

CHAPTER VII

METHODS OF OPEN SPACE PRESERVATION

A listing and brief description of various alternative methods of land acquisition and open space preservation are presented below.

Fee Simple

Probably the most commonly used technique for acquisition is outright purchase with fee simple ownership. In recent years, counties and municipalities in New Jersey have been assisted financially in such acquisition by the State Green Acres Program and other open space programs. In many instances, these programs have provided as much as 100 percent of the cost of acquisition; however, the amount of land required for open space and the mounting land costs makes public purchase of all needed land financially impractical. Many times, acquisition costs are spread out over a period of time and debt is incurred. The advantage is that more land can be purchased immediately rather than waiting for cash build up to pay all costs outright.

Fee Simple Installment Buying/Action Agreement Plan

This is a variation of fee simple, except that full title is not taken immediately; instead, the land is obtained in blocks of predetermined acreage over a fixed number of years. This approach avoids large public expenditures in any one year while, at the same time, reserving the entire area. The landowner benefits by spreading capital gains over a period of years.

Less Than Fair Market Value

Some landowners are willing to sell their land at less than fair market value. The difference between an agreed upon sale price and the higher market value can be deducted as a charitable contribution on the seller's federal income tax. For the buyer, the advantage is the reduced cost of

acquiring land for open space.

Lease Back Agreement

This method can be an effective tool for land acquisition when the land is not needed for immediate use. An agency purchases a parcel of land and then leases it to either the original owner or someone else. This method has two benefits to the public – the partial reimbursement of the purchase price through rental fee and the reduction or elimination of maintenance costs, since the renter takes care of the property.

Lease/Rental of Private Land

Government agencies and private conservation groups may choose to lease or rent private land. This may be less desirable than ownership, but depending on circumstances, may be beneficial. If a landowner has agreed to sell, or if they have agreed to donate the land to an agency, a lease agreement can be arranged until the transaction is finalized.

Donation and Bequest

The most simple and certainly one of the least expensive methods of acquiring land is by donation. Either individuals or large corporations will donate land to a public body; usually for either philanthropic reasons or for tax incentives offered by the Internal Revenue Service. The recipient of the property is usually obligated only for legal and engineering costs. Of course, the public agency cannot be assured of receiving gifts of land nor would it have a choice of time and location. Some landowners may bequest property through their wills. These methods should be promoted whenever possible.

Pre-Emptive Purchasing

This method involves acquisition, usually by a private group, to reserve land for later public purchase when it becomes financially feasible. It could also involve acquisition in advance of actual

need in order to avoid rampant speculation. Under either approach, cost is lower to the public body than it normally would be. The more common approach is by a private tax-exempt group established for the purpose of holding land in trust for later sale to the public body. It allows for the establishment of a revolving fund so that when resold, funds can be used for purchase of other properties.

Eminent Domain

Eminent domain is the power of government to acquire private property from a landowner who is unwilling to sell. The property must be used in the interest of the public health and welfare. When it is determined that a parcel should be taken, the government agency must obtain appraisals of the fair market value of the property and any structures involved in the taking and the courts through an appointed condemnation commission to determine the price to be paid to the owner. Substantial additional costs arise from the legal fees involved in the process of condemnation. Care and forethought should be used prior of invoking acquisition of property through eminent domain.

Deed Restrictions

Restrictions guiding the future use of property may be placed in the deed at the time the property is transferred. At this time, the landowner may impose practically any restriction they consider necessary or significant. These restrictions, when placed into the deed, become binding upon future owners of that property.

Easements

Owning land is similar to owning a bundle of rights. With easements, the landowner gives away or sells some of the rights, such as the right to subdivide, to cut down trees, or to build on the property, in order to protect the natural aspects of the land. An easement enables the landowner to protect the land in perpetuity while retaining ownership. If an easement is placed on land, the owner

may continue to use the property just as in the past, as long as the use does not conflict with the terms of the easement.

Easements are created to suit the needs of the parties involved. Easements protect land and allow activities that are desirable, and can cover a few acres to several thousand acres.

There are two categories of easements, affirmative or negative. An affirmative easement is when the landowner grants limited use of this property to another. For example, Warren County may obtain an easement permitting public access across a section of privately owned property containing a section of the historic Morris Canal. A negative easement takes some of the landowner's rights to use the property away from him. An example of this type of easement is to protect a view shed by purchasing the landowner's right to build a multi-story structure. Farmland preservation is another example of a negative easement.

Stream Encroachment and Wetland Permits

Stream encroachment and wetland permits issued by New Jersey Department of Environmental Protection have helped to control adverse impacts to a stream or waterway from development. A consistent effort to enforce compliance with this permitting process enhances a municipality's ability to preserve open space along streams when incorporated into a municipal ordinance requiring stream corridor buffer zones.

Cluster Zone Permits

The cluster concept permits reduction in residential lot size from that normally required in a given zone district, while maintaining the same density or number of lots that would normally be permitted. The land remaining after the development of reduced size lots would be reserved as permanent open space, either through dedication to the municipality, the establishment of an organization or homeowner's association to ensure maintenance, or the lease or sale to a non-profit

conservancy or farmer.

The most practical use of the cluster design is when it is applied to large lot areas (one acre or more) and lots size reduction of fifty percent or more. Cluster zoning offers advantages to the developer and the municipality, as well as to the homeowner. The developer benefits through reduced road and utility improvements. The municipality saves on road and utility maintenance costs and can gain needed open space for recreation. Land less suitable for development, such as flood prone areas, steep slopes or other environmentally sensitive areas is preserved. Homeowners enjoy smaller lots to maintain convenience to recreation facilities and nearness to an open space environment.

Planned Unit Development

A Planned Unit Development or PUD can assume a variety of forms, but usually it involves the planning and development of a large tract of land on a comprehensive basis rather than the common practice of lot by lot development. Planned Unit Development usually exhibits the following characteristics: large tract development, mixed uses of land (residential, commercial land, light industry), varying residential types and densities, clustering of development and large amounts of open space.

Because of the large area involved, it is possible to provide a full range of services and utilities in a PUD. Although a higher density than normally allowed is usually involved, it is possible to create large areas of open space and to use the land in the most appropriate way based on natural or physical limitations.

Transfer of Development Rights

This concept requires that a municipality identifies areas of open space and then prohibits development with the permission of the landowners. Although the landowners lose the right to

develop the land, ownership is retained. The development rights of the landowners are then treated as a commodity, permitting the owner the opportunity to profit from the sale of what can be called the development potential of the land or development rights. This development potential is transferred to another area in the municipality where construction can occur at a higher density according to the master plan and development regulations. Only the buyer of the development rights can build at this higher density. The buyer of the development rights benefits from the increased savings attributed to higher density development. The total density of the municipality is kept the same as planned, and large open space reserves can be retained.

To date, the New Jersey Legislature has only enacted enabling legislation of this concept in Burlington County and it is cited as a demonstration act. No Transfer of Development Rights legislation is being contemplated by the Legislature elsewhere in New Jersey.

Clustering on Non-Contiguous Parcels

The Legislature amended the Municipal Land Use Law in 1996 to allow clustering on non-contiguous parcels of land. Prior to this amendment, clustering projects were required to be contiguous with one another. In effect, the new statute allows transfer of development rights within a municipality provided that the master plan and an appropriate ordinance are adopted. A landowner must own both the open space parcel and the parcel receiving the increased density that is transferred from the sending or open space parcel.

Purchase of Development Rights

The Farmland Preservation Program is funded by the NJ Department of Agriculture. Under general guidelines established at the state level, county and local agricultural retention programs are established. These county level agricultural boards, working in conjunction with municipalities, are responsible for planning, and implementing a series of land use techniques to preserve farmland and

enhance agricultural operations. One technique used is the purchase of development rights. Landowners that are in a farmland preservation program may voluntarily apply to a county agricultural development board to sell a development easement of their property.

Once a development easement has been purchased, a restriction is attached to the deed, which permanently prohibits any non-agricultural development from occurring on these lands. This deed restriction runs with the land and is binding upon every successor.

Permanently retaining lands in agricultural use will benefit all New Jersey citizens by providing a local food source and retaining agricultural tax paying, privately-owned open space. Although the farmland preservation program uses Purchase of Development Rights, the method can also be used to protect forested areas, stream corridors, scenic views or even air rights to limit the height of buildings.

Sheriff Sales

Sometimes, open space properties may become available at a public sale because of a foreclosure on a mortgage, unpaid taxes, or judgement. Properties may be acquired at a lower cost if the amount being sought is for unpaid taxes or the balance of a mortgage.

Bank Foreclosure

Sometimes, open space properties may become available at a bank foreclosure. By putting the local banks on notice, properties may be acquired at a lower cost if the amount being sought is for unpaid taxes or the balance of a mortgage.