

# Legal Challenges

It can be difficult for municipal officials to preserve farmland due to the desire to increase tax revenues through residential, commercial, and industrial development and the pressures of farmers wanting to preserve their development rights. The individual farm owner's development rights should not be weighed as heavily as the need for farmland by the community as a whole.



Agricultural Preservation Zoning has been upheld in the Pennsylvania courts. The Pennsylvania Legislature has enacted several laws which establish the protection of farmland as an important public objective. These include the Right to Farm Law, the Agricultural Security Area Law, the Differential Assessment Law, and the provisions of the Pennsylvania Municipalities Planning Code. In addition to these, the Governor of Pennsylvania has issued two Executive Orders dated May, 1994 and October, 1997, which outline the State's Agricultural Land Preservation policy. Both Executive Orders state, "It shall be the policy of the Commonwealth to protect, through the administration of all agency programs and regulations, the Commonwealth's primary agricultural land from irreversible conversion to uses that result in its loss as an environmental and essential food and fiber resource."

Probably the most important legislation is the zoning provisions of the Municipalities Planning Code. The following sections of the Planning Code delegates the power to local governments to preserve agricultural land through zoning.

1. "Zoning ordinances may permit, prohibit, regulate, restrict, and determine protection and preservation of natural resources and agricultural land and activities" (Sec 603.(b)(5)).
2. "The provisions of zoning ordinances shall be designed to preserve prime agricultural and farmland considering topography, soil type and classification, and present use" (Sec 604.(3)).

An example of the Court's ruling on Agricultural Preservation Zoning is the challenge made to the ordinance of Shrewsbury Township, York County. Shrewsbury's zoning ordinance allowed a certain number of residential subdivisions per tract, based on the size of the tract at the effective date of the ordinance. These regulations permit every landowner to subdivide at least one lot from their tract, regardless of size.

For example:

<u>Size of Parcel</u>	<u>No. Of Dwellings Permitted</u>
0-5 acres	1
5-15 acres	2
15-30 acres	3
30-60 acres	4

In it's consideration of the Shrewsbury Township Zoning Ordinance, the Commonwealth Court noted, "the community interest in protecting irreplaceable agricultural land is sufficiently strong to outweigh the limitation on the owner's ability to use his land as he wishes, particularly where no landowner is prohibited from having at least one dwelling." *Boundary Drive Associates v. Shrewsbury Township Board of Supervisors*, 507 Pa. 481, 491 A.2d 86, 90 (1985).

The Commonwealth Court has also upheld zoning ordinances that are more restrictive than the Shrewsbury regulations. The Codorus Township zoning ordinance, which allows one lot for every 50 acres of land held, was upheld by Commonwealth Court. *Codorus Township v. Rogers*, 89 Pa Commonwealth Court. 79, 492.A.2d 73 (1985).

Legal challenges are usually based on three principal grounds:

1. Legislation has not authorized local governments to use this method.
2. The zoning does not serve a public purpose and therefore deprives landowners of their property without due process.
3. The zoning is a "taking" of private property without just compensation.

Pennsylvania courts have found the Agricultural Preservation Zoning passes the first two challenges. They have not been asked to rule on the third. Other states, such as New Jersey, have faced "takings" challenges and have rejected them. *Gardner v. New Jersey Pinelands Commission*, 125 NJ. 193, 593 A.2d 251 (1991).

