

No. 1996-50

AN ACT

HB 1868

Amending the act of January 13, 1966 (1965 P.L.1292, No.515), entitled "An act enabling certain counties of the Commonwealth to covenant with land owners for preservation of land in farm, forest, water supply, or open space uses," providing for use of land by wireless or cellular telecommunications provider.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 6 of the act of January 13, 1966 (1965 P.L.1292, No.515), entitled "An act enabling certain counties of the Commonwealth to covenant with land owners for preservation of land in farm, forest, water supply, or open space uses," is amended to read:

Section 6. Breach of Covenant by Land Owner.—(a) If the land owner, his successors or assigns, while the covenant is in effect, alters the use of the land to any use other than that designated in the covenant, such alteration shall constitute a breach of the covenant and the land owner at the time of said breach, shall pay to the county, as liquidated damages, the difference between the real property taxes paid and the taxes which would have been payable absent the covenant, plus compound interest at the rate of five percent per year from the date of entering the covenant to the date of its breach or from a date five years prior to the date of its breach whichever period is shorter. Such liquidated damages shall be a lien upon the property collectible in the manner provided by law for the collection of unpaid real property taxes. The acquisition by lease, purchase or eminent domain, and use of rights of way or underground storage rights in such land by a public utility or other body entitled to exercise the power of eminent domain *or by a wireless or cellular telecommunications provider who satisfies the conditions under subsection (b)* shall not constitute an alteration of use or a breach of covenant.

(b) Use of the land covered by the covenant by a wireless or cellular telecommunications provider shall not constitute an alteration of use or breach of the covenant when the following conditions are satisfied:

- (1) The land so used does not exceed one-half of one acre.*
- (2) The land does not have more than one communication tower.*
- (3) The land is accessible.*
- (4) The land is not sold or subdivided. A lease of land shall not be considered a subdivision under this clause.*

(c) Use of land under this section for wireless services other than wireless telecommunications may only qualify if such wireless services

share a tower with a wireless telecommunications provider as provided for in subsection (b).

(d) A landowner may lease a tract of land restricted by an open-space covenant under the provisions of this act for wireless or cellular telecommunications purposes without subjecting the entire tract to liquidated damages, provided that the conditions of subsection (b) are satisfied. Liquidated damages shall be imposed upon the tract of land leased by the landowner for wireless or cellular telecommunications purposes, and the fair market value of that tract of land shall be adjusted accordingly.

(e) The wireless or cellular communications provider shall be solely responsible for obtaining required permits in connection with any construction on a tract of land which it leases pursuant to the provisions of this section for telecommunications purposes. No permit requested pursuant to this section shall be denied by a municipality for any reason other than failure to strictly comply with permit application procedures.

Section 2. This act shall take effect in 60 days.

APPROVED—The 31st day of May, A.D. 1996.

THOMAS J. RIDGE