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Audit Report

**OPEN SPACE
INITIATIVE**

As of October 2015

**Office of the Controller
County of Northampton
Pennsylvania**



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Members of the Northampton County Council
John A. Brown, County Executive
County of Northampton, Pennsylvania

We have completed an audit of the County Open Space Initiatives as of October 2015 for the years 2013, 2014 and 2015.

The Executive Summary on page 1 summarizes the audit results, while the Audit Results section provides a detailed explanation.

We acknowledge the cooperation and assistance we received from the Farmland Preservation Department. Their help was essential to the performance of this audit.

Our report was discussed with management at our exit conference on May 26, 2016. Management's response is included in the Audit Results section of the report.

Very truly yours,

Stephen J. Barron, Jr., CFE
County Controller

Anthony D. Sabino, CIA
Lead Auditor

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EXECUTIVE SUMMARY

We found that both the Farmland Preservation and the Environmentally Sensitive Lands Programs are well controlled. Multiple criteria for inclusion in the programs and the numerous levels of approval before funding can be disbursed make it very unlikely that ineligible applicants will receive County Open Space Funds. Appraisals on properties appear to be done objectively by state-certified appraisers using acceptable methods of comparing properties to determine values. Appraisals are subject to scrutiny at all levels of approval. Properties eligible for millage freezes are being handled properly and procedures are in place to ensure that acreage excluded for easements are also excluded for the purposes of the millage freeze.

Both programs appear to comply in all material respects with all State and County guidelines. In Environmentally Sensitive Lands, we were able to offer some recommendations to improve the process and ensure greater compliance with guidelines.

NOTE: In the course of our audit, we consulted with the Farmland Preservation Administrator and the Open Space Coordinator. These individuals, along with the Director of Administration and members of County Council reviewed the draft of this report and attended our exit conference. We did not, however, interview the County Executive during the fieldwork phase of the audit. Please see Appendix #1 for his comments and response to the Audit Recommendations.

INTRODUCTION

On August 6, 2015, County Council passed Resolution 71-2015 which requested that the Controller's Office "perform a dedicated internal audit of the Open Space Initiatives for CY2013, CY2014, and CY2015 to date. The audit will include, but at the discretion of the Controller, not necessarily be limited to:

- 1) Appraisal Process – determine who selects the appraiser, who in the County Administration receives and evaluates the appraisal and does the appraiser take into account any increase in the value of the subdivided acreage because of the placement of the easement on the remaining property.
- 2) Consent of Millage Freeze – determine if all the appropriate taxing districts within the district have provided the appropriate approvals.
- 3) Compliance with Applicable Laws – determine if the Open Space Initiative complies with appropriate county, state and federal laws."

It should be noted that the Open Space Initiative, as reported in the County's Comprehensive Annual Financial Report, includes County Parks, Municipal Parks, Farmland Preservation, and Environmentally Sensitive Lands. In a meeting held between our office and Councilman Hayden Phillips, the above request was refined to focus only on Farmland Preservation and Environmentally Sensitive Lands.

Background – Farmland Preservation

This area of open space preservation involves the purchase of Agricultural Easements. Easements are permanent restrictions on land use. They are placed upon a deed for a monetary reimbursement; development rights are purchased which follow the deed in perpetuity. The easement is owned either individually or jointly by the County, State and/or Municipality based on the source of funding used to make the purchase.

The original owner and any future owners of the property must abide by the easement restrictions. There are a number of state laws governing Open Space funding, including Pa. Code Chapter 138e and the Agricultural Security Area Law (Act 43 of June 30, 1981, P.L. 128, No.43). The County also has detailed, written program guidelines. At the county level, the program is governed by the 5-member Farmland Preservation Board of Directors. Members of this Board are approved by County Council. At the state level, there is a similar Board consisting of 17 members.

The program is voluntary; the County does not approach landowners. To be enrolled, the property must qualify in 15 different categories set by the state, and counties are allowed to add five additional criteria. There are minimum acreage

rules and soil quality standards. The likelihood that a farmland tract will be developed and whether the property is contiguous to other preserved land is also considered. The landowner is allowed to exclude a portion of the land for the purposes of a future homestead, but this reduces the amount of easement acreage purchased, and as a result, reduces the purchase price. This is not a subdivision, however. The parcel remains intact.

The Farmland Preservation Administrator receives applications from landowners and analyzes the properties based on the stated criteria, using GIS mapping software to related run production reports. An objective weighted ranking system has been developed that assigns numeric values to each of the criteria categories. The overall score determines the order in which property owners are approached to offer inclusion in the program. Applications and their rankings are approved by the County Farmland Board and ultimately the State Board before any funding can be disbursed. This is a lengthy process that can take a number of years to complete. As a result, Farmland Preservation has a good deal of cash on hand. As of 12/31/15, the program had approximately \$3.7 million on deposit in a cash account, \$3 million of which is earmarked for specific farmland projects.

The Farmland Preservation Program is funded through a combination of State, County and municipal moneys. The amount of money available to the County from the State annually for Farmland Preservation is dependent upon the amount of committed funds from other sources. In 2006, County taxpayers approved a non-binding referendum expressing a willingness to pay a .5 mil tax increase for Open Space funding. Due to budgetary concerns, tax money from the General Fund is not currently being used to fund the Farmland Preservation or Environmentally Sensitive Lands, but in 2014, \$1,150,000 of table games tax revenue was allocated.

The appraisal process is dictated by law. Appraisers must be state-certified and qualified to appraise a property for easement purchase. They are hired by the County, not the landowner and appraisals are performed based on an analysis of at least three comparable sales. The appraisal determines the ultimate purchase price of the easement.

Landowners may also be entitled to freeze the millage rate on the property under easement. Any County, municipality, or School District tax increase imposed following the date of the easement purchase would not be applicable to the property. To qualify for this benefit, the land must be situated in an area where all three taxing entities (County, municipality, and School District) have passed resolutions/ordinances agreeing to the freeze.

On, at minimum, a bi-annual basis, the Farmland Administrator performs reviews of properties on which an easement has been purchased to determine if the landowner remains in compliance with program regulations.

Background – Environmentally Sensitive Lands

This is a grant program available for land conservancies and municipalities interested in protecting open space in Northampton County. The County published Guidelines which detail the requirements for eligibility. To be eligible

for funding, a property must be located in an area shown on the LVPC's Natural Resources Plan map as having very high, high or medium conservation priority. Properties that do not fall into one of the three conservation categories may be considered eligible for a grant if it can be documented by a special study or other means that the property has value as an important open space or natural area.

Individual landowners cannot apply for these grants directly to the County. The County is currently working with five conservancies who perform all of the work related to the application submission and monitoring of the property following the receipt of the grant. There are two opportunities available when applying for a county grant:

- Fee Simple acquisitions – In this type of acquisition, the applicant is seeking funding to purchase the property outright. Conservancies/municipalities work with landowners and apply to local, County, State, Federal and private entities for funding opportunities. The county will provide funding up to 50% of the appraised value and/or up to \$300,000. Either the conservancy or the municipality will hold title when the purchase is complete, with language provided by the County that places restrictions on the property. Public access, for instance, is a condition of the grant.
- Conservation easements – These are similar to Agricultural Easements, however, the county does not own the easement; it only provides funding to the municipalities/conservancies to facilitate the purchase. The landowner retains ownership of the land, but with development and land use restrictions, including public access. (Public access can be limited due to such things as steep slopes or endangered environmental conditions.)

There are a number of levels of approval before county funds can be disbursed:

- The related conservancy/municipality must review the application and pass a resolution approving it for submission. The submission packet must comply with the requirements of the Guidelines and must include an appraisal by a state-certified appraiser.
- The county Open Space Coordinator must review the application packet for completeness and accuracy.
- The Lehigh Valley Planning Commission (LVPC) must review the application and rank it based on all the data they oversee.
- The application is reviewed by the 7-member Open Space Advisory Board (created via ordinance by County Council in 2004) and a presentation is made to the Board by the applicant.
- The application is then reviewed by the Open Space Committee of County Council, which will make a recommendation to the full Council.
- The full Council approves or declines (via Resolution) the allocation of County dollars.
- If another funding stream is involved, the applicant must go through whatever approval process applies. If State money is involved, the Department of Conservation and Natural Resources (DCNR) requires a second appraisal.

The approval process is lengthy, and if state funds are involved, the process can take 1 ½ to 2 years.

It should also be noted that on January 7, 2016, County Council passed Ordinance 603 which adopted the LVPC's Livable Landscape Plan as the official Open Space plan for Northampton County. This will change the focus of Open Space and some of the procedures followed by administrators, but this action was subsequent to the period under audit.

PURPOSE AND SCOPE

Our overall audit objectives were to:

- Resolve questions related to the appraisal process for properties approved for easement or purchase.
- Resolve questions related to millage freezes for County, municipal and School District taxes.
- Ensure that the Open Space Initiative complies with appropriate County, State and Federal laws.

Our scope included properties which applied for funding in 2013, 2014 and 2015. We tested at random five Agricultural Easement properties and five Environmentally Sensitive Lands properties for review.

METHODOLOGY

Some of the areas that Council requested that we review did not lend themselves to traditional audit testing. Some questions were resolved through our interviews with the Farmland Preservation Administrator and the Open Space Coordinator and through our review of written Guidelines. Following are the specific areas of review as requested by Council and our conclusions based on our research:

1. Appraisal Process

a. *Council request – determine who selects the appraiser.*

For Agricultural Easements, the Farmland Administrator selects the appraiser but there are restrictions imposed by state law. They must be state-certified for these types of appraisals, and as a result there are only two to choose from in the Southeast region. They are selected based on availability. For Environmentally Sensitive Lands, these are completed at the municipal level and are submitted with the application by the conservancy/municipality. These, however, must also be completed by a state-certified appraiser. We believe these explanations satisfy the audit request.

b. *Council request – determine who in County Administration evaluates the appraisal.*

The Farmland Administrator reviews the Agricultural Easement appraisals, but they are also reviewed by the county and state Farmland Preservation Boards. For Natural Areas and Open Space applications, the Open Space Coordinator reviews the appraisals, as does the LVPC, the Open Space Advisory Board and the Open Space Committee of County Council. If other entities such as the State are involved, they will review the

appraisal as well. We believe these explanations satisfy the audit request.

- c. *Council request – determine if the appraiser takes into account any increase in the value of the subdivided acreage because of the placement of the easement on the remaining property.*

There appears to be confusion over the meaning of this part of the request. Through a review of state law 138e.64, this appears to have come from a larger sentence which, in context, references situations where acreage is voluntarily withheld from the easement through subdivision. This law, however, applies to Agricultural Easements only, not Environmentally Sensitive Lands. And according to the Farmland Preservation Administrator, normally land is not supposed to be subdivided during the Agricultural Easement process. None of the properties selected for our random sample involved a subdivision of land, and we performed no further audit work.

2. Consent of Millage Freeze

- Council request – determine if all the appropriate taxing districts within the district have provided the appropriate approvals.*

As noted earlier, millage freezes are allowed on Agricultural Easement properties if all three applicable taxing entities have approved the freeze. Currently, the only municipalities that have not approved a freeze are Allen, Lower Nazareth and Upper Nazareth Townships. The only School District that has not approved the freeze is Nazareth. The county approved the freeze in 2006, however, current rules indicate that the portion of the parcel which includes the house is not included in the easement and therefore not eligible for the millage freeze. The county's Assessment Division has set up sub-parcel numbers within its software to tax these areas separately even though they are part of the same parcel. In our testing, we researched properties to ensure that they were eligible for the freeze and that if a house was present on the land that no freeze was applicable to that portion.

3. Compliance with Applicable Laws

- Council request – determine if the Open Space Initiative complies with appropriate County, State and Federal laws*

We were able to test this area using traditional audit techniques. We used applicable State laws and County Guidelines and reviewed a sample of properties for compliance.

Our review included an assessment of internal controls in the audited areas. Any significant findings related to internal control are included in the Audit Results section of the report.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

AUDIT RESULTS

Section A - Policies and Procedures

1. Environmentally Sensitive Lands – Documents Submitted With Application

OBSERVATION

In our sample of five Environmentally Sensitive Land properties, we noted some minor instances of non-compliance with County written Guidelines. For instance, the Guidelines state that a Phase 1 Environmental Report and a written management plan must be submitted with the application. In three instances, the conservancy was permitted to submit a written management plan after all funding was secured rather than at the time of application and in two instances, Phase 1 Environmental Reports were also permitted to be delayed until funding was secured. It should be noted that all reviewing bodies approved funding for these properties.

RECOMMENDATION

Any instances where the County's written Guidelines are not strictly followed should be documented, highlighted and forwarded to the approving bodies with the submission packet as evidence that all parties are made fully aware of these anomalies.

MANAGEMENT RESPONSE

Please see Appendix #1 for Management's response.

2. Environmentally Sensitive Lands – Project Selection Checklist

OBSERVATION

To help evaluate Environmentally Sensitive Land applications, the County uses a Project Selection Checklist, which assigns scores in various categories with a total possible score of 100 in all categories; properties are then ranked for available funding based on the total score. In reviewing our sample of five properties, we noted that Project Selection Checklist scores on approved properties seemed low. The highest score we noted was 63 and the lowest was 40. The Open Space Coordinator admitted that the current scoring method makes it difficult to achieve a high score out of 100, and we believe that this could lead an observer to believe that a property does not qualify. We did note that for all properties approved for funding which we selected for our sample, evidence existed that the property had documented characteristics which made them eligible for grants under the program Guidelines. Properties were not ranked based on the checklist scores in the period under audit because adequate funding existed for all eligible properties that applied.

RECOMMENDATION

We recommend that the checklist criteria be modified to provide a better representation of eligibility for inclusion in the program.

MANAGEMENT RESPONSE

Please see Appendix #1 for Management's response.

Office of the Controller County of Northampton
Open Space Initiative Audit Report, October 2015
Management Response

Executive Summary:

Fund Expenditure:

“Both programs appear to comply in all material respects with all State and County Guidelines (pg. 1)”

Management response

Consideration to GASB 54 and Ordinance # 526, Section VII, Spending Order of Operating Revenues and Fund Balances should be exercised when County Funds are drawn to purchase an easement. County Funds should be spent after state & municipal money is exhausted. Since the inception of the local municipal program there have been acquisitions in which County funds were utilized first despite available local funding. The Administration will review acquisitions to determine GASB 54 and Ordinance # 526 compliance.

Open Space Funding:

“ ... As of 12/31/15, the program had approximately \$3.7 million on deposit in a cash account, \$3 million of which is earmarked for specific farmland projects (pg. 3, para 2) “

Management Response:

The Farm Land Preservation Fund Balance can be broken down as follows:

The opening 2016 farmland preservation fund balance included funds dedicated to specific prior year farms, local municipal current and future year acquisitions, and 2016 applicants. A total of \$3.7 Million was available for farmland easement acquisitions. This total included:

- FY 2016 Funding included a new Budget Org, 43205 *OSI Farmland Muni Part Prog*. The balance as of 1/01/16 was \$1.16 Million. This money is dedicated to municipalities that filed a joint state/county application for farmland state funds. The money pledged is committed to participating program municipalities regardless of farm applicants to the County preservation program. Expenditure in any given year depends on local farm applicants and qualification to program.
- FY 2016 Funding included an increase in revenue from the Rte 33 TIF. The beginning balance for FY 2016 was 204K.
- FY 2016 Budget Org , 43203 *OSI Farmland Preservation* included a beginning FY 2016 balance of \$2.35 Million.
- FY 2016 the County received a total of 16 farm applicants for the County preservation program. As of 5/31/16 Fourteen (14) farms conditionally qualify for the County preservation program. The total forecasted County cost to preserve these farms is approximately \$1.2 million (+/-10%). The current fund balance is able to absorb this cost. Current estimated settlement date is 2017.

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Management Response

“Due to budgetary concerns.....pg3, para3

Management Response

This statement is inaccurate. It should state “Due to budgetary fund surplus, tax money from the General Fund is not currently being used as part of the funding mechanism for Farmland Preservation or Environmentally Sensitive Lands. Despite fund surplus in the 2015 budget, table games tax revenue of \$ 1,150,00 was allocated to budget; \$ 750,000 for Farmland Preservation and \$ 400,000 for Environmentally sensitive Lands. In 2016, the fund surplus is being utilized to support these initiatives.”

“This will change the focus of Open Space...” pg 5, para1

Management Response

This is an inaccurate conclusion and should be removed completely.

Page 8 Management Response

The Administration agrees with the audit recommendation.

Page 9 Management Response

Administration will review the checklist criteria with the Open Space coordinator to determine if changes to the checklist as per the audit recommendation is warranted.