

**WEST PIKELAND TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA
ORDINANCE No. 01 of 2008**

**AN ORDINANCE OF THE TOWNSHIP OF WEST PIKELAND, CHESTER COUNTY,
PENNSYLVANIA CREATING THE WEST 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 WEST PIKELAND TOWNSHIP**

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Board of Supervisors of the Township of West Pikeland (the "Township"), 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 soil, 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 all those benefits identified and intended by Act 153, 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 OF COMMITTEE

(a) There is hereby created the West Pikeland Township Open Space Advisory Committee, which shall consist of the members of the West Pikeland Land Trust ("WPLT) (the "Committee"). In the performance of the powers and duties of the Committee, as set forth below, the Committee shall establish a subcommittee, to be known as the West Pikeland Open Space Advisory Subcommittee (the "Subcommittee), whose role and purpose shall be to conduct baseline screening and evaluation of

potential open space property interests, and open space benefits therein, and other open space process-related tasks as are set forth below, as necessary for the Committee to properly advise the Township with respect to the acquisition of open space interests.

(b) The Committee and Subcommittee shall adopt rules and regulations for the conduct of their meetings. Said rules and regulations shall comply with all the applicable statutory regulations, including but not limited to the applicable provisions of the Open Meetings Law, commonly referred to as the “Sunshine Act”, and the Public Official and Employee Ethics Act. The Committee and Subcommittee shall establish regular meeting dates and criteria for the calling of special meetings.

ARTICLE 3. MEMBERSHIP AND TERMS OF OFFICE.

WPLT’s board of directors shall constitute the membership of the Committee. The terms of office of the Committee and the titles and composition of its offices and officers shall be the same as presently exist within the WPLT, as established by its Articles of Incorporation and Bylaws, as the same may be amended from time to time, with the consent and approval of the Township where required thereunder. The Subcommittee shall consist of not less than seven, nor more than nine, residents of the Township who shall be appointed by the Committee, with the consent of the Board of Supervisors, and shall operate under the control and direction of the Committee, provided that:

(a) The Subcommittee’s operations shall be conducted in accordance with all standards and requirements of this Ordinance

(b) The majority of the Subcommittee’s members shall be members of the WPLT Board of Directors;

(c) The Subcommittee’s membership shall, to the extent qualified individuals are available and willing to serve, include (i) a representative from the Township Park and Recreation Board, (ii) a representative of the Township Planning Commission, (iii) a representative of the Township Historic Commission, and (iv) up to two at-large residents of the Township who would be geographically dispersed taking into consideration the other members of Subcommittee. The designated agency representatives may either be members or non-members of WPLT, the intent of this provision being to encourage, where possible, representation from the designated agencies but not to preclude qualified members from serving both on the WPLT and on the Subcommittee.

(d) when a member of the Subcommittee appointed as a representative of any Township board or commission designated in subsection (b) shall no longer be a member of such board or commission, such member shall no longer continue as a member of the Subcommittee and the Committee shall fill vacancies in the term of membership from such board or commission, if possible as above mentioned, for the unexpired term. Where no such alternate appointment from such board or commission is qualified and available, the vacancy shall be filled by appointment by Committee after consultation with, and consent of, the Board of Supervisors as set forth below in (e), and may be filled by continuation of the member who previously sat but no longer sits on such other board or commission, in the discretion of the Committee. Otherwise, all vacancies on the Subcommittee shall be filled by appointment by the WPLT with the approval of the Board of Supervisors.

(e) With respect to any appointees other than WPLT directors, at least 30 days before making any appointment to the Subcommittee, WPLT shall consult with the Board of Supervisors and allow it an opportunity to make recommendations pertaining thereto.

ARTICLE 4. OFFICERS

The members of the Subcommittee shall elect a Chair, and may elect a Vice-Chair and Secretary and/or such other officers, as the Subcommittee shall deem necessary or desirable to the conduct of its business. Such officers shall hold office for a period of one year, said year to run with the calendar year, except that the initial appointments shall be for a term running to the end of the first full calendar year thereafter. The Committee shall initially appoint the Subcommittee Chairperson. The Subcommittee's secretary or other designated officer shall keep minutes of all of the Subcommittee meetings and provide copies to the Committee. The Subcommittee shall establish regular meeting dates and criteria for the calling of special meetings and shall adopt rules and regulations for the conduct of their meetings as set forth in Article 2 (b) above. The Subcommittee's regular meeting dates may be co-incident with the meetings of the WPLT or the Committee. The Subcommittee shall convene for such special meetings as may be called by the Committee or the Subcommittee when necessary to inform and or report matters of importance to the Committee relating to open space interests under consideration.

ARTICLE 5. COMPENSATION AND REIMBURSEMENT OF EXPENSES

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

ARTICLE 6. POWERS AND RESPONSIBILITIES

A. The Committee shall have the following powers and duties:

1. Prepare, and recommend to the Township Planning Commission, an open space plan to be made a part of the Township's Open Space, Recreation and Environmental Resources Plan, and included as a component to the Township's Comprehensive Plan, identifying parcels of real property for potential open space preservation, and, from time to time, any necessary update, supplements or amendments thereto. Nothing in this provision shall be intended to interfere with the Board of Supervisors' or the Township Planning Commission's responsibilities and authority relating to the Comprehensive Plan.

2. Identify, review, evaluate and rate the relative desirability of interest in real property open space interests 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.

3. Recommend to the Board of Supervisors procedures for:

- a. Reviewing open space property interests.
- b. Rating the relative desirability of interests in particular interests in real property.
- c. Establishing the recommended price the Township will pay for interest in real property.

4. Review proposed ordinance provisions that relate to the protection, preservation and management of open space in the Township. This power and responsibility of the Committee shall in no way effect, be an impediment to, or impose any additional obligations upon, the Township in the conduct of its business.

5. Coordinate with the 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. This power and responsibility of the Committee shall in no way effect, be an impediment to, or impose any additional obligations upon, the Township in the conduct of its business.

B. The Subcommittee shall undertake and conduct all background investigations, landowners' communications, consultations with professional advisors, and reporting thereon to the Committee as may be directed by the Committee and/or otherwise necessary for the Committee to deliberate upon and make formal recommendations to the Board of Supervisors with respect to acquisition of open space interests. This power and responsibility of the Subcommittee shall in no way effect or be an impediment to the Township engaging in the same activity.

ARTICLE 7. REPORTS AND RECOMMENDATIONS

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

1. An annual report to the Board of Supervisors no later than February 28 following the year for which the report applies, said report to include a summary of 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.

2. Prepare and submit recommendations to the Board of Supervisors, when requested by the Board of Supervisors or undertaken by the Committee on its own initiative, regarding the following:

a. Type of open space property interest(s) to be acquired (fee simple, conservation easement, transferable development rights, or other).

b. Type of use of real property (open space) to be considered (passive, active, public access, public view, other).

c. Management, covenants and restrictions to be considered.

d. Establishment of a program to purchase open space property interests on an installment or other deferred basis.

e. Proposed ordinance provisions that relate to the protection, preservation and management of open space in the Township.

B. The Subcommittee shall undertake such investigations, consultations with professional advisors, and reporting on the foregoing to the Committee, as may be directed by the Committee and/or otherwise necessary for the Committee, to consider and make formal recommendations to the Board of Supervisors with respect to the foregoing.

ARTICLE 8. 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 West Pikeland Township establishes the following procedure for the protection of open space, through the acquisition of an interest in real property:

1. Parcels or portions thereof to be considered for acquisition of open space interests shall be shown on an open space plan to be incorporated by amendment of supplement to the West Pikeland Township Open Space, Recreation, and Environmental Resources Plan. The Committee shall be responsible to recommend such plan for adaption by the Township and for recommending, from time to time, updates and/or amendments thereto.

2. With respect to any property considered for acquisition of an open space interest, the Committee shall have a representative, who may be a member of the Subcommittee, meet with open space property owners to explain the open space program and review the property owners' goals.

3. The Committee shall evaluate any property or open space interest therein, considered for acquisition, based on a priorities grid, which includes, but is not limited to the property size, natural and/or historic resources potentially protected, potential number of homes the property could support according to the current zoning regulations, public visibility, environmental characteristics, overall view shed quality, owner interest and potential cost. The priorities grid and review criteria will be submitted to the Board of Supervisors for approval, by resolution. The Committee shall recommend amendments or updates to the priorities grid, as deemed necessary or desirable by it, which shall be submitted to approval by the Board of Supervisors, from time to time.

4. Once the Committee identifies a property for potential acquisition of open space interest(s), upon such review and reporting as it receives from the Subcommittee, the

Committee shall make a written recommendation to the Board of Supervisors, outlining its findings, with reference to the priorities grid adopted under subsection (2) above.

5. The Township Supervisors may formally consider the recommendations of the Committee, and may consider such in an executive session. If the Supervisors decide to pursue the acquisition of the designated open space interest, the Township Engineer may be requested to evaluate the property for its development potential, using the current zoning regulations as the basis for this evaluation.

6. With respect to any open space interest to be acquired, an appraisal shall be required to establish the highest and best use market value of the subject property, and/or the particular open space interest(s) to be acquired.

7. A memorandum of understanding shall be executed between the property owners and the Township. This memorandum may 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 may include, but is not limited to, specific terms pertaining to the property interest to be acquired, the projected development rights and the basic process by which the purchase price shall be determined.

8. If easements are being sought, 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. Before acquiring, or binding the Township to acquire, any open space interest, the Township Board of Supervisors shall conduct a public hearing thereon to set forth the open space interest(s) to be acquired and their proposed open space benefits. Notice of such hearing shall be given by publication one time at least fourteen (14) and not more than (30) days prior to the hearing in a newspaper of general circulation for the area of the Township and written notice shall be conspicuously posted at the Township Building to notify potentially interested residents. Written notice shall also be given, at such time, to all owners of interests in the real property. At the public hearing persons and municipalities shall have an opportunity to be heard and to present relevant evidence.

12. The Township Solicitor shall prepare or approve the agreement of sale, which shall include the terms and conditions of purchase and of any associated easements, restriction and covenants. The necessary parties to the agreement shall be the property owners, the Township, and the entity that will hold any open space property interests. 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.

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

14 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. 2007-05 as from time to time amended as long as those costs are permitted under the Act.

15. Exercise of the power of eminent domain in carrying out the provisions of this Act through this ordinance is permitted.

16. The foregoing procedures may be modified or adjusted by the Board of Supervisors, as deemed necessary by its, and/or recommended by the Committee or legal counsel to the Township, if necessary or warranted in a given case to achieve a desirable open space interest acquisition, provided that in no event shall open space interests be acquired unless: (a) the open space interest is a property designated on the open space plan made part of the Township's Open Space, Recreation and Environmental Resources Plan in accordance with subsection (1) above or is located on such property; (b) the open space interest has been subject to prior review and recommendation by the Committee in accordance with subsection (3) above; (c) the Township shall have first conducted a public hearing after prior notice as provided in subsection (11) above; and (d) there has been adherence to all mandatory provisions of PA Act 153 of 1996, as amended.

C. In addition to the procedures outlined in Article 8(B) above, the following shall be reviewed and incorporated by the Township, Committee, and its Subcommittee, where applicable, into its and their procedures and/or recommendations:

1. In evaluating any open space interest for acquisition, there shall be taken into consideration the proposal's consistency with the 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. The Township shall see to the recordation of each interest in real property acquired by the Township in the Chester County Office of Recorder of Deeds.

3. The Township shall establish and maintain a repository of records of the open space interests which have been acquired by the Township.

4. The Township shall submit to the Downingtown Area School District, in compliance with Act 153, a copy of the deed reflecting the open space property interest acquired, certified by the Chester County Recorder of Deeds.

5. No open space interests acquired hereunder shall be terminated, sold or otherwise disposed except in strict accordance with the procedures set forth in Section 10(b) of Act 153, as the same may be amended, including, but not limited to: submission to the voters of the question of any such proposed disposition in accordance with the Act; and, the

requirements of Act 153 concerning the right of first refusal in the property owner when the property interest in less than a fee simple interest.

6. The Committee's scope is limited only to properties located within the boundaries of West Pikeland Township, and shall not consider purchasing of "interests in real property" outside of West Pikeland Township.

ARTICLE 9. 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.

ENACTED AND ORDAINED THIS 7TH DAY OF APRIL, 2008.

WEST PIKELAND TOWNSHIP

BOARD OF SUPERVISORS

ATTEST

ROBERT SHEMONSKY, CHARIMAN

RICHARD BRIGHT, VICE CHAIRMAN

ROBERT BARKER, MEMBER

WILLIAM CRACAS, MEMBER

HAROLD HALLMAN, III, MEMBER

