3015

Department of Agriculture, Bureau of Farmland Preservation
Attn; Douglas M Wolfgang, Director
2301 North Cameron Street
Harrisburg, PA 17110-9408

Public Comment

[Pa.B. Doc. No. 13-1441. Filed for public inspection August 2, 2013, 9:00 a.m.]

I submit the following public comment of the proposed changes for consideration and review. Secondly I will submit comment on additional changes that I hope would be considered. Third, an opinion of the ability of the law to perform as intended without abuse and the process of altering the law to address it. Forth, my perceptions of the process.

Page4/26
[43 Pa.B. 4344] prolog /summary
Private sector. This section should also recognize that the tax relief of enrolled properties is a burden shifted to those properties not eligible or enrolled into the program. What is the cumulative fiscal effect has the Law had on properties not enrolled? What percentage of tax burden is now a portion of those properties' taxes?

Page 6/26
137b.2 Definitions. [(i)]*Agricultural Reserve.*
How will the energy use be monitored? Who will be charged with monitoring energy use? What will the penalty be for not reporting energy use? What will the penalty for not administering this item? How will it be determined that a Majority is utilized on the tract? Is a majority defined as 51%? As efficiencies decrease over time will the system have to be removed?

Page 6/26
137.b.2. *Agritainment.* **(i)(ii)(iii)**
Is this related to seasonal activity only? What if one decides to develop a year round Hershey park type facility? How will any auxiliary use related to the agritainment affect the % of enrollment? (Especially, if it renders the land unusable.) ie. New buildings serving this function, parking areas etc. What percentage of the entire operation can be dedicated to agritainment? Would you use language similar to that used in the definition of *Outdoor Recreation* item (i)? If public access can be granted for profit at specific events, why would it not be possible to permit access at all times?

Page 7/26
137.b.2. *Compost.*—Who is charged with determining whether or not, **"....at least 50% by volume of which is comprised of products commonly produced on farms.** And how is this determined? This seems to imply that that 50% can be transported onto the site. Does this make this a transfer station? (An unpermitted dump?) How do you control this?

Page 8/26
137.b.2 (i)(ii)(A)(B) *Outdoor recreation*—This does not address ADA situations. I would suggest that you evaluate and possibly incorporate language from the Game Commission Hunter & Trapper Digest.

137.b.2 *Forest Reserve.*
Further clarification of this category is required. "Land....stocked by forest trees"
Define; "stocked" does this mean placed by human activity? Does this mean professionally managed? A timber management plan should be required. A minimum value of timber should be set.
Define; "forest trees". Define; "timber".
Define; "wood products".
Forest Reserve is a category that can be and is abused. In my discussions with forestry industry representatives, I was told that they would not be interested in harvesting a parcel of less than 12 acres and only if it contained almost 100% hardwood. I have attached a picture of a parcel that is enrolled in Forest Reserve. Is this the "intent" of this law?
What species qualify? (I would suggest a list) I would suggest a requirement of a forest management program and on-going management. And a written harvest plan.
With the inevitable decimation our timber industry by the Ash Borer, (projected to be within 20years) the value of this protected category will be greatly diminished. Re-evaluation and re-categorization should be on-going in regards to Forest Reserve status.

Public access in Forest Reserve:
Why isn't public access granted in this category? It is understandable to restrict access during harvesting of timber. Given the fact that this activity occurs in cycles in excess of 20 years, it is unreasonable to restrict public access during a majority of the time it takes to grow a timber crop.

Page 10/26
137.3.(b) Responsibilities of the Department.
In General, What are the consequences/penalties associated with failure to report or administer this law in part or in its entirety? Or administer it correctly, or completely, without prejudice or selective enforcement? If a violation is reported, what action is required? Can an Assessor choose to ignore a violation? Can a solicitor choose to not pursue the violation? Can the County manager or Commissioners over ride either the Assessor or the Solicitor?

Page 11/26
137b.12. Agricultural use.
In regards to "anticipated ...income" and the $2000 production requirement, there is no inflation recognized in the $2000 figure which was established in 1985. The US Inflation Calculator now converts the amount to $4,341.93 in 2013 dollars.

In regards to "anticipated...income", It is recognized that agricultural production is affected by influencers outside the control of the producer. (Diseases, weather etc.) But this does not account for poor business practices.
I would suggest eliminating this ambiguous term or at least dollar cost average the amount over a period of years. Even then, what are the reporting requirements and penalties applied for non-compliance?

Page 12/26
Eligible land
137.b.12 Ag Use/137b.13Forest reserve.

"This includes land devoted to the development and operation of an alternative energy system if a majority of the energy annually generated is utilized on the tract."

Who is charged with determining this? And how is this monitored?

Page 13/26
Preferential Assessment
(iii)4 example two - Shouldn't this read "shall not"?

Page 18/26
137b.72 (i) Who is charged with determining this? And how is this determined? Penalties?

137b.72 (c) This should change to "A county Assessor ***shall*** inventory.....

137b.72 (2) (i) Who is charged with determining this? And how is this determined? Penalties?

137b.72 (2) (c) This should change to "A county Assessor ***shall*** inventory.....

137b.77 (c) (d) Fees for recreation on tax exempt land? This should not be permitted. Especially if others might be excluded from participating due to some other arbitrary criteria.

Page 23/26
137.b.77 (c) 26 Allowing fees for recreation? How is this different on Ag Use and Forest Reserve? The focus of "use" now could potentially change based upon market demand. A municipality or private enterprise could create ball fields and charge fees etc. And building a "permanent" structure could be circumvented by mobile structures. IE an RV. Or a whole campground of them. (No taxes and lucrative income.) Golf course example: Subdivide the structures off of the parcel and enroll the course. No fees should be permitted. What other unintended consequences might arise from the implementation of this item?

In defense of my position I submit an excerpt from [31 Pa.B. 1701] This section has been edited. Italics and bold have been added.

Comment: The Legislative Committees, Representative Cappabianca and Representative Godshall took issue with the definition of "outdoor recreation" in proposed § 137b.2. .....

.....Representative Godshall further commented as follows:

. . . The owners of the land recognize the need of these youth leagues for fields and their financial inability to pay for such. As good citizens of the community, they are happy to allow such a use ***free of charge.*** Were the land to become ineligible for Clean and Green, I can assure

you that these recreational areas would no longer be made available and literally thousands of kids would be thrown out into the streets.

I request that changes be made to these proposed regulation which allow for this passive, ***and at-no-charge, use*** of Clean and Green property. To do otherwise would result in either removal of large tracts from Clean and Green, or the loss of a large number of baseball and soccer fields used by volunteer recreation organizations. I do not believe either scenario is acceptable.

Response: Although the Department disagrees with the commentators, it has revised the definition in accordance with the commentators' suggestions. Ultimately, ***the Department accedes to the interpretation of Legislators as to the intent of the act.***

(The department did not disagree with restriction on charging fees for use.) It had objected to possibility that. ".....should not entail the grading of the land, the establishment of athletic fields on the land, the erection of structures, parking areas or permanent facilities on the land or the taking of any other action that effectively eliminates the possibility the land would, at some point, be used for agricultural production."

Note that Representative Godshall does not differentiate between categories of Clean and Green property and its public use ***at-no-charge***. What has changed since September of the year 2000? I suggest that this activity be restricted or eliminated.

Sincerely,
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717-343-7484

Additional Proposed Changes

The Intent of the Law.

I believe that the intent of this law has been lost and revisions by subsequent committees have altered it to serve special interests.

During the previous revision of this law, published at **30 Pa.B. 4573 (September 2, 2000),** a comment from Sullivan County was made requesting clarification of the "intent" of the act. 137.1.(b). The decision was to eliminate the final sentence of 137.1.(b). It was not replaced. In the absence of this sentence, the act now has no specified "intent". Without "intent", there is no basis to evaluate effectiveness or need for change or enrollment. The line that was removed from 7PA. 137(a) was as follows: ***"The intent of the act is to protect the owner of enrolled land from being forced to go out of agriculture, or sell part of the land to pay taxes."*** I suggest reinstatement of this language or if it is in conflict as written then reformulate the language to comply with the original intent of this act. Open Space is not the original purpose of this act.

Further, in making decisions on whether there is a need to alter the act, the standard measure should be whether the "intent" has been materially affected. Are owners really selling their agricultural land to pay

taxes? And, would any proposed change materially affect their decision? In the absence of information on the actions of the sellers of agricultural land, no change should be made.
Also, if the "intent" is to protect the owners of "agricultural land", this would preclude the enrollment of land that is not agricultural. Local zoning should be considered in approval of enrolled land. If local zoning prohibits agricultural purposes, then the application should be rejected.

Local zoning occasionally mandates minimum lot sizes. If a parcel could not be further subdivided then the application should be rejected.

Example: The minimum lot size is 6 acres. The zoning is residential. An owner applies to enroll a ten acre parcel. Rejected the application due to the fact that, agricultural activity and further subdivision is not permitted.

Local Zoning can do as more to preserve Open Space without a redistribution of the tax base.

Circumventing Intent
Problem: Subdivision of Agricultural Land for residential or other purposes.
Example: A 200 acre farm is sold and divided into 10 acre lots. A home is built on each lot. Each lot is then enrolled in Clean & Green.
How does this serve the intent of the law? It is highly unlikely that a farm that is divided in this manner could ever be utilized as such again. Would these residential owners permit a farmer to bid on the utilization of the enrolled portion of the land? I think not. These types on developments actually encroach upon and then attempt to force farmers to accommodate their desires.

Every application should be evaluated as to whether it has the ability to serve and agricultural purpose. A committee of those who are practicing agriculture should review the parcel and estimate its "agricultural value" and its highest and best use as such. This measure should then be compared to the tax break that might be afforded to the parcel. Would a reasonably prudent farmer purchase the property on the open market for agricultural purposes? And is so at what cost? If it has no or little agricultural value then the application is rejected.

Enforceability/Consequences
Comment on the enforceability of this act follow 6 paragraphs of contributory information from the 2000 revision of this act. Although 137b.41 relates to the application process, it opens the door for discussion of other matters.

137b.41(e)

"*Comment*: The Legislative Committees suggested that proposed § 137b.41(e) should be revised to make clear the requirement of section 3(e) of the act (72 P. S. § 5490.3(e)), which prohibits a county assessor from imposing conditions or requirements for eligibility for preferential assessment other than those prescribed by the act.

IRRC also offered a comment with respect to this subsection. IRRC ***suggested the subsection be revised to include examples of the types of information a county assessor might request, and require the county assessor to conduct a "completeness review"*** of the application within 30 days of receipt.

PFB offered a comment that was similar to one offered by IRRC. The ***PFB suggested this subsection be revised to designate various types of proof that would automatically be recognized as adequate proof for establishing eligibility*** for preferential assessment under each of the land use categories. The PFB also provided recommended language to accomplish this revision.

Response: The Department believes the referenced subsection does not authorize a county assessor to impose new or different eligibility requirements for preferential assessment under the act. The subsection does, though, afford a county assessor reasonable discretion to require that a landowner demonstrate that the land described in an application for preferential assessment meets the eligibility requirements prescribed by the act.

With respect to the comments offered by IRRC and the PFB, the Department declines to provide a list of examples of the type of information a county assessor might reasonably require. It has been the experience of the Department that when it provides such a list, a county assessor might either refuse to accept any documentation that is not contained on the list, or require a specific type of document on that list ***(such as a formal forestry management plan)*** in all instances.

The Department also declines to implement IRRC's suggestion that the final-form regulations require a county assessor to conduct a ***"completeness review" of an application within 30 days of receipt of the application.*** The act imposes in section 4, a general requirement that a county assessor process applications in a timely manner. The Department believes this is sufficient to require a county assessor to move an application along through the review process, and that further regulation is not necessary. In addition, the Department does not believe it has statutory authority to impose any sanction or adverse consequences upon a county assessor who failed to meet such a deadline."

2013 Comment: Based upon my experience and limited survey of properties enrolled in **Agricultural Reserve,** most if not all owners are either oblivious of their obligation of public access or blatantly refuse to honor their commitment. Not only are their properties posted and access is denied but in some instances I was solicited to rent the property. In one instance, a parcel in excess of 150 acres is accessible to club members only and rented out as on on-going business venture. The property includes permanent structures and paving. Events take place that require a paid ticket to attend.

2012 discussions with my County Assessor and Solicitor and the position they have taken regarding enforcement and enrollment are summarized as follows:

The act is not adequately defined, in regards to specific criteria to require "reasonable" proof for enrollment.
They have concerns of requiring information for one parcel and then not another and inviting questions of preferential treatment or discrimination.
Therefore any owner requesting enrollment is approved for any category they submit.

(I would suggest that enrollment criteria be established. Some of my concerns are detailed elsewhere in this document. Forest Reserve, Agricultural Reserve, Agritainment, etc)

"Reasonable restrictions" are accepted without comment. Since, What is reasonable to one may not be to another..... Another justification to avoid legal challenges and thus cost to the County.

(I would suggest that if the "reasonable restriction" on Agricultural Reserve is enforceable upon the visiting public then the owner should be subject to the same restriction(s). The owner may quickly change their view on what is reasonable.)

(I would suggest that "reasonable restriction" be defined.)

Enforcement of the Act has no teeth. The penalty of a $100 fine is no deterrent to Owners. The County is unwilling to pursue a violator due to the effort and cost that would result in a $100 gain.

The County is not willing to incur the cost of a legal battle to set precedent.

(I would suggest that meaningful penalties be established to gain compliance of this act. I would suggest that a tier system be established. First, a warning. Second, a one year rollback plus costs incurred by the County. Third, a five year rollback plus costs. Forth, dis-enroll the property with Seven year rollback. Plus costs)

Upon supplementing the act with reasonable criteria, an effort should be made to ensure that those charged with enforcing this act do so. I suggest a punitive system be established to require enforcement of this Act. Without such a requirement, those who benefit are further enriched at the expense of those who are funding them. I suggest a system of reporting abuse be administered through the department.

Agricultural Reserve Identification

It is virtually impossible to identify property enrolled in this category. It requires a vist to the County Seat. County records available to the public do not specifically identify the category of Clean and Green that has been granted. Thus it requires assistance by the staff to identify the coding. I suggest that the department maintain an easily accessible and searchable record of all Agricultural Reserve properties so that they can effectively be accessed by the public.

Rollback
A seven year rollback is not enough to stop a determined developer. I suggest that this be extended.

Misc.
Condo and Townhome developments
Is it possible for these types of developments to enroll their "common area" into the program? If so, that does not serve the intent of the act. I would suggest a clarification of the item.

Public access Problem
Example: A captured parcel enrolled in Agricultural Reserve has a deeded right of way (ROW) through a parcel not enrolled in Agricultural Reserve. The un-enrolled parcel is posted and the owner denies the public the right to cross his property over the ROW to gain access.

This effectively restricts public access. Is this problem resolved in somewhere else, or if not, what can be done to address this here? If not here, where and how?

Related Example:
A property owner divides a one foot perimeter off his property. He subsequently enrolls the property within the one foot division. He posts the surrounding one foot perimeter parcel, effectively circumventing the Act.

Conservation
I would suggest coordination with conservation easement programs to identify and preserve parcels deemed valuable to the public.

I have further comment on this revision of this Act. I was unable to locate this information until August 22nd, 2013 as Stephanie Zimmerman can attest to. To remain compliant with the September 3, deadline for public comment, I must now submit this document as is. I intend to submit a supplement to this document for your further consideration.

Sincerely,
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