvania v. Topel [7]

In some circumstances, the violation of a conservation easement can lead to criminal charges. When David Topel cut down 22 mature trees on a neighboring landowner's property under conservation easement, the easement holders filed a criminal complaint and Topel was charged with criminal trespass and ordered to pay for the cost of the trees as well as sentenced to five years of probation and 100 hours of community service.

Detail

While this case is focused more on criminal trespass allegations than violation of a conservation easement, it demonstrates how easement holders may decide to enforce their interests when violations are caused by a third party. In this case, multiple property owners from the Sage Meadows and Pidock development, the Bedminster Regional Land Conservancy and Solebury Township all jointly held 36.6 acres of preserved open space land. In November 2014, Sage Meadow conducted a regular quarter-yearly inspection of the lands under conservation easement, as was done for the preceding eight years. On this occasion, though, it was discovered that a quantity of mature trees had been cut down. Some of the damaged trees still had "No Trespassing" signs attached to them. A series of digital photos were taken as evidence and reported to Solebury Township and Bedminster Land Conservancy. Court records state that:

> On or about September 2014, Topel expressed a desire to have a quantity of large trees removed from an area of land facing south and onto the victim's preserved land to improve his view from a south facing deck of his residence.

In April 2015, Solebury Township and the Bedminster Regional Land Conservancy inspected the tree damage and determined that twenty-two (22) large mature growth trees were cut down and left where they were felled. The total appraised value for the trees was $261,211.07. Around this same time, Topel contacted the property owners to admit that he cut many mature trees and to say that "he made a big mistake and wanted to make amends for his actions."

[7] Commonwealth of Pennsylvania v. David L. Topel, Criminal Docket Number: CP-09-CR-0007979-2015, Court of Common Pleas of Bucks County (Nolo Contendere Plea 2016).

In May 2015, the district attorney for Bucks County filed a criminal complaint against Topel for:

> intentionally or recklessly tamper[ing] with tangible property, to wit, a tree, of another, Bedminister Land Conservancy and Solebury Township, so as to endanger person or property.

Ultimately, in March 2016, Topel entered a plea of *nolo contendere*, meaning he accepted the conviction as though a guilty plea had been entered but did not admit guilt. Topel's sentence included five years of county probation, restitution costs paid to Solebury Township in the amount of $261,211.07, and 100 hours of community service.

Lancaster Farmland Trust v. Hostetter [8]

The easement holder brought suit against the landowners whose property was encumbered by a conservation easement after the easement holder learned about the landowners entering into an option agreement to build a pipeline across the property. The Lancaster County Court of Common Pleas ruled in favor of the easement holders finding that if the option agreement was exercised it would violate the terms of the easement.

Detail

In 2015, Robert and Mindy Hostetter purchased a 139-acre preserved farm in Martic Township, Lancaster County. Three weeks after purchasing the property, the Hostetters sold an option agreement to Transcontinental Gas Pipeline Company (Transco) for the purchase of an easement across the property for the Atlantic Sunrise Pipeline. In 2016, the Lancaster Farmland Trust, which held the conservation easement on the farm, brought suit against the Hostetters and Transco. The Trust's suit alleged breach of contract, declaratory judgment, quiet title, and tortious interference with business relations based on the Hostetters' recent irrevocable option agreement with Transco to permit the company to build a pipeline over the property.

In February 2017, the Lancaster County judge overruled Transco's preliminary objections, refusing to dismiss the case. In making this ruling, the judge determined the irrevocable option agreement created a property interest that if exercised would conflict with the conservation easement which prohibited pipelines on the property. Transco subsequently terminated the agreement with the Hostetters and in March 2017 initiated eminent domain procedures against the Hostetters and the Trust. Ultimately, the Trust and Transco negotiated a settlement and new right of way agreement. The agreed-to pipeline easement involved 1.5 acres of permanent right of way and 2.2 acres of temporary workspace on the parcel, but also included additional conservation protections for the property. In addition, Transco agreed to pay the Trust $12,470 for the right of way and almost $25,000 in legal fees.

American Freedom Oil & Gas LLC v. Audubon Society of Western PA v. Milko [9]

American Freedom Oil & Gas (AFOG) obtained oil and gas drilling rights from a landowner whose property was encumbered by a conservation easement held by the Audubon Society of Western Pennsylvania (Audubon). AFOG filed suit against Audubon upon notice that the easement

[8] Lancaster Farmland Trust v. Hostetter, 2017 Pa. Dist. & Cnty. Dec. LEXIS 1486* (Lancaster County Court of Common Pleas 2017).

[9] American Freedom Oil & Gas LLC v. Audubon Society of Western Pennsylvania v. Victor Milko, Allegheny County Court of Common Pleas, Orphans Court Division, Case No. 00601 of 2015 (Memorandum Opinion Aug. 29, 2017).

prohibited hydraulic fracturing. Audubon subsequently filed a counter claim for violating the easement. The courts ruled in favor of Audubon, ordered the sale of the gas rights null and void, and required AFOG and the landowner to pay attorney fees and costs to Audubon.

Detail

In 2006, the owners of a 130-acre tract located in Butler County executed a conservation easement with Audubon which restricted all future activities on the land, except for those certain activities expressly permitted by the easement. Victor Milko purchased the property in 2011 subject to the easement. In 2014, AFOG purchased from Milko 100% of the oil, gas, natural gas, hydrocarbon, and shale rights to the tract of land. When AFOG notified Audubon of its intent to commence horizontal drilling and hydraulic fracking for the purpose of extracting natural gas, Audubon immediately advised AFOG that the proposed activities were prohibited by the conservation easement. AFOG filed suit for declaratory judgment and Audubon filed a counterclaim for violation of the conservation easement.

After extensive litigation, the court found in favor of Audubon, confirming that the easement prohibited natural gas development and ordering the contract of sale between Milko and AFOG voided. In addition, the court found that the language of the easement provided Audubon with remedies, including seeking attorney fees, even if a violation is only "threatened" (rather than going beyond the threat stage). The court awarded Audubon with attorney fees and costs totaling $128,430.43 plus interest. In addition, the court awarded AFOG a partial award of fees ($15,000) against the landowner, Milko, on the basis that Milko warranted and agreed to defend title to the interest conveyed to AFOG and to allow AFOG "full use and enjoyment of the undivided mineral interests conveyed by the Deed." Finally, the court also entered judgment in favor of AFGO and against Milko in the amount of $105,360.24 and declared the 2014 deed between Milko and AFGO null and void.

Schwartz v. Chester County Agricultural Land Preservation Board [10]

Schwartz petitioned the Chester County Agricultural Land Preservation Board for enforcement of perceived violations of a conservation easement encumbering a neighbor's property. On appeal, the Commonwealth Court determined that neither the terms of the easement itself, the Agricultural Area Security Law, nor the Conservation and Preservation Easements Act granted a third-party like Schwartz (who was not a party to the easement) with standing to bring an enforcement action.

Detail

In 2003, the Highs executed a conservation easement on their 64.5-acre farm pursuant to the terms of the Northern Chester County Agricultural Conservation Easement Challenge Grant Program. The purpose of the program was to protect and conserve prime agricultural farmland by facilitating the purchase of easements that limit development and use of agricultural land for nonagricultural purposes. In 2009, the Highs informed the easement holder, the Chester County Agricultural Land Preservation Board, that their company, Arborganic Acres, LLP, intended to use a portion of the property to mix and process organic mulch for their farm and public sale. The Preservation Board's meeting minutes noted that "staff

[10] Schwartz v. Chester County Argic. Land Pres. Bd., Common Pleas Court of the County of Chester No. 2016-05977-CS (reversed by Schwartz v. Chester County Argic. Land Pres. Bd., 180 A.3d 510 (Pa. Cmwlth. 2018)).

would continue to monitor that the [Property] remains in compliance with the [Easement].” Subsequently, Arborganic received a composting permit from the Department of Environmental Protection and began operating an organic composting facility on 5 acres of the property. Dozens of complaints about the facility were submitted to DEP and the Preservation Board, resulting in numerous site inspections. In November 2015, Schwartz, a neighboring property owner, filed a “Formal Complaint” with the Preservation Board alleging the High Farm was being used in a manner that violated the conservation easement held by North Coventry Township, Chester County, and the Board. After further investigation, in May 2016 the Preservation Board determined that “[t]he operations taking place upon the [Property] appear to be consistent with the terms of the [Easement] in place.”

Schwartz appealed the Board’s determination to the trial court, which upheld the Board’s decision finding that the language of the easement is broad enough to include all normal farming operations and Arborganic’s use falls within the ambit of “normal farming operations” as that term is defined by the Agricultural Area Security Law. Schwartz appealed the trial court’s decision to the Commonwealth Court, which determined that Schwartz did not have a third-party right to enforce the terms of the easement and that the letter provided to Schwartz by the Preservation Board was not an adjudication appealable to the trial court. In reaching this decision, the Commonwealth Court found that neither the terms of the easement itself, the Agricultural Area Security Law, or the Conservation and Preservation Easements Act granted a third-party like Schwartz (who was not a party to the easement) with standing to bring an enforcement action. Further, the letter of the Preservation Board merely reflected “the Board’s exercise of its prosecutorial discretion” rather than an appealable adjudication. Therefore, Schwartz’s appeal was remanded back to the trial court with instructions to dismiss the case.

Natural Lands v. Marshall [11]

The easement holder filed suit against the landowner for failure to comply with restrictions in the conservation easement, particularly limits on the number of animals permitted on available pasture area. Ultimately, the court did not address the substantive merits of the claims but granted the easement holder’s requested relief on a Motion for Judgment on the Pleadings, including an injunction and costs in favor of the easement holder. The court also ordered the landowner to pay the easement holder’s costs in bringing the enforcement action.

Detail

In August 2018, Natural Lands filed suit against landowners in Chester County Court seeking injunctive relief. Natural Lands alleged that, for several years previous to the suit, the landowners kept animals on the property (variously cows, horses, goats, and chickens) without fenced pasture area sufficient to protect water resources as required by the conservation easement. The filed complaint stated that:

> The large bare areas and short sparse grass on the Steep Slope Areas of the existing fenced pasture area, caused by continued over pasturing for the last four and a half years, create run-off that carries sediment and associated nutrients and pollutants into the stream, which degrade the water quality within the streams on the Property and downstream of the Property.

The easement set forth the water resource protection objectives for the Property, stating that:

> Barnyard runoff controls and preservation of conservation cover on Steep Slopes are also

[11] Natural Lands Trust, Inc. v. Marshall, Chester County Court of Common Pleas, Civil Action No. 2018-09009-MJ (Order Granting Judgment on the Pleadings Jan. 23, 2019).

implemented to protect water resources. These measures help to protect water resources from sediment and nonpoint pollution and promote the infiltration, detention and natural filtration of precipitation and storm water to maintain the quality and quantity of ground and surface waters.

The easement also contained language limiting the number of grazing animals allowed on the property, stating that "Grazing is limited to no more than one Animal Unit per 2 acres of fenced pasture." Ultimately, the substantive questions raised by the complaint were never analyzed by the court because the landowners failed to respond to a Motion for Judgment on the Pleadings. The court ordered Natural Lands' requested relief enjoining the landowners "from maintaining two or more animals including, but not limited to, horses, cows and other livestock, in any pasture area that is not of sufficient size to comply with the requirements of the conservation easement," enjoining them from "permitting the continued over pasturing and loss of ground cover vegetation in the Easement area," requiring the landowners to "restore the vegetative cover in all pasture areas to eliminate all bare spots," and directing payment of the easement holder's costs in bringing the enforcement action.

Naylor v. Board of Supervisors of Charlestown Township and French and Pickering Creeks Conservation Trust, Inc. [12]

The landowner filed suit against the easement holder and local municipality after the easement holder informed the landowner that a conservation easement did not permit construction of a new residential building to replace a previously demolished historic home identified in the original grant of easement. The County Court ruled in favor of the Naylors, which the Commonwealth Court affirmed.

Detail

The Naylors filed suit in the Chester County Court of Common Pleas against the Charleston Township Board of Supervisors and French and Pickering Creeks Conservation Trust, Inc. after the Trust informed the Naylors that a conservation easement encumbering their 40-acre property (the former Baughman Farm) did not permit construction of a house. The complex case involved a poorly drafted grant of easement from 1986 (that did not directly address the matters in dispute), prior litigation, sale and subdivision of the eased land, conflicting communications from the Trust, and an assertion of easement enforcement rights by the Township. The County Court ultimately ruled in favor of the Naylors, finding that the easement allowed for construction of one home as a replacement for a former residence on the property, which the Commonwealth Court affirmed.

The Conservation and Preservation Easements Act provides for its retroactive application to easements recorded before its effective date (June 22, 2001) and includes a provision requiring courts to interpret ambiguous easement terms in favor of conservation purposes (the "Liberal Construction Standard"). While the Naylor Court invoked the Act to resolve questions of standing, it declined to apply the Liberal Construction Standard, holding that doing so in the expansive manner requested by the Trust would result in an unconstitutional

[12] Naylor v. Board of Supervisors of Charlestown Township and French and Pickering Creeks Conservation Trust, Inc., Chester County Court of Common Pleas, Civil Docket No. 2014-10708-MJ (Summary Judgment Granted July 2016) (affirmed by Naylor v. Bd. of Supervisors of Charlestown Twp. & French & Pickering Creeks Conservation Trust, Inc., 247 A.3d 1182 (Table) (Pa. Commw. Ct. 2021).

impairment of contract.[13] Accordingly, holders of easements recorded before the effective date of the Act should not rely on the benefit of the Liberal Construction Standard in future enforcement actions unless and until a subsequent case further clarifies the retroactivity issue.

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v. 1/3/2024

[13] When the favorable standard of the Act is not applied, the standard of review defaults to the conventional standard of interpretation for grants of easements, which is to determine the intention of the original parties to the contract "by a fair interpretation and construction of the grant [as demonstrated by] the words employed construed with reference to the attending circumstances known to the parties at the time the grant was made." Zettlemoyer v. Transcontinental Gas Pipeline Corp., 657 A.2d 920, 924 (Pa. 1995)