

Panel #1: Violations

Moderator: Donna Fisher

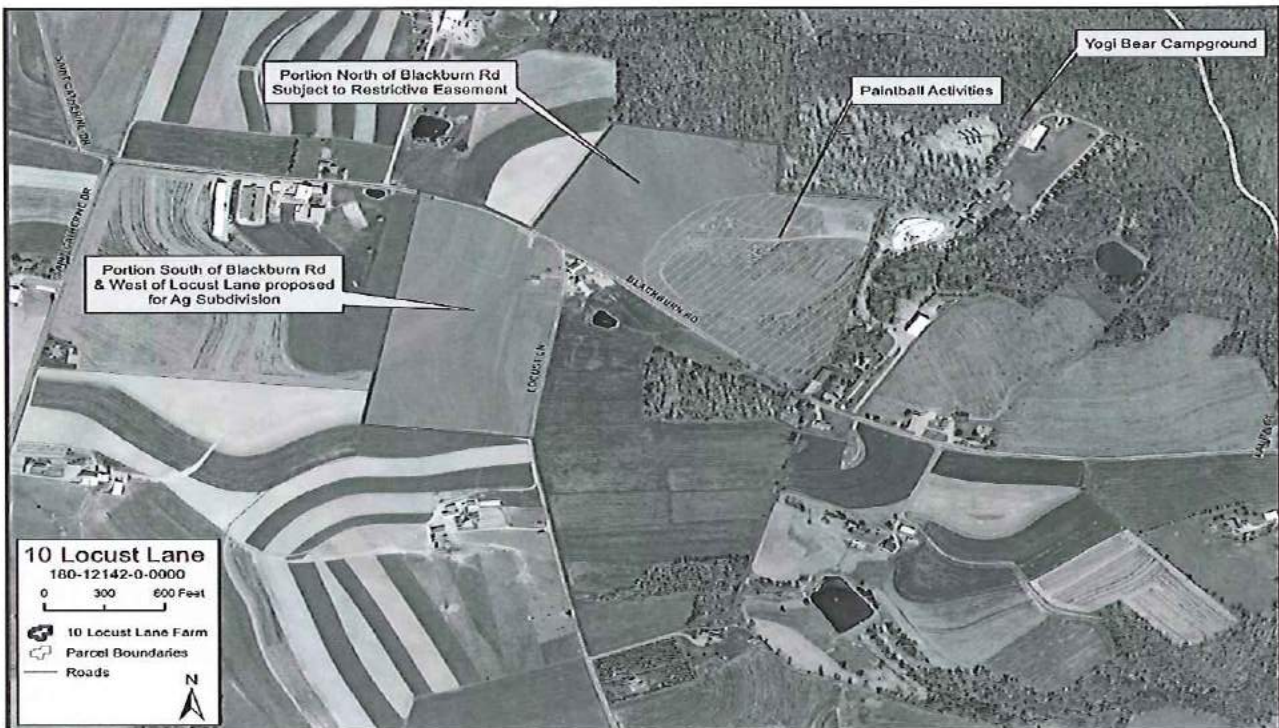
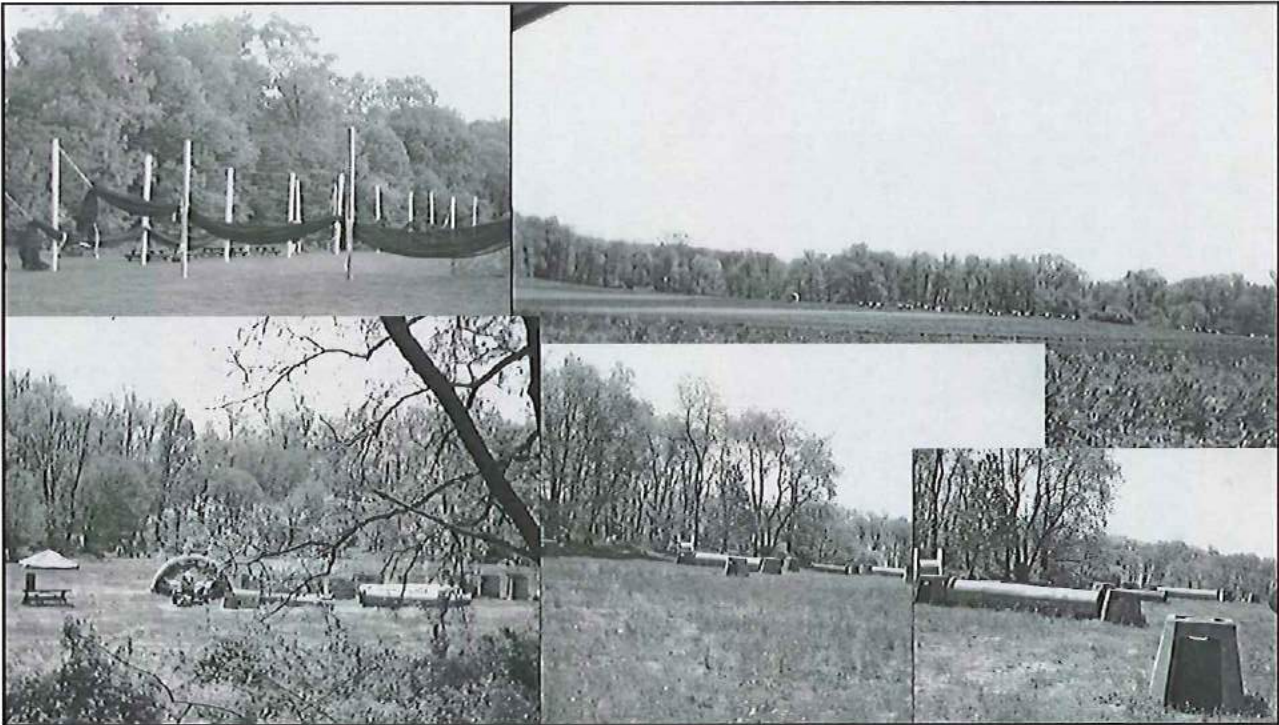


Lancaster County Case Study: *Paint Ball, and Easements Restricting Agricultural Use*

Timeline

- Preserved in 2003 (100% state easement)
- Public sale in 2004
- New owner met with County APB staff in Spring 2005
- May 2005 inspection notes:
 - Landowner indicates the following plans for the farm:
 - Corn maize, pumpkin patch, paintball facility for family and friends (although it is advertised for public use), a greenhouse, and possibly an additional dwelling.
 - The Landowners have surveyed the land, but have not pursued the subdivision plans which were previously discussed with the APB Staff.
 - The paintball facility appears to be inconsistent with the easement.
 - The 2004 property deed does not contain the conservation easement restrictions.

- 2006 inspection notes:
 - Additional structures in the area adjacent to the Jelly Stone Park property.
 - 15 posts with black backdrop material, 25 large wooden spools, numerous metal tubes, picnic tables, tents, wooden skids, cement blocks, and construction trailers. In addition, paintballs were throughout the area.
 - The paintball operation appears to be utilized by the general public
 - Sure Shot Paintball brochure and website advertisements.
 - The Landowners have submitted a subdivision plan and application to East Drumore Township; however, a subdivision application has not been submitted to the APB.
 - The 2004 property deed does not contain the conservation easement restrictions.



Preparation for Notice of Violation

- Staff review with Board Solicitor
 - Ensure adequate and proper documentation
- Board review and approval
 - Board determines it's an actual violation
- County Administrator review and approval

Notice of Violation

- May 2006
- Sent by Certified Mail to landowner, copied to:
 - County Commissioners
 - Township Supervisors
 - PDA
 - County Planning Commission
- Identified the following violations:
 - Non-permitted nonagricultural use (paintball)
 - Lack of Conservation Plan for current operation
 - Proposed subdivision (not permitted by Subdivision Guidelines)

2006-2015

- County files complaint in Court of Common Pleas
- Preliminary Injunction not pursued
- Landowner files counter suit
 - Claims farm is not preserved
 - Procedural defect when Township added the farm to their ASA
 - Did not follow required public notification
- APB attempts to engage Commonwealth to defend their easement
- PDA is supportive, but must be handled by Office of Attorney General
- AG becomes involved in 2012
 - No actual action until 2014
- Farm is sold to new owner in February 2015
 - Paintball, subdivision and conservation plan violations cease
- Both lawsuits dropped in May 2015

Deed Restriction

- Campground sold in 2013
- Deed restriction recorded: prohibits certain agricultural uses on portion of farm adjacent to Campground
 - No application of fertilizer from April 1-November 1
 - No activity causing offensive odors
- Have not pursued as a violation
 - Our easement (and Statute and Regs.) does not specifically prohibit
 - Matter of degree (not all ag production is restricted)
 - Courts tend to interpret easements in favor of the party that didn't draft them
 - Losing in court would be a worse precedent than taking no action

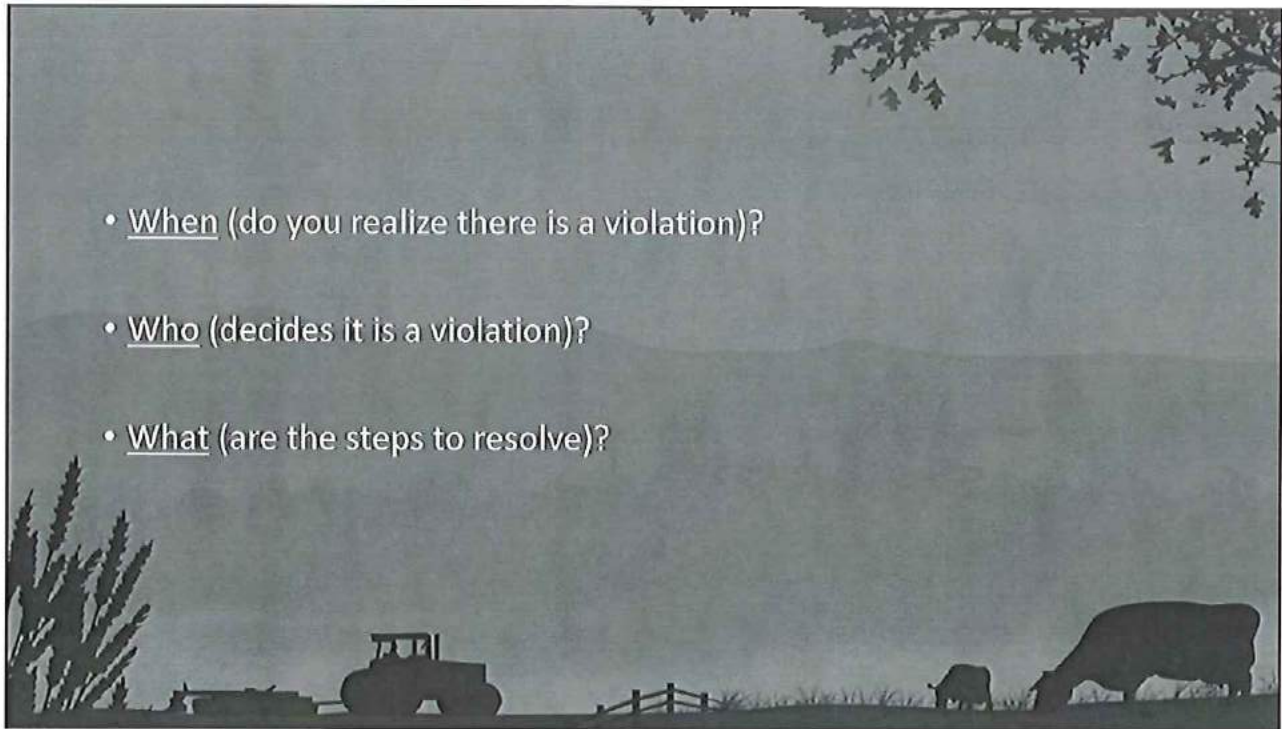
Lessons Learned

- Document everything
- Instruct townships to process ASAs correctly
- Civil proceedings take longer than you expect
- Office of AG will represent the Commonwealth, not PDA
- Landowner selling the farm counts as a “win”
- Easements restricting agricultural use of a preserved farm are not clear violations



Montgomery County Case Study: *Mountain Mulch, What Qualifies as Agricultural Production?*

- When (do you realize there is a violation)?
- Who (decides it is a violation)?
- What (are the steps to resolve)?



PDA Determination

- Not "Agricultural production"
 - Agricultural Production: "The production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of such crops, livestock or livestock products if more than 50% of such processed or merchandised products are produced by the farm operator..."
 - "50% of such processed or merchandised products are produced by the farm operator" refers to inputs rather than to outputs.
 - A mulching operation on a preserved farm could be "agricultural production" if more than 50% of the raw materials that are processed into the final product (mulch) are produced by the farm operator.
 - Mountain Mulch is in violation of the easement

Trial Court Determination

- Mulching operation not protected as a forestry activity or agricultural operation under the Pennsylvania Municipalities Planning Code or the Pennsylvania Right to Farm Act because:
 - The vast majority of the raw materials used for the mulching operation were brought in from off-site sources
 - The resulting mulch was not used onsite, but instead was delivered for use off-site

Commonwealth Court Determination

- Upheld Trial Court decision
- Trial court "had sufficient grounds to grant the Preliminary Injunction and did not abuse its discretion in finding [the mulching operators] in contempt for violating...the Injunction"

Lessons Learned