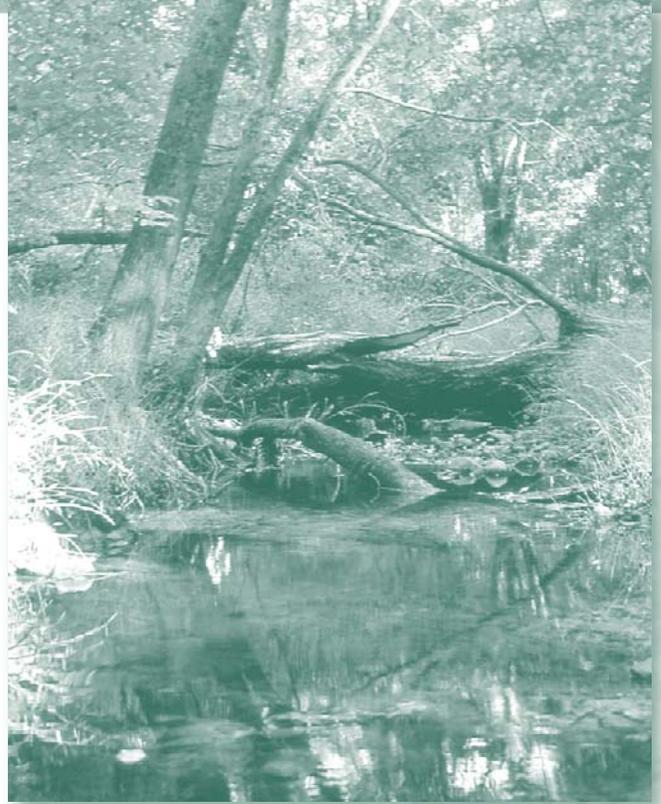


Heritage
Conservancy

Public Finance for Open Space: A Guide for Pennsylvania's Municipalities



1958 • 2008

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Preserving Our Natural and Historic Heritage



Heritage Conservancy is a full service conservation organization with over 50 years of professional experience. Our mission of “Preserving Our Natural and Historic Heritage” is achieved by working with national, regional and local partners to plan and implement sustainable initiatives for land conservation, historic preservation, natural resource protection and land stewardship.

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I. Public Finance for Open Space in Pennsylvania

Pennsylvania is depleting one of its most valuable resources—its green spaces—at an alarming rate. Since the 1950s, Pennsylvania has lost more than four million acres of farmland to development, an area the size of Connecticut and Rhode Island combined. During the 1990s, Pennsylvania ranked fifth of the 50 states in the development of open land but 48th in population growth. In the period from 1982 to 1997, Pennsylvania was sandwiched between Wyoming and South Dakota for the greatest number of acres urbanized for every new resident. In the face of these trends, local governments have increasingly turned to land acquisition and conservation easements to preserve open space.

This publication is intended to be a guide for local leaders and municipal officials who wish to raise public funds for open space. In this report, the general term open space preservation also means the protection of farmland, historic properties and natural resource areas and the provision of land for active and passive recreation.

WHY INVEST IN OPEN SPACE?

Accumulating evidence indicates that open space conservation is not an expense for a municipal government, but an investment that produces important economic benefits. Cost-of-service studies show that residential development costs more in public services, such as schools and

“THE NATION BEHAVES WELL IF IT TREATS THE NATURAL RESOURCES AS ASSETS WHICH IT MUST TURN OVER TO THE NEXT GENERATION INCREASED, AND NOT IMPAIRED IN VALUE.”

Theodore Roosevelt

infrastructure, than it generates in tax revenue, while farmland and open space result in a net revenue surplus. Open space has been shown to further improve the bottom line by boosting tourism and attracting good businesses and jobs. Open space protection is not only good for a community’s health, stability, beauty, and quality of life; it is also good financial policy.

A poll of Pennsylvania voters conducted by the Trust for Public Land in April 2002 revealed that a solid majority of state residents favor public spending for land preservation. Two-thirds of the voters opposed scaling back the state’s current environmental funding and 78 percent supported guaranteed state funding exclusively to protect and improve the environment. 94 percent identified preserving natural lands that protect water quality as the top priority. Other voter priorities included creating local parks (82 percent support), preserving land for outdoor recreation (81 percent), preserving land as fish and wildlife habitat (79 percent), and preserving land to manage growth and development (76 percent).

Open space protection is also becoming a key component of state and local smart growth strategies. Communities are choosing to protect special places before they are lost to development and to reclaim vacant and abandoned land in urban areas for parks, trails and recreation facilities. Planners are giving increasing priority to green infrastructure in deciding how and where a community should grow.

Generally, voluntary land conservation techniques—acquisition of land or a conservation easement from a willing seller or donor—are less controversial and generate more public support

than regulatory methods. Regulatory approaches are, however, effective in preventing development in sensitive areas, controlling patterns of development, and preventing costly disasters such as floods. It is important to keep in mind that a variety of tools, capital investments and regulatory, will likely be needed to meet a community's land conservation goals. Buy the best; zone the rest.

FINANCING OPEN SPACE

Pennsylvania has shown considerable leadership in funding land conservation at the state level. The State has also succeeded in providing funding to local governments to make them partners in the process.

Most municipalities find it necessary to supplement outside funding sources with funds of their own, raised through local taxes and bonds. The possibility of raising local funds for park, open space, farmland and recreation projects depends on a variety of factors, including the economic health and borrowing history of a community, and the political will of local elected leaders and the electorate.

Throughout the United States, government spending on open space has gained in popularity with voters in the last several years. In 2006, voters approved 134 ballot measures for open space nationwide, committing almost \$6.7 billion in funding for parks, farmland protection and open space conservation. In 2007, 64 successful initiatives added \$2 billion for conservation. Since 1988, voters across the United States have given their support to more than \$45.9 billion in open space funding, passing 1,587 referenda as reported by The Trust for Public Land.

“NEVER DOUBT THAT A SMALL GROUP OF THOUGHTFUL, COMMITTED CITIZENS CAN CHANGE THE WORLD. INDEED IT’S THE ONLY THING THAT EVER HAS.”

Margaret Mead

In Pennsylvania, voters have demonstrated solid and increasing support for open space, approving numerous open space tax and bond referenda, the majority of them in the southeastern part of the state. Altogether, county and municipal governments in Pennsylvania have authorized over \$1.1 billion in open space borrowings at the county and municipal levels, in addition to millions of dollars annually in open space taxes. In 2006, voters in Upper Dublin Township, Montgomery County, approved a \$30 million financing for open space acquisition, the largest such township measure to date. The largest county referendum was Montgomery County's \$150 million in 2003 with a 78% approval vote. Some townships and counties (such as Berks, Bucks, Chester, Montgomery and Northampton counties) have had more than one successful referendum.

The following sections explain the mechanics of open space finance and provide guidance on conducting a successful referendum campaign.



II. Public Financing Options for Open Space

Municipalities wishing to finance open space acquisitions with public dollars face a basic choice in financing methods:

- “Pay-as-you-go” approach in which spending uses current revenues and savings;
- “Pay-as-you-use” or borrowing approach by spending funds now and paying them back over time; or
- Combination approach—simultaneously passing measures to incur debt and to implement a dedicated tax for open space acquisition, so that revenues from the dedicated tax can help provide funds to pay off the debt.

PAY-AS-YOU-GO APPROACH

With the pay-as-you-go approach, the government spends revenues from general appropriations or from a dedicated funding source. These funding sources—which can include property taxes, earned income taxes, real estate transfer taxes, or budget surpluses—can be attractive to debt-adverse voters and public officials. “Pay-as-you-go” means year-by-year accountability and no borrowing costs. On the downside, it also means relatively small annual revenues (sometimes too small to pay for large land protection projects) and funding can be difficult to sustain as the leadership of a community changes.

PROPERTY TAX

The property tax is a familiar, if sometimes unpopular, revenue source for local governments. Property taxes are usually measured in “mills,” where 1 mill equals \$1 of tax for every \$1,000 of assessed property value. Property taxes provide a steady source of revenue regardless of changes in the economy. They are relatively easy to administer at the local level, and the burden is broadly distributed. On the downside, this revenue stream

may be sought after by numerous interests. Retired residents on fixed incomes may oppose such an increase in their cost of living. Furthermore, municipal codes limit local property tax rates, requiring voter approval if these limits are exceeded. Nevertheless, voters in many communities (e.g. Milford Township in Bucks County and Halfmoon Township in Centre County) have been willing to use a property tax increase when revenues are specifically earmarked for parks and open space protection. In addition, a number of municipalities use real estate taxes to pay for debt service on open space bonds.

EARNED INCOME TAX

The earned income tax (EIT) is an increasingly important source of revenue for local governments. The EIT may be more acceptable than the property tax in communities with a large population of retired seniors, since the tax is only applied to earned income, not to real estate assets or pensions. Pennsylvania law caps the EIT at 1.0%, and in most jurisdictions the local school district lays claim to half of this amount. Act 153 of 1996 authorizes voters to approve the levy of an increased earned income tax beyond the 1.0% limit, exclusively for the purpose of financing purchases of open space. The amount of the additional tax is set by the voters in a referendum. Voters in Elk, Highland, and East Honey Brook townships in Chester County and East Rockhill, West Rockhill, Richland, Springfield and Hilltown townships in Bucks County, among many others, have approved EITs ranging from 0.10% to 0.5%.

**“PRESERVATION COSTS MONEY.
DEVELOPMENT COSTS MORE.”**

*Bill Tinsman,
Solebury Township Supervisor, Bucks County*

REAL ESTATE TRANSFER TAX

The real estate transfer tax is levied on the sale of property, increasing with the value of the property being sold. Such costs are typically paid by the buyer. At the local level, the real estate transfer tax can create significant funding for park and open space acquisition, particularly in fast-growing communities. However, a downturn in the economy can make revenues difficult to predict. Opposition from real estate interests has proved difficult for some communities on this measure. The tax is also limited by state law to 1.0%, and if a community has already reached this level of taxation, it cannot be exceeded. Radnor Township in Delaware County increased its real estate transfer tax from 0.75% to 1.0% and dedicated the additional revenues from the increase to open space.

RESERVATION OF PARK AND RECREATION LAND

As a non-tax method, the Pennsylvania Municipalities Planning Code also permits municipalities to require the reservation of land for park and recreation purposes, or to charge a fee-in-lieu of dedications, as part of the subdivision and land development process.

BORROWING – PAY-AS-YOU-USE APPROACH

Borrowing—by issuing bonds, utilizing bond pools, or borrowing from commercial lenders—presents its own set of opportunities and drawbacks. On one hand, borrowing can provide a community with the funds and flexibility it needs up front to fund large-scale park and open space projects, while land costs are lower than they will be in the future. Long-term loans or bonds raise substantial amounts of money, enabling the community to



make important acquisitions now while land is available. Costs are spread out over a long time horizon and, therefore, are borne by both current and future beneficiaries. On the other hand, financing charges accrue and convincing voters of the merits of incurring debt can sometimes be challenging.

Debt comes in a wide variety of formats. Each carries its own particular advantages, constraints, and costs. For instance, while governments often issue bonds to raise large amounts of money, in some cases the interest rate on a bank loan may be lower than that for a bond. In general, it may be more cost-effective to finance small amounts of debt (up to \$2-3 million) through a bank loan, since the transaction costs for issuing bonds are significant. In the past, banks shied away from lending larger sums, but some municipalities have had success in borrowing up to \$5 million or more at a time from local lenders, and the ceiling for bank loans may continue to rise as banks compete with bond issuers for municipalities' business.

In addition to deciding which type of debt is most advantageous, borrowers also need to take into consideration the timing of the borrowing. A municipality that approves a large amount of debt may not need all of the funds right away. If all of the money is borrowed in a lump sum at the outset, interest will begin to accrue immediately, even if the funds are not being used. The funds will sit in an account, perhaps earning less in interest than the municipality is paying on the debt. Even if the account pays a higher rate of interest, municipalities may be restricted from realizing arbitrage gains through reinvestment of the funds. A municipality may wish to borrow in phases over time as the need arises, or seek a line of credit from a bank.

A municipality may choose to use the revenues from a dedicated open space tax to help pay off the debt. Of course, it may not be possible to match revenues from the tax precisely with payments on the debt, since debt payments are generally fixed and tax revenues tend to vary over time. Nevertheless, the paring of debt and taxation measures can help assure that a dedicated funding stream will be available to pay off all or part of the debt, which may be an important political consideration in some municipalities.

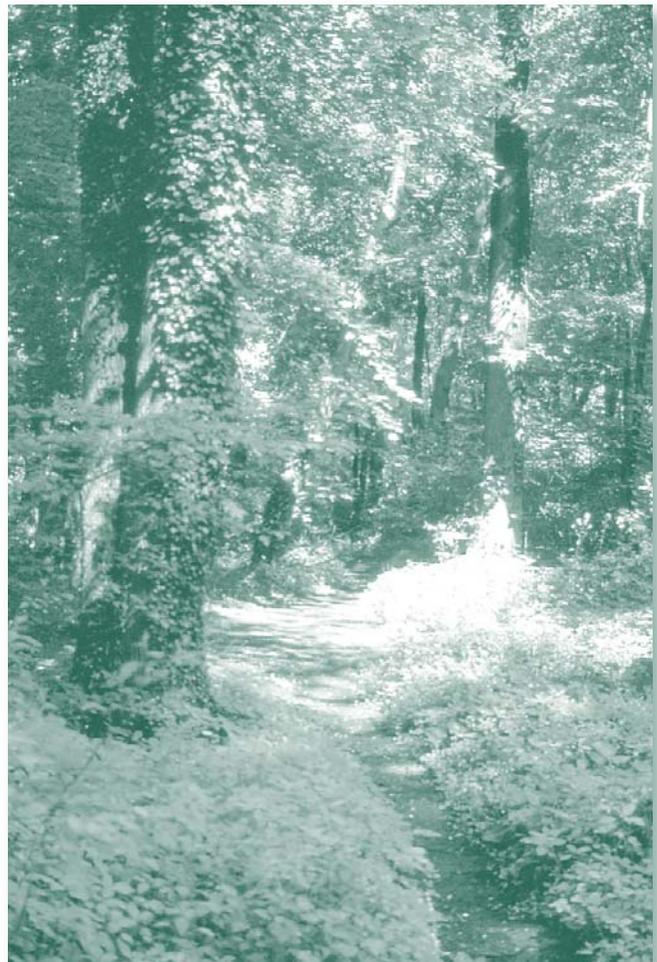
Given the complexities of this kind of financing, it makes sense to get advice from experienced lending professionals who are familiar with the range of debt instruments and strategies that are available.

Understandably, many voters are concerned that these taxes will go on forever after enacted. Some municipalities have included Sunset Provisions that state a specific date the tax will end. For example, several municipalities have specified that the tax will end in five years. While these provisions may provide comfort for taxpayers, there are several

“VOTERS RESPONDED TO THE KEY ISSUES...SPRAWL, HIGHWAY CONGESTION, AND THE EFFECTS OF RAPID GROWTH.”

Tom Kerr, Wildlands Conservancy

concerns that should be considered. With only a five year guarantee of an income stream, lenders may be unwilling to provide financing for larger levels of debt. Additionally, the rate and annual payments for borrowing \$5 million over five years will be much higher than if borrowing \$5 million over twenty years and, as such, the annual tax burden on the public may be unreasonably high to service a short term loan.



III. Pennsylvania Law on Open Space Financing

ACT 153 OF 1996

Pennsylvania's Act 153 of 1996 (which amended the Open Space Lands Act, Act 442 of 1967) gives local governments the power to acquire open space interests for the following purposes:

- Protection of water resources and watersheds
- Protection of forest for timber production
- Conservation of farmland
- Parks and recreation
- Conservation of natural and scenic resources
- Preservation of sites of historic, geologic, or botanic interest
- Promotion of sound planning through the creation of buffers between communities

Under the Act, local governments may levy a tax on real estate or earned income above existing limits in order to purchase development rights or open space lands, but only if they first receive referendum approval from the voters.

The Act also lays out the rules for acquisition of open space by local governments. Properties may be acquired in fee and must be resold within two years after restrictive easements or covenants have been placed on the land. Property interests may be purchased on an installment or deferred basis.

Land or development rights to be purchased must have been identified in a natural areas, open space, recreation, or land use plan recommended by the planning commission of the municipality in which the property is located, and that plan must first be adopted by the governing body. If the community does not have a planning commission, the process relies on a similar plan prepared by the county planning commission and adopted by the municipal governing body.

In the event that the governing body decides to dispose of acquired land or development rights, it must first obtain voter approval. These interests must then be offered to the original property owner at the original price paid by the local government. If the offer to the original property owner is not accepted within 90 days, the property interests may be sold in the manner provided by law.

Act 153 specifically prohibits municipal governments from using their power of eminent domain, which is the power to condemn land for acquisition, in carrying out the provisions of the act.

ACT 4 OF 2006

Act 4 of 2006 amended Act 153 and authorizes the three local taxing authorities (municipality, school district and county) to freeze the millage on lands whose development potential has been removed. All three must agree to participate. This is a significant incentive for property owners to preserve land and has been done in school districts in Bucks and Northampton counties.

ACT 138 OF 1998

Pennsylvania Act 138 of 1998 (an amendment to the Agricultural Area Security Law, Act 43 of 1981) authorizes local governments to purchase agricultural conservation easements to preserve farmland in established agricultural security areas. Local governments may undertake this activity on their own or in cooperation with a county or the Commonwealth as joint owners. The Act permits local governments to incur debt to purchase these easements.

**“WE COULD HAVE SAVED THE EARTH
BUT WE WERE TOO DAMNED CHEAP.”**

Kurt Vonnegut Jr.

LIMITS ON LOCAL GOVERNMENT DEBT AND TAXES

Pennsylvania statute sets limits on local government debt using the concept of a borrowing base. A local government's borrowing base is its average annual revenue over the last three years. Under the Local Government Unit Debt Act (Title 53, Part VII, Subpart B, Chapter 80) the debt limit for townships and other local governments is 250% of their borrowing base, unless the voters approve additional debt.

The Local Government Unit Debt Act also requires that, when revenue or guaranteed revenue bonds or notes are issued for the acquisition of property for open space preservation and there has been a tax or other levy imposed for that purpose, a separate sinking fund has to be established to hold those funds. Money raised for preservation does not disappear into the municipality's general fund.

In the realm of taxation, property tax rates are controlled by municipal codes in each municipality in Pennsylvania. For earned income taxes, the Local Tax Enabling Act (P.L.1257, No. 511) sets the limits for local governments. Under this act, the earned income tax rate is capped at 1.0%, unless the voters approve additional taxation.

THE REFERENDUM PROCESS

The method for placing a referendum question on a ballot is set forth in the Pennsylvania Election Code (P.L. 1333, No. 320). First, the governing body must pass an ordinance to have the question placed on the ballot. For tax measures, the ordinance is then filed with the county board of elections at least 13 Tuesdays before the next primary or general election. The question for approval of a dedicated tax must be phrased in the following words:

“Do you favor the imposition of a [describe the tax in mileage or rate] by [local government unit] to be used to [purpose]?”

For a debt referendum, the question must be submitted to the county board of elections at least 45 days in advance of the election and be phrased substantially as follows:

“Shall debt in the sum of [amount] dollars for the purpose of financing [describe purpose] be authorized to be incurred as debt approved by the electors?”

It is also necessary to publish election notices in local newspapers and legal journals beginning no earlier than three weeks before the election, but no later than two weeks before the election.

For both tax and debt referendum questions, the purpose should be described carefully so that the intent is clear to the voters and so that it authorizes all of the intended activities. An example might be “... for the acquisition of land and conservation easements for open space, recreation and the preservation of farmland.” Each referendum question must be customized to fit the situation at hand. (For model ballot language, see Appendix A.)

ENABLING LEGISLATION

The approval of a referendum question by the voters is a wonderful accomplishment, as it shows true grass roots support for open space financing. But the victory is not yet won. Approval by the voters is not binding on elected officials. A successful referendum is a necessary step if the elected officials are planning to exceed taxation or debt limits, but the approval of the voters by itself does not cause the tax to be implemented or the debt to be incurred. In all cases, the elected officials must pass an ordinance in order to enact the proposed financing. (For examples of enabling ordinances, see Appendix A.)

IV. Steps to a Successful Referendum

While voters nationwide are approving open space referenda in increasing numbers, some referenda fail. Fortunately, there are steps that can be taken to improve the chances of success: organization, education and action. (For a sample timeline that outlines steps and their approximate timing during a campaign, see Appendix B.)

PHASE I: ORGANIZATION

Perhaps the most important key to a successful campaign is organization. Remember that the referendum process is a political process. Expect the same amount of time, work, fundraising and debate as you would for any other political campaign.

First, decide which election would be best to put the referendum on the ballot. Primary elections usually have 8 to 10% turnouts; general elections pull 15 to 20%. If other tax or bond initiatives of the municipality or school district are scheduled, it may be better to postpone an open space funding question. Review historic voting patterns and results.

Time: Proponents should launch open space campaigns well in advance (at least 7 months to one year) of the vote in order to build well-rounded coalitions, gather information, survey residents, get measures on the ballot and communicate with the public.

Message: Stick to the message and focus on quality of life issues, the benefits to the community and the costs of not approving the referendum. The cost savings will resonate with the voters.



Support: A well-organized and committed group of individuals to develop and promote the referendum is essential. While every campaign is unique, successful campaigns share some of the following common elements:

- Organize a campaign committee (EAC, standing Open Space Commission, ad hoc Open Space Committee, etc.), enlist volunteers and appoint area or activity captains. Meet regularly. Appoint a campaign director and treasurer.
- Recruit a well respected “local champion” to serve as primary spokesperson.
- Prepare a time line and schedule of tasks, assign responsibilities, and stick to the timeline.

Rely on an adopted open space, natural resource, recreation and farmland preservation plan or preparing one or update an existing plan if needed. These basic issues should be addressed:

- What are the community’s preservation goals?
- How would properties be selected for protection?

- Who would administer the protection program?
- Outright purchases, purchase of easements or both?
- What are realistic acreage goals? Preservation in phases?
- How much would it cost to implement? Would there be later improvement and maintenance costs?
- What financing methods (bonds, earned income taxes, property taxes, realty transfer taxes, combinations) are available and appropriate?
- How much revenue would be generated by the different methods?
- Who would be affected most by the tax?
- How much would it cost the average household in the community?

Decide whether or not to hire professional help to assist in the campaign.

Decide what campaign costs may be involved (mailings, postage, signs, etc.) and develop a preliminary budget.

Interview key people in the community to request support.

Solicit contributions for the campaign.

Prepare and distribute a survey to determine what people want to protect and how much funding is acceptable or tolerable. Analyze the responses and use this in campaign literature.

“THE HARD POLITICAL PATH IS THE ONLY WORKABLE ROUTE TO THE SOFT ENVIRONMENTAL PATH.”

Barry Commoner, Earth Island Institute

Initiate a dialog with landowners and farmers about how the funds would be applied.

Develop participation from other supportive groups.

Discuss Pennsylvania’s Campaign Expense Reporting Law (25P.S.3241-3260b) with the municipal solicitor.

All participants in a referendum campaign, whether public officials or individual volunteers, need to comply with Pennsylvania’s Campaign Expense Reporting Law (25 P. S. §§ 3241-3260b.) Under this statute, any group or individual that accepts more than \$250 worth of contributions or spends more than \$250 to influence the outcome of a referendum must register as a Political Action Committee (PAC) with the county board of elections and submit reports documenting expenditures and contributions. Campaign materials generated by the PAC should indicate that donations are not tax deductible for income tax purposes.

Public officials and employees should be cautious about their involvement in the campaigning. A public official may legitimately endorse a referendum and help to educate the public on the issues, and municipalities frequently use public funds to pay consultants for technical advice. But the line between non-partisan research and education activities and partisan advocacy can be a blurry one. It’s often better and politically acceptable if an independent organization or group conducts the campaign. When in doubt, consult with legal counsel or the Pennsylvania Ethics Commission.

PHASE 2: EDUCATION

Public support for the referendum is critical. Voters deserve the right to know what their money will be used for and how much it will cost them. A campaign must explain clearly what is being proposed and how individuals and interest groups will benefit. Most likely, this will mean communicating several key messages through different channels and to different targeted audiences. To help with this effort, engage local organizations, such as environmental and watershed groups, municipal environmental advisory councils, planning commissions, park and recreation boards, athletic leagues, farming groups, senior citizen groups, “enlightened” builders, financial experts, local leaders, etc. Solicit support from the school board and ask them to endorse the referendum. It is imperative to keep local elected officials informed and supportive. Ask the local political parties to endorse the referendum and make sure that they acknowledge the referendum in their party handout material.

Here are some helpful ways to win voters’ support and allay their concerns:

- Hold public meetings
- Hold focus meetings for key groups (farmers, seniors, athletic groups, etc.)
- Send out newsletters and postcards timed to the election cycle
- Post information on the municipal website and/or establish a separate site
- Cultivate the press to write articles in support of the issue
- Explain conservation terminology e.g. conservation easement and “in perpetuity”
- Provide open space success stories

- Create a film or PowerPoint and stream it on your web site and use it at meetings.

Regarding published information about the referendum, at a minimum include:

- A summary explaining the measure and a statement of why it is needed
- A description or breakdown of funds targeted in the proposed measure
- A description, general or specific, of lands to be protected by the measure
- A list of influential supporters or endorsements
- Likely annual costs to the average household.
- Other relevant background information specific to the community and answers to frequently asked questions.

PHASE 3: ACTION

As stated above, treat the referendum as a political campaign. Don’t sit back or you will lose! Never underestimate the opposition, especially development groups. Anticipate and prepare to address negative campaigns. Oppositions will likely come just before Election Day, which makes it extremely difficult to counter misleading information. Activate all networks to work on this together. Share efforts across municipal lines if the neighboring community has a referendum scheduled and avoid conflicting messages.



In addition to the education-related steps discussed above, take action to distribute campaign posters/signs. An effective way to establish referendum awareness is through yard signs placed far and wide, especially at intersection of key roads.

Be strategic with mailings. Referendum mailings should be timed to the election. Visually appealing, well designed post cards are eye catching and can bring additional attention right before the election.

Activate phone banks the last weekend before the election to get out the vote and target the audience.

On Election Day, create information kiosks at the polling places to describe the issue and have friendly, knowledgeable people manning the kiosks to help answer questions.

PHASE 4: CELEBRATION, IMPLEMENTATION AND CONTINUATION

Done properly, these three steps—organization, education and action—will lead to passage of the referendum. Once the measure passes, celebrate! Acknowledge success and the efforts of those who worked on the campaign.

After a successful referendum, the governing body must enact certain ordinances to implement the funding measures.

Hold a workshop to invite farmers and property owners to apply for funding. Repeatedly reach out to them. Meet with them on an individual basis...best across their kitchen tables or in their living rooms. Have professional help for

“IT IS OUR TASK IN OUR TIME AND IN OUR GENERATION, TO HAND DOWN UNDIMINISHED TO THOSE WHO COME AFTER US, AS WAS HANDED DOWN TO US BY THOSE WHO WENT BEFORE, THE NATURAL WEALTH AND BEAUTY WHICH IS OURS.”

John F. Kennedy

the farmers and land owners in preparing funding applications. Be their advocate as they go through the appraisal/approval process.

Also, keep the public informed of your progress through press releases and events, as well as visually through signs erected on protected properties to acknowledge lands that were protected with local funding.

The Trust for Public Land’s website is a good source of information for strategies for creating a compelling message: www.tpl.org. For additional message ideas, see The Biodiversity Project’s website: www.biodiversityproject.org/messagekit.htm.



V. Case Studies

Although it's a bit difficult to track open space referenda, there have been successful referenda in at least 83 municipalities in 9 Pennsylvania counties. In many of these municipalities, citizens have voted to approve money for conservation up to four times and have combined different types of initiatives (bonds, earned income taxes, real estate taxes and realty transfer taxes) to broadly distribute the tax burden. In addition, residents have voted to raise conservation dollars in 11 county referenda, also several times in various counties. Heritage Conservancy compiles a list of county and municipal referenda after each primary and general election. Contact the Conservancy for the most current list.

UPPER MAKEFIELD TOWNSHIP, BUCKS COUNTY

Upper Makefield Township, located along the banks of the Delaware River, has long been a desirable place to live because of its historic country charm (including Washington's Crossing historic park) and proximity to Interstate 95, Princeton and Philadelphia. In 1997, Merrill Lynch began planning an office campus for 10,000 workers in Hopewell Township, which is immediately across the Delaware. The prospect of this new influx of people brought concern about additional development pressure on an already growing community. While the Township had passed a \$6 million open space bond referendum in 1996, it was clear that this money would be insufficient to reach the community's goals for continued open space preservation.

The Township's Environmental Advisory Council (EAC) calculated the total remaining undeveloped, unprotected acreage of 25 acres or more, estimated what percent of this open space might realistically

be protected through conservation easements or acquisition, and arrived at a target number of acres for protection that was multiplied by an estimated average price per acre (for easements and acquisition). The target goal for the open space campaign totaled \$15 million. In public meetings and mailings, the referendum organizers presented a clear picture of the costs and benefits of the bond issue to members of the community. They were able to point to successful land acquisitions under the first bond issue as examples of the results that could be achieved with additional funds. Prior to the referendum campaign, the Township had developed an open space plan that established mechanisms for administering the open space program and clearly set forth criteria for selecting parcels for protection. Through the planning process, the public had ample opportunity to comment on the plan and become educated on the rationale for protecting open space.

In 2000, the measure faced political opposition from a no-new-taxes advocate, but the voters found arguments in favor of the referendum more compelling. Of those who voted on that issue, 68 percent voted to approve the \$15 million debt referendum. In the general election of 2005, Upper Makefield voters approved a third referendum for an additional \$10 million. The Township has taken out a series of bank loans as needed to complete conservation agreements with landowners. Bank loans are less costly and less cumbersome procedurally than the process of issuing bonds. That money was leveraged with county and state grants for open space and farmland preservation.

**“WE CANNOT SOLVE THE PROBLEMS
WE HAVE CREATED WITH THE SAME
THINKING THAT CREATED THEM.”**

Albert Einstein

AMITY TOWNSHIP, BERKS COUNTY

In May 2002, Amity Township held a referendum on a proposed open space tax measure. The measure was to have increased the earned income tax by 0.25%. The township's supervisors supported the measure, and two public meetings were held to explain the benefits of open space preservation. Shortly before the election, however, an organization, allegedly backed by a home builders association and calling itself "Taxpayers Against the Referendum," initiated a mail and phone campaign against the referendum. The township had begun the campaign only a few weeks earlier, leaving relatively little time to educate the voters, get feedback from the community, or counter the opposition campaign.

Taxpayers Against the Referendum argued that the measure should be rejected because the township had not yet established specific criteria for selecting properties, and because the tax would presumably go on indefinitely even if there were no open space left to acquire. The organization also intimated that the earned income tax proposal would somehow raise property taxes for senior citizens and weaken public services. While these assertions were not backed with solid evidence, they were apparently sufficient to raise the concerns of many township residents. Voters came out in unusually large numbers on Election Day, in spite of the fact that it was a primary election and many of the candidates were running unopposed. The open space tax was rejected by a margin of two to one.

BEDMINSTER TOWNSHIP, BUCKS COUNTY

Bedminster Township is a rural community with a small population base. The citizens and taxpayers have shown their commitment to farmland conservation in the most significant manner...with their tax dollars. In 1997, 2002 and the primary election of 2005, voters had approved three \$2.5 million referenda. In addition, they approved a 0.25% earned income tax in the general election later in 2005, which will produce an estimated annual funding stream of \$280,000. The EIT distributes the burden between earned income and property taxes. All these funds will be used to purchase conservation easements solely or jointly with the Bucks County Agricultural Land Preservation Program. Lest it be inferred that Bedminster is an affluent community whose residents are trying to protect a privileged way of life, it is important to note that the 2000 Federal Census showed that Bedminster's median household income was lower than Bucks County's overall as well as all the surrounding townships. These are mostly farm families and people of modest means committed to the protection of farming and a rural way of life. The referenda campaigns were well organized. The public was well educated. The four initiatives were successful.

**"IN THE END, WE WILL CONSERVE
ONLY WHAT WE LOVE. WE WILL LOVE
ONLY WHAT WE UNDERSTAND. WE
WILL UNDERSTAND ONLY WHAT WE
ARE TAUGHT."**

Baba Dioum

Part VI: The Job Well Done

The protection of important land resources in a community is not a small or easy task. But the preservation of important lands helps establish a desired quality of life, not only for current residents and businesses, but also for those new to the community in the coming years. Land preservation is an investment, not an extravagant expense.

As described in this report, a land protection program should incorporate a number of fundamental principles:

- The method of financing must be adequate to achieve the community's land preservation goals and should be chosen to have minimal financial impact on the taxpayers.
- The provisions of Pennsylvania statutes, which authorize municipalities to raise tax dollars for open space and farmland preservation, must be met.
- A successful referendum campaign is one that provides the public with all the information needed to understand what lands would be preserved, how the money would be raised, and how the tax is likely to impact the average household. A well structured campaign includes sufficient lead time to clearly get these messages into public discussion.
- Those involved in a well designed campaign learn from the mistakes and successes that other municipalities have experienced, but they tailor the campaign to the temperament and capabilities of their own community.

**“THE PURPOSE OF CONSERVATION:
THE GREATEST GOOD TO THE
GREATEST NUMBER OF PEOPLE FOR
THE LONGEST TIME.”**

Gifford Pinchot, U.S. Forest Service

The campaign must be defensible in response to those who would challenge the preservation efforts. As in any investment program, land preservation must be undertaken properly to ensure it is entered into wisely and, as best as possible, protected from potential loss or degradation.

Preserved land is a long-term investment. Balance can be achieved between new development and valued community resources. As in any task worth doing, it is worth doing properly. It's only the community's future and quality of life that will be affected.



Appendix A



ording of the ballot question can be written in either legalize, as shown on this page, or to be user friendly, as shown on following pages. Please note that the following sample questions and ordinances have been adapted from examples provided to Heritage Conservancy by several municipalities and have not been reviewed by Conservancy legal counsel. This information is not intended to provide legal advice. Municipalities should confer with their solicitors in the preparation of ballot questions and implementing ordinances.

BALLOT QUESTION FOR DEBT

RESOLUTION NO. _____

A RESOLUTION OF THE TOWNSHIP OF _____, _____ COUNTY, PENNSYLVANIA, SIGNIFYING _____ TOWNSHIP'S DETERMINATION' TO INCUR ELECTORAL DEBT; CALLING AN ELECTION FOR THE PURPOSE OF OBTAINING THE VOTERS' ASSENT; AND APPROVING THE CONTENT AND SUBSTANTIAL FORM OF A NOTICE OF ELECTION

WHEREAS, _____ Township, _____ County, Pennsylvania desires to preserve open space and agricultural land in _____ Township for the benefit of the residents of _____ Township; and

WHEREAS, in furtherance thereof, _____ Township desires to incur electoral debt in the amount of _____ Dollars (\$_____) for the purpose of acquiring open space; for the purpose of acquiring agricultural conservation easements; for the purpose of acquiring development rights and for the purpose of acquiring land for recreation; and

WHEREAS, _____ Township desires to call an election to obtain the voters' assent for incurring such debt; and

WHEREAS, _____ Township desires to approve the content and substantial form of a notice of election; and

WHEREAS, _____ Township is authorized to incur electoral debt by the Act of July 12, 1972, P.L. 781, as amended, 53 P.S. Section 6780-101, et seq., and adopts this "desire resolution" pursuant to 53 P.S. Section 6780-101;

NOW, THEREFORE, be it, and it is hereby RESOLVED by the Board of Supervisors of _____ Township as follows:

I. _____ Township hereby determines that it is advisable to make an increase in the debt of _____ Township with the assent of the electors, in the amount of _____ Dollars (\$_____), to be used to acquire open space; to acquire agricultural conservation easements; to acquire development rights; and to acquire land for recreation for the benefit of the residents of _____ Township.

II. _____ Township hereby calls an election, to be held on _____, for the purpose of obtaining the assent of the electors to incur the debt set forth in Section I of this Resolution.

III. _____ Township hereby approves the following content and substantial form of notice of the election:

“_____ Township hereby calls an election for its registered electors to be held on Tuesday, _____, to obtain the approval of the electors for _____ Township to incur electoral debt, in the amount of _____ Dollars (\$_____) for the purpose of acquiring development rights and for the purpose of acquiring land for recreation. The estimated cost of the project is _____ Dollars (\$_____). The question to be submitted to the voters at the election shall be substantially in the following form:

“Shall debt be authorized to be incurred as debt approved by the electors, in the amount of _____ Dollars (\$_____) for the purpose of financing the acquisition of open space; for the purpose of acquiring agricultural conservation easements; for the purpose of acquiring development rights; and for the purpose of acquiring land for recreation?”

YES NO

IV. _____ Township hereby authorizes the appropriate Township officials and employees to take whatever steps are necessary to obtain the assent of the electors to incur the debt set forth in Section I hereof.

V. This Resolution shall be effective immediately upon its legal adoption.
RESOLVED this ___ day of _____, 200_.

ATTEST:

_____ TOWNSHIP BOARD OF SUPERVISORS

BALLOT QUESTION FOR EARNED INCOME TAX

_____ TOWNSHIP ORDINANCE # _____

An Ordinance of the _____ Township Board of Supervisors providing for a question to be placed before the voters of _____ Township by a referendum at the general election of (date) asking whether the electors of _____ Township favor the imposition of an additional Earned Income Tax at the rate of ___% by _____ Township to be used for financing the acquisition of open space; for the purpose of acquiring forest and agricultural conservation easements; for the purpose of acquiring property development rights; and for the purpose of acquiring recreation or historical lands. The ballot question is authorized by Act 153 of 1996. The referendum shall read as follows:

“Do you favor the imposition of an additional Earned Income Tax at the rate of ___% by _____ Township to be used for financing the acquisition of open space; for the purpose of acquiring agricultural conservation easements and for the purpose of acquiring recreation or historic lands?”

YES or NO

Plain English Version:

The ballot question asks the voters of _____ Township whether the Township should impose an additional Earned Income Tax at the rate of ___% on an annual basis to purchase land or interests in land for preservation and conservation of open, undeveloped land in _____ Township. The Township would use the money to do one (1) or more of the following:

- 1. Acquire agricultural conservation easements.** The Township could purchase agricultural conservation easements, or participate in State or County land preservation programs that acquire agricultural conservation easements, an agricultural conservation easement allows the landowner to retain his/her land and use it for farming and other agricultural purposes.
- 2. Finance the acquisition of open space.** The Township could purchase undeveloped land from landowners in the Township in order to protect sensitive natural areas such as woodlands, stream valleys or other unique natural resources or habitats.
- 3. Finance the acquisition of recreation or historic land.** The Township could purchase undeveloped land from landowners in the Township for the purpose of developing additional recreational facilities for residents or for historic preservation purposes.
- 4. Acquire Property Development Rights.** Under this option, a landowner would sell the development rights of a property to the Township. The landowner would retain the property, but the property could not be developed.

A vote of “YES” to the ballot question approves the imposition of an additional Earned Income Tax at the rate of ___% upon Township residents for the foregoing purposes.

ENACTED AND ORDAINED this ___ day of ___, 200_.

SAMPLE ENABLING ORDINANCE FOR DEBT

ORDINANCE NO. _____

AN ORDINANCE INCREASING THE INDEBTEDNESS OF _____ TOWNSHIP, _____ COUNTY, PENNSYLVANIA, BY THE ISSUE OF A GENERAL OBLIGATION NOTE IN THE AMOUNT OF \$ _____ FOR THE ACQUISITION OF OPEN SPACE; FIXING THE FORM, NUMBER, DATE, INTEREST AND MATURITY THEREOF; MAKING COVENANT FOR THE PAYMENT OF THE DEBT SERVICE ON THE NOTE; PROVIDING FOR

THE FILING OF THE REQUIRED DOCUMENTS; PROVIDING FOR THE APPOINTMENT OF A SINKING FUND DEPOSITORY FOR THIS NOTE; AND AUTHORIZING EXECUTION, SALE AND DELIVERY THEREOF.

WHEREAS, on _____, the electors of _____ Township approved the incurrence, by _____ Township, _____ County, Pennsylvania, of \$_____ in electoral debt for the purpose of financing the acquisition of open space; and

WHEREAS, _____ Township desires to incur \$_____ in electoral debt in order to pursue the acquisition of open space; and

WHEREAS, the proposed increase of debt, together with its nonelectoral indebtedness and its lease rental indebtedness presently outstanding, will not cause the limitations of _____ Township's debt incurring power, pursuant to constitutional and statutory authority, to be exceeded;

NOW, THEREFORE, be it ORDAINED and ENACTED by the Board of Supervisors of _____ Township, _____ County, Pennsylvania, and it is hereby ordained and enacted by the authority of same as follows:

SECTION 1. That the aggregate principal amount of the Note of _____ Township proposed to be issued is \$_____ same to be issued for the foregoing purposes and same to be incurred as electoral debt.

SECTION 2. The period of useful life of the improvements for which this obligation is to be issued is estimated to be in excess of ___ years.

SECTION 3. Said indebtedness shall be evidenced by one general obligation Note, in fully registered form, in the sum of \$_____ dated and bearing interest from the earliest date of possible issue of said Note under the statutory time requirements as set forth in the Act of General Assembly of the Commonwealth of Pennsylvania approved the 28th day of April, 1978, being Act 52 of 1978 Session, at the rate of interest of _____% [insert terms] until paid.

_____ Township reserves the right to anticipate any or all installments of principal or any payment of interest at any time prior to the respective payment dates thereof, without notice or penalty. The principal and interest of said Note shall be payable at the office of the sinking fund depository selected for the Note as hereinafter provided,

SECTION 4. The said Note is hereby declared to be a general obligation of _____ Township. _____ Township hereby covenants that it shall include the amount of debt service on the Note for each fiscal year in which such sums are payable in its budget for that year; shall appropriate such amounts to the payment of such debt service; and shall duly and punctually pay or cause to be paid the principal of the Note and the interest thereon at the dates and places and in the manner stated in the Note according to the true intent and meaning thereof, and for such proper budgeting, appropriation, and payment, the full faith, credit and taxing power of _____ Township is hereby irrevocably pledged.

The amounts which _____ Township hereby covenants to pay in each of the following fiscal years on the basis of an interest rate of ____% per annum [insert terms] are as set forth on Exhibit “A” hereto.

SECTION 5. The form of said Note shall be substantially as is set forth on Exhibit “B” hereto.

SECTION 6. The said Note shall be executed in the name and under the corporate seal of _____ Township by the Chairman and Vice Chairman and attested to by the Secretary. The Treasurer is hereby authorized and directed to deliver said Note to the purchaser, and receive payment therefore on behalf of _____ Township. The Chairman and Secretary of _____ Township are authorized and directed to prepare, verify and file the debt statement required by Section 410 of Act 52 of 1978, and to take other necessary action, including, if necessary or desirable, any statements required to qualify any portion of the debt from the appropriate debt limit as self-liquidating or subsidized debt.

SECTION 7. [Name of institution] is hereby designated as the Sinking Fund Depository for the obligation herein authorized, and there is hereby created and established a Sinking Fund, to be known as “Sinking Fund 2002 General Obligation Note” for the payment of the principal and interest thereon which shall be deposited into the Sinking Fund no later than the date upon which the same becomes due and payable. The Treasurer shall deposit into the Sinking Fund, which shall be maintained until such obligation is paid in full, sufficient amounts for payment of principal and interest on the obligation no later than the date upon which such payments shall become due. The Sinking Fund Depository shall, as and when said payments are due, without further action by _____ Township withdraw available monies in the Sinking Fund and apply said monies to payment of the principal of and interest on the obligation.

SECTION 8. The Chairman and Secretary of _____ Township are hereby authorized to contract with [name of institution] for its services as Sinking Fund Depository for the Note and paying agent for the same.

SECTION 9. In compliance with Section 702 of Act 52 of 1978, the members of Board of Supervisors have determined that a private sale by negotiation rather than public sale is in the best interest of _____ Township. Therefore, the general obligation Note in the amount of \$_____, herein authorized to be issued and sold is hereby awarded and sold to [Underwriter] in accordance with its proposal to purchase the said Note at par; provided the said Note is dated the date of delivery thereof to [Underwriter] and is in the form set forth in Section 5 of this Ordinance; and further provided that the proceedings have been approved by the Department of Community and Economic Development if such approval is required under the provisions of the Act.

SECTION 10. The action of the proper officers and the advertising of a summary of this Ordinance as required by law in [newspaper where public notice was printed], a newspaper of general circulation, is ratified and confirmed. The advertisement in said paper of the enactment of the ordinance is hereby directed within fifteen (15) days following the day of final enactment.

SECTION 11. All ordinances or parts of ordinances not in accord with this Ordinance are hereby repealed insofar as they conflict herewith.

ORDAINED and ENACTED this ____ day of ____, 200_.

ATTEST:

_____ TOWNSHIP BOARD OF SUPERVISORS

SAMPLE ENABLING ORDINANCE FOR EARNED INCOME TAX

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWNSHIP OF _____ IMPOSING A TAX ON EARNED INCOME AND NET PROFITS RECEIVED OR EARNED BY RESIDENTS OF _____ TOWNSHIP AND BY NONRESIDENTS FOR WORK DONE OR SERVICES PERFORMED THEREIN, AT THE RATE OF ._% SPECIFICALLY FOR THE PURPOSE OF LAND PRESERVATION PURSUANT TO ACT 153 OF 1996, THE OPEN SPACE LANDS ACT

The Board of Supervisors of _____ Township hereby enacts and ordains:

Section 1. Incorporation of Statutes. The provisions of the Open Space Lands Act, Act 153 of 1996, 32 P.S. 5001 et. seq., as hereafter amended, supplemented, modified or reenacted by the 1965, 53 P.S. 6901-24 (1982), as hereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania, are incorporated herein by reference thereto; except to the extent that options are provided in said Section 6913, this ordinance designates the option selected, and except as and where hereinafter specifically provided otherwise.

Section 2. Imposition of Tax.

A. A tax for the purpose of retiring the indebtedness in purchasing interest in real property and for making additional acquisitions of real property for the purpose of securing open space pursuant to the Open Space Lands Act, Act 153 of 1996, 32 P.S. 5001, et. seq., of ._% is hereby imposed on:

(1) salaries, wages, commissions and other compensation earned or paid on or after January 1, 200_ by residents of _____ Township; and on

(2) the net profits earned on or after January 1, 200_ of businesses, professions or other activities conducted by such residents.

Section 3. Declarations, Returns and Payment of Tax.

A. Every taxpayer whose net profits are subject to the tax imposed by this ordinance shall file a declaration of their net profits for the current year and shall pay the tax due thereon in annual installment, all as provided in Section 6913,III.A.(1)(I) of the Local Tax Enabling Act, or estimated net profits for the current year and shall pay the tax due thereon in quarterly installments, all as provided in Section 6913, III. A. (1) (ii) of the Local Tax Enabling Act.

B. Every taxpayer whose earnings are subject to the tax imposed by this ordinance shall make and file final returns and pay the balance of the tax due, as provided in Section 6913, III.B. of the Local Tax Enabling Act.

C. Every taxpayer whose earnings are not subject to collection at the source, shall file quarterly returns and shall pay quarter-annually the amount of tax shown as due on such returns all as provided in Section 6913, III.B.(2) of the Local Tax Enabling Act.

D. The officer is hereby authorized to provide by regulation, subject to the approval of the _____ Township Board of Supervisors, that the return of an employer or employers, showing the amount of tax deducted by said employer or employers from the salaries, wages or commissions of any employee who is a resident of _____ Township, and paid by him or them to the officer shall be accepted as the return required of any employee whose sole income, subject to the tax or taxes under this ordinance, is such salary, wages or commissions.

Section 4. Collection at Source. Every employer having an office, factory, workshop, branch, warehouse, or other place of business within _____ Township who employs one or more persons, other than domestic servants, for a salary, wage, commission or other compensation, shall register with the officer, deduct the tax imposed by this ordinance on the earned income of their employee or employees who are residents of _____ Township and shall make and file quarterly returns and final returns and pay quarterly to the officer the amount of taxes deducted, all as provided in Section 6913, IV. of the Local Tax Enabling Act.

Section 5. Administration. The earned income tax officer shall be the same person or corporation appointed by the Board of Supervisors of _____ Township to collect the existing general revenue earned income tax.

Section 6. Interest and Penalties for Late Payment. If for any reason the tax is not paid when due interest at the rate of six percent (6%) per annum on the amount of said tax, and an additional penalty of one-half of one percent (1/2%) of the amount of the unpaid tax for each month or fraction thereof in which the tax remains unpaid, shall be added and collected. Where suit is brought for recovery of any such tax, the person liable therefore shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed.

Section 7. Penalties for Violations.

A. Any person who fails, neglects or refuses to make any declaration or return required by this ordinance, any employer who fails, neglects or refuses to register or to pay the tax deducted from his employees, or fails, neglects, or refuses to deduct or withhold the tax from his employees, any person who refuses to permit the officer or any agent designated by him to examine his books, records, and papers and any person who knowingly makes any incomplete, false or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of their net profits or earned income in order to avoid the payment of the whole or any part of the tax imposed by this ordinance, shall upon conviction therefore before any district justice, or court of competent jurisdiction, be sentenced to pay a fine of not more than

five hundred dollars (\$500.00) for each offense, and costs, and in default of payment, to be imprisoned for a period not exceeding thirty (30) days.

B. Any person who divulges any information, which is confidential under the provisions of this ordinance, shall, upon conviction therefore, before any district justice or court of competent jurisdiction, be sentenced to pay a fine of not more than five hundred dollars (\$500.00) for each offense, and costs, and in default of payment, to be imprisoned for a period not exceeding thirty (30) days.

C. The penalties imposed under this section shall be in addition to any other penalty imposed by any other section of this or any other ordinance.

D. The failure of any person to receive or procure funds required for making the declaration or returns required by this ordinance shall not excuse him or her from making such declaration or return.

Section 8. Repealer/Interpretation. All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed, except that this Ordinance shall be construed as a supplement to the existing Ordinance ___ of _____ Township proposing an additional Earned Income Tax for open space purposes.

Section 9. Severability. 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. It is hereby declared as the intent of the Board of Supervisors of _____ Township that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

Section 10. Effective Date. This ordinance shall become effective January 1, 200_, and it shall continue on a calendar year basis, thereafter, without annual reenactment.

ENACTED AND ORDAINED this ___ day of _____, 200_, by the Board of Supervisors of the Township of _____.

_____ TOWNSHIP BOARD OF SUPERVISORS

Appendix B

SAMPLE CAMPAIGN CALENDAR FOR AN OPEN SPACE REFERENDUM

STEPS	TIME LINE COUNT DOWN IN MONTHS							POST ELECTION
	7	6	5	4	3	2	1	
ORGANIZATION	PRE-CAMPAIGN KICKOFF							
	Adopt Open Space Plan	Set campaign goals						
	Form Political Action Committee	Organize campaign committee	Interview key people in community					
		Enlist volunteers	Discuss legal matters with solicitor	Solicitor to help prepare measure wording				
		Recruit local champion		Solicit endorsements from school board, both political parties, community leaders				
		Develop budget, schedule, responsibilities, strategies						
		Identify funding sources	Raise funds	Raise funds	Raise funds	Raise funds	Raise funds	Raise funds
		Introduce the concept to municipal officials and hire professional help	Resolve acceptable financing methods with elected officials	Begin dialog with landowners & farmers	Arrange public meetings/general public & focus groups		Hold public meeting	Hold public meeting
			Develop participation of support groups					
		Prepare survey	Distribute survey		Analyze survey responses & use in campaign material			
EDUCATION			Prepare campaign material	Have material printed		Send information pieces	Send last information pieces	
			Prepare cost of community services or similar studies					
			Prepare open space success stories	Develop website			Distribute yard signs	
		Identify and develop media contacts	Initial media contacts to tell the story	Cultivate the press	Press the media for supporting stories			Final media press!
ACTION								
CELEBRATION, IMPLEMENTATION, CONTINUATION								

*This sample time line is based on seven months. However, a longer campaign period is recommended.

Acknowledgements

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