

PART 97: ORDINANCE 1

PURCHASE: OF DEVELOPMENT RIGHTS

SECTION 1: Intent, Findings, Purpose and Authority.

A. *Intent:* The intent of this ordinance is to create the Lenox Township Farmland Preservation Program that will:

- (1) Protect eligible farmland by purchasing development rights voluntarily offered for purchase by landowners.
- (2) Authorize acceptance of voluntary donations and the cash purchase and/or installment purchase of the development rights of eligible farmland and the placement of a conservation easement on these properties that restricts the future development.
- (3) Provide procedures and guidelines for selecting the farmland parcels to be protected, for determining the value to be paid for those rights and for the repurchase of those rights.

B. *Findings:*

- (1) Lenox Township is located in the northern third of Macomb County, an area experiencing development pressure from urbanization in the southern two-thirds of the County. This development pressure has and is resulting in the conversion of historically agricultural properties to non-agricultural uses.
- (2) Agricultural land uses in Lenox Township provide a significant contribution to the economy of the Township and surrounding communities as well as providing valuable open area in the Township.
- (3) Cultivated land in Lenox Township represents 9,440 acres, more than 41% of the total 22,604 acre land area of the Township.
- (4) Lenox Township desires to protect existing important agricultural land while allowing for a reasonable variety of other land uses in the community.
- (5) Studies in Michigan indicate that agricultural land pays more in property taxes for local community services than the cost of providing those services to the agricultural land. In order to balance the provision of services with the cost of providing those services Lenox Township desires to preserve a reasonable amount of agricultural land.

- (6) Generally agricultural lands close to urban centers have a greater market value for future development than their market value for farming. Farmland that has a market value greater than its agricultural value does not attract sustained agricultural investment and is eventually sold by farmers and removed from agricultural uses. Lenox Township desires to provide a stable environment for agriculture uses in the Township in order to reduce disinvestment in agriculture in the Township.
- (7) The permanent acquisition by the Township of voluntarily offered development rights in agricultural lands within the Township, as authorized by this ordinance and by the statutes of the State of Michigan, will permit these lands to remain in agriculture in a developing area and will provide long-term protection for the public interests which are served by the agricultural lands.
- (8) Properties on which the Township has purchased the Development Rights shall remain substantially undeveloped in order to promote their agricultural use.
- (9) The Township Board finds and declares that the acquisition of development rights of farmland including any costs necessarily incident to such acquisition, and the monitoring and enforcement of development rights easements or participation with the State or any party for such purposes will promote the public health, safety, and general welfare of the people of Lenox Township.

C. *Purpose and Legislative Authority:*

- (1) The purpose of this ordinance is to establish the authorization and manner in which the Township is to acquire development rights in farmland as provided for in this ordinance pursuant to the Township Zoning Act, P.A. 184 of 1943, as amended, MCLA 125.271 through MCLA 125.310 and Subpart 11 of Part 21 of the Natural Resources and Environmental Protection Act, P.A. 451 of 1994 as amended, MCLA 324.2140 through MCLA 324.2144.

SECTION 2: Definitions.

- A. *"Agricultural Conservation Easement"* means a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant running with the land not to undertake development.
- B. *"Agricultural Use"* means the production of plants and animals useful to humans, including forages and sad crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and

grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program or a federal conservation reserve program. Agricultural use does not include the management and harvesting of a woodlot.

- C. *"Before and After Appraisal"* means an appraisal that determines the value of the full ownership of the land, before the development rights are severed, and the fair market value of the parcel after the development rights are severed.
- D. *"Development"* means an activity that materially alters or affects the existing conditions or use of any land.
- E. *"Development Rights"* means an interest in land that includes the right to construct a building or structure, to improve land for development, to divide a parcel for development, or to extract minerals incidental to a permitted use or a special land use or specific development rights, set forth in a development rights easement recorded in accordance with the provisions of this ordinance.
- F. *"Development Rights Easement"* means a grant, by an instrument, in which the owner relinquishes to the public in perpetuity the right to undertake development of the land, and that contains a covenant running with the land, not to undertake development, subject to permitted uses.
- G. *"Development Rights Value"* means the difference between the fair market value of the full ownership of the land (excluding the buildings thereon) and the fair market value of the land if the use were restricted to an agricultural use.
- H. *"Farmland"* means farmland as defined in Part 361 of the Natural Resources and Environmental Protection Act (NREPA), Act 451 of 1994 as amended.
- I. *"Owner" and "Landowner"* means a person having a freehold estate in land coupled with possession and enjoyment. If land is subject to a land contract, owner means the vendee in agreement with the vendor.
- J. *"Permitted Use"* means any use contained within a development rights easement essential to the farming operation or that does not alter the agricultural character of the land. Storage, retail or wholesale marketing, or processing of agricultural products is a permitted use in a farming operation if more than 50% of the stored, processed, or merchandised products are produced by the farm operator for at least 3 of the immediately preceding 5 years. Entertainment agriculture, such as you pick fruit operations, petting farms, Christmas tree farms and farm markets that include ancillary related uses are permitted as long as more than 50% of the gross receipts for the entertainment agricultural activity are attributable to the agricultural product being marketed and the facility has been approved by the Township.

- K. *"Purchase of Development Rights Selection Committee"* means a committee established via an inter-local agreement under the Urban Cooperation Act, containing representatives from the participating Townships, the purpose of said committee being to develop a scoring system for reviewing purchase of development rights applications, to review the applications, to make recommendations to the various participating Township Boards regarding parcels to select for acquisition and to develop and to make applications to State, Federal and other entities for purchase of development rights funding.
- L. *"Viable Agricultural Entity"* means a farm of less than 20 acres in size that produces a gross annual income in excess of \$50,000.00 annually from agricultural products produced on the less than 20 acre parcel.

SECTION 3: Authorizations.

- A. The Township Board is authorized to purchase development rights, as defined in this Ordinance and to accept a grant of an agricultural conservation easement, which easement shall specify the development rights purchased by the Township. In addition to purchasing of development rights the Township Board is authorized to acquire development rights by gift, grant, bequest, devise, covenant or contract.
- B. The Township is authorized to enter into cash purchase and/or installment purchases as authorized by law. When installment purchases are made, the Township is authorized to pay interest on the declining unpaid principal balance at a legal rate of interest consistent with prevailing market conditions at the time of execution of the installment contract and adjusted for the tax-exempt status of such interest.
- C. The Township Board is authorized to accept donation of all or part of the development rights of a parcel as authorized under Subpart 11 of Part 21 of the Natural Resources and Environmental Protection Act, P.A. 451 of 1994 as amended, MCLA 324.2140 through MCLA 324.2144.
- D. The Township Board is authorized to contract with other entities, such as land conservancies, to participate jointly in the acquisition of farmland development rights.
- E. The Township may contract with a recognized and legally established non-profit land conservancy or other entity that would assist in the process of negotiating easements and establishing both the baseline studies and the procedures for monitoring of any development rights easements acquired under this ordinance.
- F. The Township Board shall provide for periodic monitoring of all agricultural conservation easements purchased or gifted under the authority of this Ordinance, to ensure adherence to the development and use limitations.

- G. The Township Board is authorized to work in cooperation with other townships in order to execute the preservation of farmland through purchase of development rights in accordance with MCLA 125.301(3), the Township Zoning Act, Act 184 of 1943 as amended.
- H. The Township Supervisor, or his or her appointed agent after approval by the Township Board, is authorized to make grant applications to governmental programs, foundations, trusts or other entities to assist in the purchase of development rights of farmland.

SECTION 4: Applications.

- A. *Notice of Availability:* The Township may on an annual basis and based on available funding, conduct an application and selection process for landowners wishing to sell their development rights under the Township purchase of development rights program. A call for applications shall occur upon adoption of a resolution by the Township Board and upon publication, in a newspaper of general circulation in the Township, of the deadline for receiving applications and the manner in which applications may be obtained.
- B. *Eligibility:* A landowner may submit an application to the Township for consideration for development rights purchase provided the application meets the following requirements:
- (1) At least 51% of the parcel is devoted to an agricultural use.
 - (2) The nominated parcel is at least 20 acres in size, unless the parcel is located adjacent to already preserved land or is a viable agricultural entity.
 - (3) Mineral rights are either owned by the landowner or can be subordinated by the party in control of those rights.
- C. *Application Process:* A landowner may apply to have their development rights purchased by the Township in the following manner:
- (1) An application for consideration of development rights purchase may be obtained from the Township Clerk.
 - (2) Applications may be accepted for consideration on an annual basis and shall be filed with the Township Clerk.
 - (3) A fee is not required to accompany the application.
 - (4) The landowner must file the application.
 - (5) An application shall include the following information:

- (a) The name of the landowner filing the application.
- (b) The address and phone number of the applicant.
- (c) Proof of ownership of the property submitted with the application. Mortgage status of the property, along with the name, address, phone number, and contact name for the bank or other mortgage lender.
- (d) A legal description of the land being submitted with the application.
- (e) An indication of the number of tillable acres in land requested for consideration.
- (f) The size of the parcel
- (g) The type of crop grown.
- (h) Any other information deemed necessary to complete the application by the Board, as requested on the application form received from the Township Clerk.

D. *Review of the Application:* Upon receipt of the application the Clerk shall forward the application to the Purchase of Development Rights Selection Committee for scoring, review and recommendation. In the event that a Purchase of Development Rights Selection Committee as defined in this Ordinance has not been established, the Township Board shall forward the application to the Township Planning Commission for review and recommendation.

E. *Prioritization and Scoring Criteria:* The Purchase of Development Rights Selection Committee (or the Township Planning Commission if the Purchase of Development Rights Selection Committee has not been established) shall develop selection criteria and a numerical scoring system to be used to make recommendations to the Township Board for possible development rights purchase. The selection criteria shall place a priority on the purchase of the development rights of farmland based on the criteria listed in Section 5.A. of this ordinance.

SECTION 5: Standards and Procedures.

- A. *Selection Criteria:* The Board in its determination whether to purchase the development right of a particular farm parcel shall consider the following:
- (1) The consistency of the proposed development rights purchase with the Township Master Land Use Plan.
 - (2) The availability of funding to complete the purchase.
 - (3) Farmland that has a productive capacity suited for the production of feed, food, and fiber, including but not limited to nursery stock operations and the raising of horses.

- (4) Farmland that would complement and is part of a documented, long range effort or plan for land preservation.
- (5) Farmland that is located within an area that complements other land protection efforts by creating a block of farmland that is protected.
- (6) Farmland in which matching funds have been provided by either the landowner or another source.
- (7) Farmland that is under development pressure.
- (8) Written recommendations of the Purchase of Development Rights Selection Committee or the Township Planning Commission if a Purchase of Development Rights Selection Committee has not been established.
- (9) Such other information as may be reasonably necessary under all the facts and circumstances.

B. *Action by the Township Board:* Upon reviewing the application the Township Board shall, at regular meeting of the Board:

- (1) Approve the application; or
- (2) Approve the application subject to specific conditions; or
- (3) Deny the application, stating specific reasons for the denial; or
- (4) Postpone action on the application to a specified date.

C. *Agricultural Conservation Easement Provisions:* Upon the purchase of the development rights of a parcel the landowner shall execute an agricultural conservation easement on a form acceptable to the Township. The agricultural conservation easement shall contain provisions indicating the easement will run with the land and that the easement will be in perpetuity and may not be terminated except as provided for in this ordinance. The agricultural conservation easement shall include but not be limited to the following provisions:

- (1) The property may not be divided into parcels less than 40 acres in size.
- (2) The construction of residences for new owners on any division is prohibited.
- (3) Buildings may be constructed for agricultural use only subject to the terms and conditions of both the Lenox Township building code and Zoning Ordinance.

- (4) Only agricultural activities are permitted on the land.
- (5) Excavation of topsoil, sand, gravel, rock, minerals or other materials that significantly impairs the agricultural values of the property are prohibited.
- (6) The landowner may maintain, renovate, add to or replace existing structures subject to the terms and conditions of both the Lenox Township building code and Zoning Ordinance.
- (7) The property may be sold, mortgaged, bequeathed or donated provided that any conveyance is subject to the terms and conditions of the agricultural conservation easement.

D. *Method of Determining Value and Payment:* The method of determining the value and payment for the purchase of development rights for a selected parcel shall be as follows:

- (1) Upon approval of an application for development rights purchase under Section 5 the Township shall cause to be prepared an appraisal of the applicant's property. Said appraisal shall be a before and after appraisal. The amount to be offered shall be the difference between the before appraisal value and the after appraisal value or may be a lesser amount if the landowner has agreed to gift a portion of the development rights value.
- (2) State Certified Appraisers selected by the Township on a bid basis shall make appraisal. The selected appraiser shall not have a property interest, personal or financial interest in the selected parcel.
- (3) Appraisals shall be in writing and shall be furnished to the respective owners for review at the time an offer is made. If an owner of property believes the property has not been adequately appraised, said owner may, within 90 days from the date of offer, have a review appraisal made at the owner's expense, by a State Certified appraiser. The review appraisal shall be filed with the Township. The Township shall review the second appraisal and shall recommend an amount to be offered for the development rights.
- (4) Payment shall occur at the time of closing with the landowner, and shall be made by check from the Township to the landowner or, in the alternative, shall be made as an installment purchase upon agreement of the terms of the installment purchase between the landowner and the Township.

- E. *Recordation of Agricultural Conservation Easement:* In order to ensure that purchase of development rights is fixed so as to run with the land all agricultural conservation easements granted by a landowner under this ordinance shall be recorded at the Macomb County Register of Deeds office.

SECTION 6: Duration of Acquired Interests.

- A. The Township for the benefit of its citizens shall hold development Rights acquired pursuant to this Ordinance in trust in perpetuity. If the Township Board finds that the farmland upon which development rights have been acquired can no longer reasonably be used for an agricultural use the Township Board may approve the disposition of their interest in the land. For those development rights easements held jointly by the Township and another entity, such as a conservancy, trust or the State of Michigan, all parties to the easement must concur with the disposition of the development rights interest in the land.
- B. If the Township approves the disposition of development rights acquired on a parcel, the value of the development rights to be sold shall be determined by a before and after appraisal based on the value of the property at the time the request for disposition is made. The before and after appraisal shall be made by a State Certified Appraiser, selected by the Township on a bid basis. The difference between fair market value with development rights and the fair market value after the development rights are severed would be required to be repaid to the Township in order for the development rights to be reconnected to the parcel.
- C. Proceeds from the repurchase of the development rights of a parcel shall be deposited into the purchase of development rights fund of the Township and shall be used to acquire the development rights of other farmland within the Township.

SECTION 7: Purchase of Development Rights Funding.

- A. The Township Board may choose to request approval for additional taxes to fund the local purchase of development rights program
- B. Township funds, supplemental matching funds, or gifts from other governmental agencies or private sources may become available to pay a portion of the cost of acquiring development rights. The Township Board is hereby authorized to utilize such funds to purchase interests in farmland or to otherwise supplement any proceeds directly generated by the Township in accordance with the applicable laws or terms governing such grant.

SECTION 8: Severability.

Any provision of this Ordinance which is found by a court of competent jurisdiction to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision contained in the Ordinance and such other provisions shall remain in full force and effect.

SECTION 9: Publication.

A true copy of this ordinance or a summary thereof shall be published in a newspaper of general circulation in the Township of Lenox.

SECTION 10: Effective Date.

This ordinance shall be effective immediately upon publication.