

Bulldozed into Bankruptcy

When Augustine Natale bought farmland in Chester County Pennsylvania in 1989, he did not recognize the significance of language that had been added 22 years earlier to an older deed to the same land. The language, which had been repeated in the deed just before his own deed, was what is technically known as a "conservation easement." The language said that the land could be used only for farming or nature conservation, and for small buildings related to those uses.

Nine years after he bought the land, this language destroyed his life's dream. In November 1998, the broken hearted, elderly man stood by while a bulldozer tore into his new farmhouse and ripped it down to rubble.

Even last year Mr. Natale did not seem to understand the simple, yet technical, language restricting, or encumbering, his deed. He telephoned the Property Rights Foundation of America in New York in a last-ditch hope for help to regain his lost home, but referred to his lawyer an inquiry about the language in the conservation easement.

It is no wonder that Mr. Natale did not know what he had bought when he acquired the 42 acre property. When the French and Pickering Creeks Conservation Trust, the land trust which holds the conservation easement, sued to stop the construction of the Natale farmhouse in 1989, the Chester County Court of Common Pleas ruled that the farmhouse was allowed under the restrictions. The judge ruled that the construction of the farmhouse "does not offend the easement definition of a "small building" incidental to farming use."

The judge emphasized that the burden of restricting a property owner's use of his land "is substantial," and that the "restriction must be specific and in words incapable of multiple interpretations."

Mr. Natale had saved for the farmhouse for fifteen years. With the court's clear ruling in his favor, he went ahead to build the Colonial house, which would house three generations of his family while they farmed the land.

But, while Mr. Natale built his house, the French and Pickering Creeks Conservation Trust appealed the decision. The ruling by the Chester County Court of Common Pleas was reversed. In 1995, the Pennsylvania State Supreme Court dismissed Mr. Natale's appeal. All that remained was a drawn-out battle about the removal of the house, with the final demolition order given on November 23, 1998. The next day the house came down. Bob Williams of The Philadelphia Inquirer photographed one of the men in the Natale family with his arm around Mr. Natale's waist, while the Chester County Sheriff wrapped his arm around the aged man's broad, stooped shoulders as he turned away when the house came down.

During the 1960's, conservation easements were an exciting new tool for the protection of land from development. Questions about the future implications to property owners were not paramount in the intellectual land-use planning circles developing this new line of protection.

When the National Conference of Commissioners on Uniform State Laws passed a Uniform Conservation Easement Act in New Orleans in 1981,

representatives from some of the states raised important questions, but the model law was railroaded through intact. After the model law passed the highly respected body, it went on to be gradually incorporated into law in many states over the years. The law sets a framework for conservation easements by canceling the historic legal traditions that do not allow broad, negative encumbrances. It also establishes the powerful right of non-profit groups to sue to enforce conservation easements even if they are not parties to an easement.

Meanwhile, as the legal groundwork was being secured, the number of conservation easements also mounted. At the same time, a generation passed. Now, a harvest is being reaped as these easements are affecting subsequent owners. Many cases have gone to court in recent years.

During the 1990's, however, the drive to acquire conservation easements accelerated greatly, with land trusts and government acquiring encumbrances on extremely large rural blocks of land to protect forests, ranches, farms and nature. Some environmentalists want to tie up most of the land in entire regions, such as all of the State of Maine's unincorporated backcountry, with conservation easements.

Moreover, the terms of these new conservation easements are extremely broad, with resource protection superseding even forestry and agriculture, according to the technical language in the deeds. The actual language contradicts the statements of government and environmental groups, which claim that they intend to permanently promote these land-based industries.

If two judges could reach diametrically opposite conclusions on the meaning of the conservation easement encumbering Augustine Natale's property, then the potential for confusion and litigation over the hundreds of thousands of acres of conservation easements being accomplished with much more complex terms is virtually limitless. Conservation easements are devaluing the equity of land-based industries such as farms. Historic private property rights are being muddled. As this new generation of conservation easements comes home to roost, the tragedy of Augustine Natale will be repeated thousands of times. The American tradition of private property ownership and the freedom and prosperity based on private property ownership will be diminished.

For more information, visit

The Property Rights Foundation, Inc.

website at

<http://www.prfamerica.org>