

We Helped Preserve That!

The Jones Family Farm

Shelton, Connecticut



The legend inscribed on a stone tableau at the farthest reaches of the 400-acre Jones Family Farm reflects the maxim of its founding father, Philip Jones: "Be good to the land and the land will be good to you." The Jones family, a long-time Pullman & Comley client, has been a good shepherd of the land since the mid-1800s; today, the land is under the stewardship of Terry Jones (founder Philip Jones's great-great grandson), Terry's wife, Jean, and their son and daughter-in-law, Jamie and Christiana, as well as Terry's father, who still participates in farm activities on a limited basis. Throughout the years, the family has enjoyed the reputation of being faithful to the credo of its forefather.

Long renowned for their Christmas tree business, today the Joneses also produce and market strawberries, blueberries, pumpkins, gourds, squash and autumn vegetables and have recently established a vineyard and winery, producing their own grapes and several varieties of red and white wines.

In addition to adhering to the traditional farm virtues of hard work, patience, watering and fertilizing, the Joneses, in keeping pace with the realities of economic life in the 21st century, are ever-conscious of protecting the valuable land that they own and maintaining the highest environmental quality possible.

A few years ago, the family began looking into ways to protect their land from future development by dedicating, perpetually, portions of the farm acreage to agricultural use through property restrictions and the sale of development rights to government programs designed to protect farm land. There are a variety of federal, state and municipal programs that support the protection of agricultural land (including the purchase of development rights), but they are often of limited duration and funding.

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When Terry Jones learned that Connecticut farms could compete for funds under a federal program available until the end of 2007 for the purchase of development rights, he turned to Pullman & Comley for representation based upon the firm's broad experience in this area.

Attorney Ed McCreery, a resident of Shelton and a member of the Shelton Conservation Commission and the Shelton Land Trust, was Jones's primary contact at the firm. McCreery enlisted fellow attorney Jim White, who was known to the Jones family and, as a municipal, land use and real estate attorney, was familiar with the concept of the sale of development rights, conservations easements and the like.

"I called them because I knew first-hand that Pullman & Comley's lawyers are familiar with the concept of development rights and the associated restrictive deed language," said Jones. "They had recently represented a nearby family who were involved in a similar city/state partnership transaction involving the preservation of woodlands."

McCreery and White, in turn, enlisted Brion Kirsch, an attorney in the firm's Real Estate Department, to join the project, since Kirsch had experience with the financing aspects of this type of specialized transaction.

"This transaction involved several unique and interesting twists," commented McCreery. "It was a partnership between the city of Shelton and the United States Department of Agriculture, which had awarded a grant to the city under a federal program called the 'Farm and Ranch Lands Protection Program'." The federal program contained volumes of complex mandates which had to be complied with by both the city and the land owner. The mandates ranged from special title insurance coverage and endorsements to a variety of issues arising from that portion of the 133-plus acres that was formerly owned by the U.S. government and used as a NIKE Missile Site. Additional challenges arose because of pre-existing conservation easements and a portion of the property that was situated in the adjoining town of Monroe.

One additional twist adding spice to the project was that the Joneses wanted to make a gift of some of the acreage development rights directly to the city of Shelton, and the gifting transaction had to be completed by December 31, 2007, or else available gift tax credits would have lapsed and no longer be available to the Jones family. Since they also wished to use some of the proceeds from the sale of the development rights to purchase additional land for the farm, the opportunity to qualify the transaction as a "Section 1031" Tax Free Exchange was taken advantage of. The Pullman & Comley team was instrumental in planning and implementing the exchange, which resulted in significant tax savings for the Jones family.

"The journey from where we were to where we wanted to be was obviously fraught with lots of complexities along the way, but a successful outcome was extremely important to us," Jones remarked after the closing on the sale of development rights to the city of Shelton. "My family is very grateful to Pullman & Comley, who were not only able to navigate all of the twists and turns in this difficult joint federal/municipal partnership, but also had to operate in such a tight time frame.

Because of their hard work and legal skills, we have been able to add another 130 acres to that portion of our farm that is protected in perpetuity for agricultural use so another seven or more generations can farm it."



For additional information about this topic, please contact James P. White Jr. (203-330-2132) or at jwhite@pullcom.com.

Green Building Gets a Boost from Massachusetts Ruling on Kilowatt Credits

Installing solar panels often means compromising between a desire to help the environment and the cost/benefit and rate of return associated with the installation. As a result, most property owners opt to install enough solar panels to meet their base-load needs only.

The limit on the installation is dictated by the usual paltry payment received (if any) by the owner from the local distribution company for excess kilowatts produced by the installation.

Recognizing that this economic reality was limiting the size of solar installations, Massachusetts has amended its net metering rules to allow liberal credits for excess solar capacity. For small installations, under 1 MW, an owner can transfer credits, at full retail rates, to other ratepayers in their vicinity. There is no restriction on the price that the market may pay for such credits, but the expected credit amount should be close to retail rates.

“ **One of the most progressive parts of the new law involves ‘Neighborhood net metering credit’.** ”

For installations over 1 MW but less than 2 MW, the local utility has the option of purchasing the credits at retail rates as well. One of the most progressive parts of the new law involves "Neighborhood net metering credit."

This is a credit equal to the excess kilowatt-hours produced by an installation which is owned by a group of 10 or more residential customers that resides in a single neighborhood. All of the customers can agree to distribute the credits among themselves and sell the credits to other ratepayers in their vicinity. As such, the cost of larger installations can be spread among many people.

The Massachusetts legislation may become a model for other states as they recognize that net metering incentives can fuel the installation of alternative energy.

For additional information about this topic, please contact Brad N. Mondschein at 203-674-7940 or at bmondschein@pullcom.com.

Editor's Notes

Lee D. Hoffman was a speaker at the Connecticut Business and Industry Association's Second Annual Corporate Sustainability Conference, which addressed green business strategies to enhance a company's bottom line, and how to incorporate environmental stewardship and social responsibility initiatives to generate a more productive workforce and higher return on investment.

Lee also served as an instructor in an EPA-sponsored training program that discussed the brownfield redevelopment process, available state programs, Brownfield tools and different ways to market sites to attract developer and investor interest.

Diane W. Whitney recently appeared before the United States Circuit Court of Appeals, Second Circuit, in New York to argue a matter involving both the Clean Water Act and federal Resource Conservation and Recovery Act relating to lead contamination in the Farmington River.

Brad N. Mondschein will lead a roundtable discussion on "Green Building: The Current Status and Future of Green Building Requirements in Connecticut" on Thursday, October 30, 2008, at our Bridgeport office. For more information, please call 203-330-2008 or email roundtable@pullcom.com.

Brad also will chair a workshop on legal and regulatory challenges to the building industry involving sustainable requirements at the ICSC Centerbuild Conference on Wednesday, December 3, 2008, in Phoenix, AZ. This conference is presented by the International Council of Shopping Centers. For more information, contact info@pullcom.com.

Elliott B. Pollack will speak on "Top Ten Property Valuation Developments in 2008" at the 2008 Connecticut Commercial Real Estate Conference on Thursday, November 13, 2008, in Farmington, CT. This conference is presented by the University of Connecticut Center for Real Estate. For more information, visit www.business.uconn.edu/realestate.

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Fall 2008
Volume VI / Issue 2

Groundbreaking News Real Estate, Land Use & Environmental Issues