

Peninsula Township Purchase of Development Rights Ordinance
Summary of Revisions Proposed by the Purchase of Development Rights Study Group
2/22/2022

The Peninsula Township Purchase of Development Rights Ordinance was initially approved by the Township Board on May 4, 1994. It was revised August 25, 2003 amending Section 8 to provide a process for amending easements and adding Section 14 Severability.

There have been two millage votes to support the Peninsula Township Purchase of Development Rights Program (PDR). The funding has been fully committed so the program is unable to buy any more Development Rights even though there are unrestricted farms whose owners are willing to participate in the program.

In 2019, a PDR Planning Group met with representation from the Township Supervisor and Board, the Planning Commission, the initial PDR Drafting Committee, the PDR Selection Committee, the Planner, and the Grand Traverse Regional Land Conservancy (GTRLC). They discussed a potential renewal of the PDR millage in order to protect additional farmlands within the Agricultural Preserve Area.

An Evaluation of the Peninsula Township Farmland Preservation Program had been written by Tom Daniels, Ph.D. on behalf of the GTRLC in 2008. This was submitted as well as recommendations from the conservancy staff to update the ordinance and better define the management processes for PDR. Additionally, circumstances had changed. The following is a list of things that changed during the PDR years that further prompted a review and update of the PDR Ordinance:

- The PDR Program and other preservation efforts have been supported and have been successful. There are, according to the GTRLC Peninsula Township Protected Land Map 2021, 6,036 acres of land under protection, representing 34% of the township.
- Agriculture on the Peninsula has become more diversified.
- The Michigan Zoning Enabling Act of 2006 was adopted.
- The Agricultural Preservation Area was expanded by the Township.
- Matching State and Federal Funds have become available that may be used to enhance the PDR Program if the program requirements are in alignment.
- The Township's experience and recommended best practices in the conservation industry have provided input for process and management changes.

A core group of the PDR Planning Group, known as the PDR Study Group, worked diligently into 2020 to revise the PDR Ordinance but went on a Covid-19 hiatus when it was unsafe to meet and it became apparent that there was no chance to move forward with a renewal election in that year. The core group's work resumed in 2021. The following is a summary of the substantial changes to the PDR Ordinance that are proposed.

The Peninsula Township Purchase of Development Rights Ordinance as amended August 25, 2003 was used as the base document for the revisions. It was reformatted for ease of reading before the editing began. Many minor changes have been made for clarity, grammar, and to update terms. Language has been added throughout the document for compliance with the Zoning Enabling Act.

The following is an outline of noteworthy changes made Section by Section:

SECTION 1 FINDINGS AND DECLARATION OF PURPOSE

- Updated the descriptions of agriculture.

SECTION 2 DEFINITIONS

- Clarified definitions.
- Deleted definitions not used elsewhere within this ordinance.
- Added several definitions including:
 - Conservation Easement;
 - Master Plan;
 - Open Space;
 - Peninsula Township Purchase of Development Rights Ordinance; and
 - Zoning Ordinance.

SECTION 3 AUTHORIZATION

Paragraph 6 provides budgeting guidelines for the monitoring of Conservation Easements.

SECTION 4 RETAINED RESIDENTIAL DEVELOPMENT RIGHTS

- Deleted unnecessary language.
- Paragraph 4 added specifications regarding the size of retained home sites, their survey and monumentation.

SECTION 5 ELIGIBLE LANDS AND PRIORITY OF ACQUISITION

- Specified that property that is part of an approved Special Use Permit for a Winery Chateau or Remote Winery Tasting Room is not eligible to participate in the Purchase of Development Rights program.
- Provided for up to 10% of the generated taxes to be spent on acquiring unused Development Rights from properties with existing Conservation Easements.
- Added a chart of criteria for the above purpose.
- The criteria used to prioritize the acquisition of development rights on new property was simplified and the weighting was changed to favor large parcels and the leveraging of funds.
- Previously, viewsheds were individually evaluated and the scoring was subjective. The new scoring is much simpler. If any of the parcel falls within a viewshed it is given a fixed number of points.

- The Planning Commission reviewed and enlarged the Agricultural Preservation Area Map. In so doing, they took into consideration the Red Tart Cherry Site Inventory and the physical characteristics of the township's land so these items have been deleted from the scoring.
- Points have been added for other funds that are to be used to leverage easement acquisitions.
- Eliminated points for adjacency to "currently farmed properties", instead there are points for adjacency to properties with conservation easements.
- Increased points for parcel size.

SECTION 6 SELECTION COMMITTEE

- The committee size was reduced from seven to five; terms were amended accordingly.

SECTION 7 SELECTION

- Streamlined and rearranged the process for selection.
- Clarified the appraisal criteria and process.
- Added that the Selection Committee may re-score and re-prioritize applications as information and conditions change.
- Added language regarding appeals.

SECTION 8A DURATION OF ACQUIRED INTERESTS AND RELINQUISHMENT OF ANY INTEREST

- Replaced previous ordinance language with "The Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the conservation purposes as described in the conservation easement, or by exercise of eminent domain."

For an unexpected change in condition, there would need to be a majority vote of the township and must go through judicial proceedings to entitle the Township to compensation in accordance with Internal Revenue Code provisions.

If any of the property is taken by eminent domain, compensation is determined by an Internal Revenue Code method.

SECTION 8B AMENDMENT OF CONSERVATION EASEMENT

- First Paragraph - Added that procedures for the administration of the amendment process will be established and adopted within 90 days of the passage of this ordinance.
- #3 Review - was added to provide legal review for applicable laws, rules and regulations as well as for compliance with current Land Trust Standards and Practices, and amendment principles, published by The Land Trust Alliance.
- #6 Standards - was revised to incorporate principles that have been adopted by The Land Trust Alliance. A previously used list of negative conditions is used in a positive tone as examples of acceptable outcomes.

- #7 Appraisal of Changes in Value - deleted payment of increase in value to the Township because according to the principle in #6a iii "The amendment does not result in private inurement or confer impermissible private benefit.

SECTION 8D TRANSFER OF DEVELOPMENT RIGHTS

- This section was added to clarify that property where the Township has purchased Development Rights may not, now or in the future, serve as a receiving area for a transfer of development rights.

SECTION 9 RELATED COSTS

- No substantive changes.

SECTION 10 SUPPLEMENTAL FUNDS

- No substantive changes.

SECTION 11 TOWNSHIP PURPOSE

- No substantive changes.

SECTION 12 DEVELOPMENT RIGHTS ACQUISITION FUND

- No substantive changes.

SECTION 13 DEVELOPMENT RIGHTS ENFORCEMENT FUND

- Added that the Township Board shall not only establish, but shall maintain a Development Rights Enforcement Fund and increased the budget amount from \$40,000 to \$100,000.

SECTION 14 SEVERABILITY

- No substantive changes.