Webster Township Purchase of Development Rights Ordinance

AN ORDINANCE authorizing Webster Township to acquire voluntarily offered property Development Rights in real estate on farmland and open space land within the township, and establishing the procedure for acquiring and financing the acquisition of Development Rights.

THE WEBSTER TOWNSHIP BOARD OF TRUSTEES ORDAINS:

SECTION 1: Findings and Declaration of Purpose

The Board of Trustees finds that:

1. Webster Township is a desirable place to live, work and visit in large part because of the availability of farmland, natural features and open space. The Township Master Plan includes scenic views, agriculture, open spaces and wildlife habitat as valuable natural and aesthetic resources that should be protected.
2. The climate, variety of soils and terrain make the Township well suited to the production of a great number of agricultural products. These resources include several thousand acres of land currently in agricultural production, and other woodland, wetland and open lands adjacent to these farmlands. Such lands provide unique, aesthetic and economic benefits to the citizens of the Township and are an important part of the Township's natural and agricultural heritage.
3. Webster Township is experiencing substantial residential development because of its proximity to Dexter, Ann Arbor and other employment centers, its attractive landscapes and excellent public schools. The same characteristics which have made this area so desirable for agricultural production and recreation also make it attractive for residential sites.
4. It is the policy of the State of Michigan, Washtenaw County and Webster Township to protect, preserve and enhance agricultural lands as evidenced by the Township Master Plan, the Township Zoning Act, the Washtenaw County PDR Ordinance, MCLA 125.271 et seq. and other state and local statutes and policies. Ordinances regulating land use by zoning and subdivision control enacted by the Township also serve these purposes. These measures by themselves, however, have not effectively provided long-term protection of agricultural areas and open space from pressure of increasing residential and commercial development.
5. The Township recognizes the agricultural industry's significant contributions to the local economy.

6. Generally, farmlands which are close to urban centers have a greater market value for future residential development than their market value for farming or open space.
   Prime agricultural land often has the same features (such as perkable soils) that are components of desirable residential areas. This encourages the speculative purchase of these lands at high prices for future residential development, regardless of the current zoning of such lands. Farmland which has a market value greater than its agricultural value does not attract sustained agricultural investment and eventually this land is sold by farmland owners.
7. The permanent acquisition of voluntarily offered interests in farmland and open space within the Township, as provided in this Ordinance and as authorized by the Constitution and statutes of the State of Michigan, will permit these lands to remain in Agricultural Use near developing urban areas and provide long-term protection for the public interests which are served by those lands in the Township.
8. Properties on which the Township has purchased the Development Rights should remain substantially undeveloped in order to promote their natural and Agricultural Use.
9. The acquisition of interests in farmland and open space as provided in this Ordinance is a public purpose of Webster Township as provided in this Ordinance and financing such acquisition requires that the Township enter into purchases or installment purchases not to exceed statutory limits.
10. This ordinance is authorized by Sections 31 to 33 of the Township Zoning Act. MCL 125.301 B 125.303.

SECTION 2: Definitions

"Agricultural Rights" means an interest in and the right to use and possess land for purposes and activities related to open space, natural habitat, horticultural and other Agricultural Uses.

"Agricultural Use" means farmland devoted to the production of plants and animals useful to humans, including forages and sod 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, a federal conservation reserve program or a wetland reserve program. Agricultural Use does not include the management and harvest of a woodlot.

"Board of Trustees" means the Webster Township Board of Trustees.

"Chairperson" means the member of the Farmland and Open Space Preservation Board who is elected Chairperson by the Preservation Board.

"Conservation Easement" means a non-possessory interest in real property which is acquired in accordance with MCL 324.2140 et seq. for the purpose of retaining and enhancing agriculture; preserving natural, scenic or open space values of real property; restricting or preventing the development or improvement of land for purposes other than agricultural production; or other similar purposes.

"Development" means an activity which materially alters or affects the existing conditions or use of any land.

"Development Rights" means an interest in and the right to use and subdivide land for any and all residential, commercial and industrial purposes and activities which are not incident to agriculture and open space.

"Eligible Land" means Farmland and/or Open Space for which the purchase of Development Rights are authorized pursuant to this Ordinance.

"Farmland " means those lands designated in the Township Master Plan for Agricultural Uses.

"Farmland and Open Space Preservation Board" or "Preservation Board" means the board appointed by the Board of Trustees pursuant to Section 6 of this Ordinance to advise in the selection of Eligible Lands for Conservation Easement purchases.

"Fee Simple Ownership" means full and irrevocable ownership of land, and any buildings on that land, owned outright, without any limitations or restrictions other than local zoning ordinances..

"Governmental Agency" means the United States or any agency thereof, the State of Michigan or any agency thereof or any Township, City or municipal corporation.

"Open Space" means substantially undeveloped land that is not devoted to Agricultural Use but possesses special qualities including natural areas, scenic views, wildlife habitat and threatened or endangered species.

"Owner" means the party or parties having the fee simple interest in land.

"Parcel" means all property under a single ownership that is included in the application.

"Permitted Use" means any use contained within a Conservation Easement essential to farming, or other non-consumptive uses.

"Supervisor" means the Webster Township Supervisor.

"Township" means Webster Township.

"Value of Development Rights" means the difference between the fair market value of Fee Simple Ownership of the land (excluding the buildings thereon) and the fair market value of the agricultural rights and/or the open space value plus any residential Development Rights to be retained by the owner.

SECTION 3: Authorization

1. The Board of Trustees is hereby authorized to create a special Development Rights Acquisition Fund to provide matching funds for Purchase of Development Rights applications. This fund may financed by any of the following:
    a. Millage, voted upon and approved by the residents of the Township, for Purchase of Development Rights
    b. Allocation from the Township General Fund
    c. Fees that are earmarked for Farmland Preservation
    d. Contributions or bequests.
2. The Board of Trustees is hereby authorized to expend tax revenues, specifically generated and set aside in the Development Rights Acquisition Fund as stipulated in 3.1 above, to acquire property interests in Farmland and Open Space land described and prioritized in Section 5 of this Ordinance. The property interest acquired may be the Development Rights or any lesser interest, easement, covenant or other contractual right. Such acquisition may be accomplished by purchase, gift, grant, bequest, devise, covenant or contract but only at a price which is equal to or less than the appraised value determined as provided in this Ordinance. The revenues shall be used to acquire such property interests only upon application of the Owner and in a strictly voluntary manner.
3. The Board of Trustees is authorized to enter into cash purchase and/or installment purchase contracts, and agreements for the receipt of tax deductible donations of easements, consistent with applicable 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 for the tax-exempt status of such interest.

4. The Board of Trustees is further authorized to contract with recognized and legally established nonprofit land trusts (for example, American Farmland Trust and Legacy Land Conservancy) other experienced and qualified nonprofit groups or other units of government to participate jointly in the acquisition of interests in Eligible Land.
5. The Board of Trustees may contract with recognized and legally established nonprofit land trusts, other experienced and qualified nonprofit groups or other local units of government that would assist the Township in establishing baseline studies, procedures for monitoring and/or the management of any Conservation Easements acquired under this Ordinance. Such studies and monitoring must conform to the "The Standards and Practices Guidebook" issued by the Land Trust Alliance, or its revised version as it becomes available.

SECTION 4: Retained Residential Development Rights

1. To promote Agricultural Use of properties and retain Open Space characteristics on which the Township has purchased the Development Rights, such properties should remain substantially undeveloped.
2. It may be in the best interest of property owners and of the program that property owners retain some residential Development Rights so long as the land remains substantially undeveloped. When property owners retain some Development Rights their land value remains higher than it would be if they sold all their Development Rights and the value of the Development Rights to be purchased is correspondingly reduced.
3. Applications for the sale of Development Rights may include a provision to retain the limited right to build residential dwellings . This is not to preclude the sale of all existing dwelling units on the site at the time the Development Rights are purchased. Sale of these existing dwelling units shall be in accordance with the Conservation Easement on the property.
4. The building locations for retained residential Development Rights may be restricted in the negotiated Conservation Easement in order to protect other important features of the property. Building locations and lot sizes must also conform to existing zoning regulations.

SECTION 5: Eligible Lands and Priority of Acquisition

Revenues shall be used to purchase Development Rights in the following lands subject to the provisions of Section 7.

<u>Primary Criteria that all properties must meet:</u>

- Voluntary application by the property owner and those lands designated in the Township Master Plan for Agricultural Uses and natural features.

Criteria for Selection:
The following criteria shall be used in determining the order in which applications will be prioritized to purchase Development Rights on all Eligible Lands for which complete applications have been received by the Township. This numerical ranking system has been developed to prioritize Farmland and Open Space for the purchase of Conservation Easements. After an initial screening, sites will be evaluated using this system. It is the intention of the users of this system to direct efforts toward high quality Farmland and Open space in areas of the Township where its preservation is most appropriate. Appropriateness is determined by favorable natural conditions and location factors which make farming a viable undertaking both currently and in the future. Areas targeted for preservation are those lands designated in the Township Master Plan for Agricultural Uses and with special natural features.

Initial Screening

1. Conservation Easement already placed on the property.
   a. If yes, then reject application.
2. Permitted use according to local zoning: Is agriculture a permitted use according to the zoning designation for the nominated parcel? Or if the nominated parcel is considered Open Space as defined in this ordinance, is the current or proposed use of the nominated parcel permitted according to the Township's zoning ordinance?
   a. If no, then recommend rejection of application.
3. Contamination on the site: Is the site free of any known environmental contamination?
   a. If no, then recommend rejection of application.

Description of the System:
The screening and scoring system for review of potential Conservation Easement acquisitions consists of two land types: Farmland and Open Space land. The system is intended to identify high quality Farmland and Open Space properties that are appropriate for protection. The point value arrived at through the use of this system will be used to prioritize sites for purchase of Conservation Easements. Higher point values indicate higher priority for purchase. All property

in a single ownership may be included in one application. Contiguous properties under the same ownership will be treated as a single entity.

The Farmland system consists of four sections with a maximum point value of 100.
The Open Space system consists of three sections with a maximum point value of 113.

A. Farmland

PART	TOTAL POINTS
I - Characteristics of the Farmland	51
II - Stewardship of the Land	6
III - Pressure for Conversion to Non-farm Use	18
IV – Leveraging	25

Note: An explanation of terms and parameters used in the system appears in Appendix A.

PART I - CHARACTERISTICS OF THE FARMLAND

Quality of the soils

Category	Score
75% or more Class I, II	15
50-74% Class I, II	10
50% or more Class I, II, III	6
Less than 50% Class I, II, III	0

Size of Parcel Offered for Development Rights Purchase

Acreage	Score
80 acres or more	15
20 to 79 acres	8
5 to 19 acres	3

Farmland in Agricultural Use

Percent of Property in Agricultural Use	
90% & up	10
76% - 89%	8
61% - 75%	6
51% - 60%	4

Proximity to Protected Land

Distance	Score
Directly adjacent	6
Not adjacent, but within 1 mile	3
Not adjacent and not within 1 mile	0

Scenic, Historical, or Architectural Features

Features	
Farm site provides a vista or has unique historical or architectural features, including architecturally significant barn(s)	5
Farm site provides an accent	3

PART II - STEWARDSHIP OF THE LAND

Conservation Plans

Extent of Conservation Plan	Score
USDA Natural Resources Conservation Services (NRCS) conservation plan implemented	4
Conservation practices used on the property (documented)	3
Limited or no conservation practices used	0

Commitment to Farming

P.A. 116 Participation	Score
Applicant property enrolled in P.A.116	3

PART III

PRESSURE FOR CONVERSION TO NON-FARM USE (OR SITE DEVELOPMENT CAPABILITIES AND LIMITATIONS)

Amount of Road Frontage

Frontage	Score
1,000 feet or more	6
500 - 999 feet	3
100 - 499 feet	1

Adjacent Land Use

Percent of Perimeter in Agricultural Use	Score
75-100%	6
50-74%	4
25-49%	2
< 25%	0

Adjacent Land Use Designation

Percent of Perimeter designated Agricultural Zoning	Score
75-100%	6
50-74%	4
25-49%	2
< 25%	0

PART IV
LEVERAGING

Acquisition Considerations

Matching Funds	Score
> 50%	15
20 – 50%	10
< 20%	5
No matching funds	0

Landowner Contribution	Score
> 20%	10
10-20%	8
< 10%	2
No contribution	0

B. Open Space Land

PART	TOTAL POINTS
I – Characteristics of the Land	44
II – Context	46
III – Acquisition Considerations	23

I. *Characteristics of the Land*

	Score
Mature Trees and/or Rare Species	
Species and/or habitats of special concern	15
Mature native forest or grassland elements	10
Early successional plant communities	6
Parcel Size	
> 40 acres	10
20 – 40 acres	3
< 20 acres	2
Road Frontage	
> 1000 feet	3
500 – 1000 feet	2
< 500 feet	1
Wetlands and/or Floodplain (% of property with feature)	
>20%	10
10 – 20 %	7
<10%	3
No features	0
Groundwater Recharge (% of property serving as a groundwater recharge)	
> 75 %	6
50 -75%	4
< 50%	2

II. *Context*

	Score
Adjacent Land Use (% of properties perimeter to open space and/or agriculture use)	
> 89%	7
50 – 89 %	5

< 50%	4
None	0

Proximity to Water Resources Frontage (Amount of frontage on open water, a perennial stream, or county drain)

> 500 feet	15
100 – 500 feet	10
< 100 feet	5
no frontage	0

Proximity to Protected Land

Adjacent	12
1 mile or less	6
> 1 mile	0

Scenic and/or historical value (Does the site provide vista, or does it have unique or historical features)

2 or more attributes	12
1 attributes	6
0 attributes	0

III. *Acquisition Considerations*

Matching Funds

> 50%	15
20 – 50%	10
< 20 %	5
No funds	0

Landowner Contribution

> 20%	8
10 – 20%	5
<10%	3

SECTION 6: Farmland and Open Space Preservation Board

1. A five-member Farmland and Open Space Preservation Board shall be appointed by the Board of Trustees. The Board of Trustees shall seek the

names of nominees for the Preservation Board by the means usually employed for other boards and commissions. The Preservation Board shall determine the selection of Eligible Land on which Development Rights are offered for acquisition by their owners. Selection of Eligible Land shall be made by a majority of Preservation Board members.

2. The Preservation Board shall consist of residents of the Township. The Preservation Board shall include a representative of the Board of Trustees, two citizens at-large and two representatives who own agricultural land or operate agricultural businesses. The Board of Trustees may appoint ex-officio members.
3. The Preservation Board may consult experts as it may desire and the Board of Trustees may appropriate funds for that purpose.
4. Members shall serve two-year terms,. and shall not be compensated for their services but shall be reimbursed for expenses actually incurred in the performance of their duties. Members may be reappointed to successive terms.
5. No member shall vote on the selection of individual parcels in which they have an interest or on individual parcels adjacent to property in which they have an interest.

SECTION 7: Selection

The Preservation Board shall conduct an open voluntary application process and utilize the scoring system specified in Section 5 as follows:

1. Properties with higher scoring shall be pursued with available funds before properties of lower scoring, provided:
    a. The Preservation Board may negotiate for a lower price and/or seek outside funding for the purchase of Development Rights on any parcel offered.
    b. In the interest of protecting a significant amount of agricultural or Open Space land, the Preservation Board may determine not to buy all of any of the Development Rights on a particular parcel if the Preservation Board makes a finding that it is in the best interest of the program to protect a larger number of acres rather than a smaller number of acres of higher valued Development Rights.
    c. The Preservation Board may receive and act on appeals of any factual nature by an affected property Owner.
2. Applications shall be submitted to a location to be specified by the Preservation Board and stamped with the date of receipt.

3. The Preservation Board shall review each application received to determine the eligibility and priority classification of each property interest and to verify ownership by tax records.
4. For those properties which meet the requirements of Section 5, the Preservation Board shall cause an appraisal of the applicant's property interest to be made. A "before and after" appraisal shall be made to determine the value of Development Rights. One appraisal shall determine the fair market value of full ownership of the land (excluding buildings thereon) and one shall determine the fair market value of the agricultural rights and/or open space value, plus any specifically retained residential Development Rights.
5. Appraisals shall be made by State certified appraisersselected by the Preservation Board. The selected appraiser shall not have a property interest, personal interest or financial interest in Eligible Land. The same appraiser shall conduct the before and after appraisals.
6. Appraisals shall be in writing and shall be furnished to the respective owners for review. Errors of fact in any appraisal may be called to the attention of the appraiser by the Preservation Board or by an Owner of the property appraised, but corrections of the appraisal may be made only by the appraiser.
7. .
8. Written applications by an Owner who desires to have Development Rights purchased by the Township shall be submitted on forms provided by the Preservation Board. These written offers shall include any development options desired to be retained by the Owner.
9. Upon receiving the recommendations of the Preservation Board, the Board of Trustees shall take final action on such recommendations.
10. Once action to select properties for the purchase of Development Rights has been taken by the Board of Trustees, the Preservation Board shall draft a baseline documentation report describing through photographic, pictorial and narrative means the condition of the property at the time of the grant and a Development Rights easement. The baseline report shall contain a signature page where the Owner and the Supervisor sign to state that the report is an accurate description of the property at the time of grant. The easement shall similarly feature a page where the signatures of the Owner and the Supervisor are notarized, following which the easement shall be recorded with the Washtenaw County Register of Deeds so that it is effective on all current and future Owners.
11. Upon the completion of a purchase of Development Rights transaction, the Township assessor will be notified of the Development Rights purchase.

SECTION 8: Duration of Acquired Interests

1. Development Rights acquired pursuant to this Ordinance shall run with the land and be held by the Township for the benefits of its citizens in perpetuity. , An Owner who has sold Development Rights to the Township may repurchase those Deveopment Rights upon the following conditions:
    - Fifty (50) years have passed since the Development Rights were sold; and
    - The Preservation Board determines that the property may not be reasonably used for Agricultural Use or has lost its Open Space character. A recommendation will be based on the following factors:
        i. That, because of the quality of the Farmland, agricultural production cannot be made economically viable with generally accepted agricultural and management practices
        ii. That surrounding conditions impose physical obstacles to the agricultural operation or prohibit essential agricultural practices
        iii. That significant natural physical changes in the Farmland have occurred that are generally irreversible and permanently limit the productivity of the farmland
        iv. That a court order restricts the use of the Farmland so that agricultural production cannot be made economically viable
        v. That significant natural physical changes occurred in the Open Space making it less desirable to protect; and
    - Repurchase of the Development Rights is consistent with the purpose of the Township's land preservation program as determined by the Preservation Board; and
    - The Township chooses not to exercise its 60-day option to purchase the remainder of the property interests in the parcel; and.
    - All other funding parters agree to the repurchase.

2. Once the Preservation Board determines that a property is eligible to have its Development Rights repurchased, the Owner shall pay the fair market value of those rights at the time of their return, as determined by a State Certified Appraiser. The Owner may not challenge this appraisal. The Township will deposit the proceeds from any repurchases into the Development Rights Acquisition Fund which shall be used to purchase additional Development Rights.

3. A repayment received shall be allocated to all original contributing funding partners in the same proportion as the proportion for the original purchase of the Development Rights of the parcel.

SECTION 9: Related Costs

The costs of appraisal, survey, environmental assessment, closing and legal review lawfully incurred incident to the acquisition of Conservation Easements by the Township may be paid by the Township. The Township shall not be responsible for expenses incurred by the Owner incident to this transaction, including surveying and the owner's legal review.

SECTION 10: Supplemental Funds

Supplemental or matching funds from other Governmental Agencies or private sources may become available to pay a portion of the cost of acquiring Development Rights,. The Board of Trustees is hereby authorized to utilize such funds to supplement Township funds in the manner provided by this Ordinance and in accordance with the applicable laws or terms governing such grant.

SECTION 11: Development Rights Funding Sources and Acquisition Fund

1. Funding for purchasing Development Rights may come one or more of the following sources:
    a. General appropriations by the township specifically set aside in the Development Rights Acquisition Fund (see section 3).
    b. Proceeds from the sale of Development Rights by the township subject to Section 8 of this Ordinance.
    c. Grants.
    d. Donations.
    e. Contributions from land trusts or other non-profit entities
    f. Other sources approved by the Board of Trustees and permitted by law.
2. All revenues for purchasing Development Rights on Farmland and Open Space land shall be placed in a designated Development Rights Acquisition Fund to be hereafter created in the office of the Treasurer of Webster Township. Money in such acquisition fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Township money.
3. The revenues and any interest received from the deposit or investment of such revenues shall be applied and used solely for the purposes set forth in this Ordinance.

SECTION 13: Severability.

In the event any provision of this Ordinance shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

APPENDIX A

PART I - CHARACTERISTICS OF THE FARMLAND

Accent. Attractive view but narrower in scope and weaker in impact than a vista.

Protected Land. Protected land is defined as that which is permanently protected through private or public means. Types of protected land include nature preserves, public park and recreation lands, lands restricted by Conservation Easement with land trusts and conservancies or other Governmental Agencies, and other lands with Development Rights secured through purchase or donation.

Vista. A broadly sweeping view visible from publicly accessible places, including but not limited to a variety of vegetation types such as woodlands, farm fields and topographic variations.

PART II - STEWARDSHIP OF THE LAND

Conservation Plans. In the absence of NRCS plans, the Preservation Board will determine the extent of conservation practices by consulting with experts in the field and other appropriate means.

Enrollment in P.A. 116. Michigan's Farmland and Open Space Preservation Act (P.A. 116 of 1974) enables a landowner to enter into a Development Rights agreement (for Farmland) or a Development Rights easement (for Open Space) with the State. These agreements and easements are designed to ensure that the land remains in a particular use or uses for an agreed upon period.In return for maintaining the land in a particular use, the landowner is entitled to certain income or property tax benefits.

PART IV - LEVERAGING

Matching Funds. Matching funds are defined as other financial contributions from private or public sources that could be applied to a property's application and result in a lower local cost for Development Rights purchase.

Landowner Contribution. Refers to an owner's willingness to accept an offer for Development Rights at a percentage or amount lower than the appraised value.