DO NOT REMOVE
FROM THE FILE

ORDINANCE NO. 94-02-097

THE EFFECTIVE DATE OF THIS ORDINANCE IS April 5, 1994

RE: LOCAL PROGRAM FOR THE PRESERVATION OF CRITICAL AGRICULTURAL LAND

PREAMBLE

The Board of County Commissioners of Frederick County, Maryland is authorized to adopt, and from time to time amend, revise, rescind or change a local program for the preservation of agricultural land subject to the approval of the Maryland Agricultural Land Preservation Foundation, the State Treasurer and the Secretary of the Department of Agriculture by virtue of the authority contained in Section 2-512 of the Agriculture Article of the Annotated Code of Maryland;

Frederick County currently has an active Agricultural Preservation Program;

Frederick County wishes to supplement its existing local program to encourage the preservation of agricultural land and to protect and preserve the family farm;

Frederick County is an active participant in the Maryland Agricultural Land Preservation Program with over 8434 acres under easement or under contract for easement settlement and another 9681 acres covered by District Agreements;

It is important to protect the agricultural viability of areas of the county where many farms are already under easement by assisting owners and prospective owners who wish to preserve the land for permanent agricultural use; and

The Maryland Agricultural Land Preservation Program does not provide adequate certainty of easement purchase to prevent certain farms from being subdivided into residential lots or otherwise developed;

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that this Ordinance is hereby approved and adopted to read as follows:

FILED!
JUN 7 9 13 AM '94
CLERK

Section 1-13-34. LOCAL PROGRAM FOR THE PRESERVATION OF CRITICAL AGRICULTURAL LAND.

A. PURPOSES. There is hereby created in Frederick County a

BY _____

pc: Co. Atty., P+Z, Gordon, File

Critical Farms Program, for the purpose of protecting certain specific agricultural property from subdivision or other development and also for the purpose of protecting and preserving the family farm and full-time farmers. This protection shall occur primarily through the use of options to purchase development rights easements on this property. An applicant for eligibility for this program shall make application to the Program Administrator, who will determine the eligibility of the farm pursuant to the provisions of subsection (B) herein.

B. ELIGIBILITY. To be eligible for this program, a farm must meet each of the following criteria:

1. The farm must meet the requirements of the Maryland Agricultural Land Preservation Program for district formation and easement sale that are in effect at the time of the application, and must receive a favorable recommendation for district formation from the Frederick County Agricultural Preservation Advisory Board;

2. The applicant must submit documentation that:

   a. the applicant is the contract purchaser of the farm; or

   b. the farm has been purchased by the applicant within the previous six months;

3. Seventy-five percent of the acreage of the farm must be located within an area zoned either Agricultural or Conservation;

4. The farm must be able to have additional residential lots created within the farm under the County zoning and subdivision regulations; and

5. The applicant must be a full time farmer. To be considered a full time farmer, the applicant ordinarily must have derived a majority of the applicant's gross income from farming during each of the past 3 years. The Frederick County Agricultural Preservation Advisory Board shall have the discretion, however, to determine that an applicant qualifies as a full time farmer for purposes of this program even though a majority of the applicant's gross income during each of the past 3 years has not come from farming. In making this determination the Frederick County Agricultural Preservation Advisory Board shall consider the following:

   a. the percentage of the applicant's gross income which has been derived from farming;

   b. the source and type of income the applicant has received;

   c. the applicant's history, involvement, and experience in farming;

d. the purposes of this local program for the preservation of critical agricultural land; and

e. if the applicant includes more than one individual, the source and type of income each has received individually.

C. SCORING. The evaluation of applications shall be governed by the then current priority criteria established for the Frederick County Agricultural Land Preservation Program.

D. RANKING. All information regarding eligibility criteria and scoring of an individual farm property will be presented to the Frederick County Agricultural Preservation Advisory Board. Based on the eligibility criteria and the scoring, the Frederick County Agricultural Preservation Advisory Board will decide whether to include the farm in the ranking system. The Program Administrator will compile a list of active applicants ranked from the highest approved score to the lowest approved score. Each active applicant shall be informed of the applicant's position in the ranking. An application approved by the Advisory Board will be considered active until the applicant submits a written request for cancellation, or until the status of the farm changes so that it no longer meets the criteria of this section.

E. PROCEDURES. During the first 14 days of each month in which funds are available for this program, the Program Administrator shall accept applications for eligibility for this Program. The Program Administrator shall refer each application to the Agricultural Preservation Board for an evaluation of its eligibility for this program.

F. PRELIMINARY APPROVAL. Whenever the uncommitted funds of the Frederick County Program for the Preservation of Critical Agricultural Land may be sufficient to allow the funding of an option to purchase a development rights easement, the Program Administrator will provide the Board of County Commissioners with the list of the active applicants with ranking.

The Board of County Commissioners may grant preliminary approval to one or more applicants, always giving preference to the highest score. The Board of County Commissioners may also determine that none of the properties on the list has a score which is high enough to justify an option to purchase a development rights easement through this program.

G. EASEMENT EVALUATION. After preliminary approval, the County will authorize and pay for two appraisals of development rights easement value conducted according to the guidelines of the Maryland Agricultural Land Preservation Program. The two appraisals will be used by the County and the applicant to negotiate a development rights easement value.

The maximum value of any development rights easement shall be the difference between the fair market value of the land and the agricultural value of the land. The fair market value of the land is the price as of the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property was not subject to any restriction imposed under the state or county agricultural preservation programs.

The agricultural value of land is the price as of the valuation date which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property as a farm unit, to be used for agricultural purposes.

When an agreement as to the easement value has been reached, the Board of County Commissioners may grant the final approval of the option to purchase the development rights easement. Preliminary approval by the Board of County Commissioners does not obligate the Board of County Commissioners in any way to grant final approval.

H. OPTION TO PURCHASE EASEMENT. Upon final approval by the Board of County Commissioners, the County will agree in writing to extend to the applicant an option to purchase a development rights easement, in an amount equal to seventy-five percent of the agreed upon value of the easement, which option shall extend for a period of five years.

This option shall include a statement that the farm in question shall be created as an Agricultural Land Preservation District and shall provide for restrictions on the use of the land substantially the same as those restrictions contained in the easement agreement of the Maryland Agricultural Land Preservation Foundation. Once the documents creating this district are prepared and executed, the appropriate documents shall be recorded in the Land Records of Frederick County.

I. EASEMENT SALE. The recorded option to purchase will require that the applicant and its heirs or assigns actively pursue for a period of five years the sale of an easement of the Maryland Agricultural Land Preservation Foundation ("Foundation") at an asking price no lower than the amount of the option to purchase the easement extended by the County. Any offer from the Foundation that equals or exceeds the amount of the option must be accepted by the applicant.

If the Foundation purchases a development rights easement from the applicant during this five year period, the full amount of the County option will be repaid to the County at the settlement of the easement. Any offer made by the Foundation which is equal to or greater than the amount of the County Option must be accepted and

the entire amount owed to the County shall be paid to the County at the time of easement settlement. Settlement of a Foundation easement and payment of the proceeds to the County will release the applicant from any additional obligation of the option to purchase by the County.

If a development rights easement on the property has not been purchased by the Foundation within five years, the applicant may rescind the Option to Purchase by repaying to the County the full selling price of the Option, plus interest for the entire period of the Option, at the legal rate in effect at the time of rescission. If the applicant does not cancel the Option the County will exercise the option contained in the agreement and purchase the development rights easement from the applicant for such consideration as will have already been provided. Unless otherwise agreed by both the County and the applicant, the easement agreement will be substantially the same as the standard easement agreement of the Foundation. The easement agreement may be assigned by the County to the Foundation.

The undersigned hereby certifies that the foregoing Ordinance was approved and adopted on the 5th day of April, 1994.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

Dawn Hatzer
Administrative Officer

By
Ronald L. Sundergill
President