

**EAST PIKELAND TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

ORDINANCE No. 127

AN ORDINANCE OF THE TOWNSHIP OF EAST PIKELAND, CHESTER COUNTY, PENNSYLVANIA CREATING THE EAST PIKELAND OPEN SPACE COMMITTEE PURSUANT TO PA ACT 153 OF 1996 ALSO KNOWN AS “OPEN SPACE PRESERVATION BY LOCAL GOVERNMENTS” AND PROVIDING FOR PROCEDURES FOR REVIEWING OPEN SPACE PROPERTY INTERESTS CONSIDERED FOR ACQUISITION BY THE BOARD OF SUPERVISORS OF EAST PIKELAND TOWNSHIP

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Board of Supervisors of the Township of East Pikeland, Chester County, Commonwealth of Pennsylvania, and it is hereby enacted and ordained by its authority as follows:

ARTICLE 1. DEFINITIONS

For the purpose of this Ordinance the following definitions shall apply:

“Interest in real property.” Any right in real property, improvements thereto or water, whatsoever, including but not limited to a fee simple, easement, remainder, future interest, transferable development right (TDR), lease, license, restriction or covenant of any sort, option or contractual interest or right concerning the use of or power to transfer property.

“Open space benefits.” The benefits to the citizens of the Commonwealth and its local government units which result from the preservation or restriction of the use of selected predominantly undeveloped open space or areas, including but not limited to: (i) the protection and conservation of water resources and watersheds, by appropriate means, including but not limited to preserving the natural cover, preventing floods and soil erosion, protecting water quality and replenishing surface and ground water supplies; (ii) the protection and conservation of forests and lands being used to produce timber crops; (iii) the protection and conservation of farmland; (iv) the protection of existing or planned park, recreation or conservation sites; (v) the protection and conservation of natural or scenic resources, including but not limited to soils, beaches, streams, flood plains, steep slopes or marshes; (vi) the protection of scenic areas for public visual enjoyment from public rights of way; (vii) the preservation of sites of historic, geologic or botanic interest; (viii) the promotion of sound, cohesive, and efficient land development by preserving open spaces between communities.

“Open space property interests.” Any interest in real property acquired hereunder for the purpose of achieving open space benefits.

ARTICLE 2. ESTABLISHMENT & MEMBERSHIP

There is hereby created the East Pikeland Township Open Space Committee (“Committee”), which shall consist of a maximum of nine (9) members appointed by the Board of Supervisors of East Pikeland Township, all of whom shall be residents of the township. The nine (9) members shall include one member of the Board of Supervisors, one member of the Township Planning Commission and seven (7) residents from East Pikeland Township.

ARTICLE 3. TERMS OF OFFICE

The terms of the members shall be for three years, except as originally established herein. The original members shall be appointed to terms of office as follows:

- Three members for a term to expire December 30, 2007.
- Three members for a term to expire December 30, 2008.
- Three members for a term to expire December 30, 2009.

ARTICLE 4. VACANCIES

When a member of the Committee appointed as a member of the Board of Supervisors or Planning Commission shall no longer be a member of such board or commission, such member shall no longer continue as a member of the Committee. The Board of Supervisors shall fill vacancies in the term of membership for the unexpired term.

ARTICLE 5. OFFICERS

The members of the Committee shall elect a Chair, Vice-Chair and Secretary who shall hold office for a period of one year, said year to run with the calendar year. The Board of Supervisors shall initially appoint the Chairperson. The Secretary shall keep minutes of all of the Committee meetings and provide copies to the Board of Supervisors and the Township Secretary. All meetings will be properly advertised in accordance with statutory requirements, including but not limited to the "Sunshine Act." The Committee shall establish regular meeting dates and criteria for the calling of special meetings.

ARTICLE 6. COMPENSATION AND REIMBURSEMENT OF EXPENSES

All members of the Committee shall serve without compensation but shall be entitled to reimbursements for necessary and reasonable expenses upon the approval of the Board of Supervisors.

ARTICLE 7. POWERS AND RESPONSIBILITIES

The Committee shall have the following powers and duties:

- A. Identify, review, evaluate and rate the relative desirability of interest in real property to be acquired by the Township; establish the price the Township will pay for particular interests;

and submit recommendations to the Board of Supervisors for its consideration to acquire such interests in real property.

B. Recommend to the Board of Supervisors procedures for:

1. Reviewing open space property interests.
2. Rating the relative desirability of interests in particular interests in real property.
3. Establishing the recommended price the Township will pay for interest in real property.

C. Review of proposed ordinance provisions that relate to the protection, preservation and management of open space in the Township.

D. Coordinate with the Environmental Advisory Council, Parks and Recreation Board, Historical Commission and Planning Commission by evaluating any property being considered for active recreation or passive open space to effect program implementation.

ARTICLE 8. REPORTS AND RECOMMENDATIONS

The Committee shall submit the following information and reports to the Board of Supervisors as indicated:

A. An annual report to the Board of Supervisors no later than February 28 following the year for which the report applies, and said report to include a summary of the activities of the Committee with particular reference to the extent and adequacy of the program and its effectiveness in view of the public fund expenditures involved and the public objectives to be met.

B. Prepare and submit recommendations to the Board of Supervisors regarding the following:

1. Type of real property (open space) interest to be acquired (fee simple, conservation easement, other).
2. Type of use of real property (open space) to be considered (passive, active, public access, public view, other).
3. Management, covenants and restrictions to be considered.
4. Establishment of a program to purchase open space property interests on an installment or other deferred basis.
5. Proposed ordinance provisions that relate to the protection, preservation and management of open space in the Township.

ARTICLE 9. PROCEDURES

A. The Open Space Lands Acquisition and Preservation Act (the "Act"), as amended by Act 153 of 1996, specifically § 5007.2 of the Act, provides that: "A local government shall not

acquire interest in real property pursuant to this Act, unless that local government has established, by ordinance or resolution, the procedures for reviewing open space properties interest considered for acquisition by a local governmental unit, for rating the relative desirability of the interest in particular parcels of real estate, and for establishing the price the local government will pay."

B. The Board of Supervisors of East Pikeland Township establishes the following procedure for the protection of open space, either by purchase of development rights, securing easements, or direct acquisition:

1. The Committee shall have a representative, who need not be a member of the Committee, meet with property owners to explain the open space program and review the property owners' goals.
2. The Committee shall evaluate the property based on a priorities grid, which includes, but is not limited to the property size, potential number of homes the property could support according to the current zoning regulations, public visibility, environmental characteristics, overall viewshed quality, owner interest and potential cost. The priorities grid and review criteria will be submitted to the Board of Supervisors for approval.
3. Once the Committee identifies a property for further investigation, the Committee shall make a written recommendation to the Board of Supervisors, outlining its findings.
4. The Township Supervisors shall formally consider the recommendations of the Committee at a public meeting. If the Supervisors agree to commence the acquisition process, the Township Engineer shall be requested to evaluate the property for its development potential, using the current zoning regulations as the basis for this evaluation.
5. If such recommendations are accepted, the Supervisors shall adopt an appropriate resolution to proceed with the acquisitions process.
6. An appraisal shall be required to establish the highest and best use market value of the subject property.
7. A memorandum of understanding shall be executed between the property owners and the Township. This memorandum shall acknowledge a general understanding between the parties to acquire an open space interest in the property and the steps to be undertaken as part of this process. This memorandum shall include, but is not limited to, specifics pertaining to what property interest is to be acquired, the projected development rights, basic process by which the purchase price shall be determined.

8. If easements are being sought, a conservancy and lands trust shall assist with determining the property's market value subject to those restrictions. The difference between the property's appraised value and the market value with the restrictions or covenants shall determine the easement value.

9. If the property owners desire a second appraisal, a second appraisal may be ordered, at the expense of the property owners.

10. The property owners shall not be obligated to convey, nor shall the Township be obligated to purchase, any property rights until such time as both parties have entered into an agreement of sale specifying the terms of the acquisition.

11. The Township Solicitor shall prepare or approve the agreement of sale, which shall include the terms and conditions of the easement agreement. The necessary parties to the agreement shall be the property owners, the Township, and the entity that will hold any conservation easement. A conservancy, land trust or similar body may advise the Township with respect to any appropriate restrictions, conditions, easements or like matters with respect to the property.

12. It shall be the responsibility of the property owners to consult with their personal legal, tax or other advisors at their own expense.

13. All reasonable costs associated with the acquisition of the open space easements and/or fee interests acquired pursuant to the Act may be paid from the tax revenues generated by the additional earned income tax collected under the provisions of Ordinance No.120 as from time to time amended.

14. Exercise of the power of eminent domain in carrying out the provisions of this Act through this ordinance is not permitted.

15. Compliance with all other provisions of PA Act 153 of 1996, as amended.

C. In addition to the procedures outlined in Article 9(B) above, the following shall be reviewed and incorporated by the Committee into its procedures and/or recommendations:

1. Township Comprehensive Plan; Township Open Space, Recreation and Environmental Resources Plan; other township plans and studies related to land use and planning for the township; and the Chester County Comprehensive Land Use Plan (Landscapes); as each may be amended from time to time.
2. Recordation of each interest in real property acquired by the township in the Chester County Office of Recorder of Deeds.
3. Maintenance of records to be filed in the Township Building of the interests in real property which have been reviewed and acquired by the township.

4. Submission to the Phoenixville Area School District, in compliance with Act 153, a copy of the deed reflecting the open space property interests acquired and certified by the Chester County Recorder of Deeds.
5. Compliance with Act 153 regarding the termination or sale of open space property interests acquired under the Act through this chapter, including but not limited to: submission to the voters at the next primary, general or municipal election a question regarding the Township's desire to dispose of the open space property interest; the offer of any interest owned by the Township, that is less than a fee simple interest, to the original owner or the original owner's estate at the same price paid by the Township; if the original owner or the original owner's estate does not accept the offer within ninety days, the Township can sell the property interest at a public sale.
6. The Committee's scope is limited only to properties located within the boundaries of East Pikeland Township, and shall not consider purchasing of "interests in real property" outside of East Pikeland Township.

ARTICLE 10. MISCELLANEOUS

A. All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

B. If any sentence, clause, section or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any other remaining provisions, sentences, clauses, sections, or parts of this ordinance.

C. This Ordinance shall become effective within five (5) days after enactment.

DULY ENACTED THIS _____ DAY OF _____ 2007.

**EAST PIKELAND TOWNSHIP
BOARD OF SUPERVISORS**

Russell L. Strauss, Chairman

J. Benson Campbell, Vice Chairman

Mark W. Brooks, Member

ATTEST:

Kimberly Moretti, Township Manager