

PENINSULA TOWNSHIP

ORDINANCE NO. 23

AMENDMENT NO. 1

An Amendment to Ordinance No. 23, Purchase of Development Rights Ordinance, amending Section 8 of the Ordinance;

THE TOWNSHIP OF PENINSULA ORDAINS:

SECTION 8:

A. Duration of Acquired Interests and Relinquishment of Any Interest. Development Rights acquired pursuant to this Ordinance shall be held in trust by the Township for the benefit of its citizens in perpetuity, subject to the following: If the Township Board shall find that Farmland and Open Space Land described in this Ordinance can no longer reasonably be used for "Agricultural Use" as to any interest in land acquired with Millage proceeds, the Township Board shall submit to the voters of the Township a proposition to approve of the disposition of such interest. Only upon a majority vote approving such proposition can such interest be disposed of by the Township and the proceeds of such disposition shall only be used for the acquisition of interests in "Eligible Lands" as provided in this Ordinance. A "before and after" appraisal shall be made to determine the Value of Development Rights, and the Township shall not sell the Development Rights for an amount less than the appraised value of the Development Rights determined as follows: 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 plus any retained development rights. Appraisals of the fair market value of Full Ownership or of a property interest other than Development Rights shall be made by State Certified Appraisers selected by the Selection Committee on a bid basis. The selected appraiser shall not have a property interest, personal interest or financial interest in Eligible Lands. In the event that the low bidder has a conflict of interest associated with a potential easement, the second low bidder will conduct that appraisal. In any event, the same appraiser shall conduct the before and after appraisals.

B. Amendment of Conservation Easement. Because of the public trust that is inherently involved with the Purchase of Development rights and the corresponding intent that all conservation easements endure in perpetuity, amendments of conservation easements are to be discouraged and can only be amended in compliance with strict standards. An application for an amendment of a Conservation Easement and any amendment of the terms and conditions of a Conservation Easement shall proceed in accordance with the following provisions:

- (1) Application. Application for amending a recorded Conservation Easement shall be made to the Township Clerk on a form approved by the Township Clerk, along with a non-refundable fee as determined by the Township Board by resolution.
- (2) Application Costs.
  - a. The Township shall not be responsible for any expenses incident to the request for amendment.
  - b. All costs associated with the requested amendment, including appraisals, attorney fees and publication fees, shall be paid by the applicant.
  - c. Prior to undertaking any direct expenses related to the request, the Township Board shall require a deposit to cover the estimated costs associated with consideration of the request. All unexpended funds shall be returned to the applicant.
- (3) Public Hearing. The Township Board shall hold a public hearing prior to consideration of an amendment to a Conservation Easement. The notice shall meet the same time requirements as a notice for a Planning Commission public hearing for a Zoning Ordinance amendment.
- (4) Notice. All property owners within 1,320 feet of the property shall be given written notice of the application for amendment of an existing Conservation Easement. The notice shall include the existing and proposed conditions. It shall also state where the public hearing will be held and where the application can be viewed. The notice shall also include the legal description and the street address of the parcel to allow the public to locate the property.
- (5) Standards. An amendment to a Conservation Easement shall not be granted by the Township Board if the amendment causes any of the conditions set forth in Section 8B.(5) a. i-vii to occur, unless a finding is made that the standards in both Section 8B.(5) b. and c. have been satisfied:
  - a.
    - i. The amendment increases the number of future dwelling units.
    - ii. The amendment increases the probability of parcel fragmentation.
    - iii. The amendment results in a scattering of residences more than prior to the amendment.

- iv. The amendment increases the amount of driveway across prime and unique agricultural land necessary to access dwellings.
  - v. The amendment reduces the net amount or quality of productive agricultural land as a result of the amendment.
  - vi. The amended building sites interfere with air drainage.
  - vii. The amendment results in new buildings located in identified scenic views.
- b. The possible adverse effects on adjacent property, particularly adverse visual effects on adjacent conservation easement parcels, shall be determined to be less than the positive benefits of the proposed amendment.
- c. The amendment enhances the Conservation Easement program as described in the Findings and Declaration of Purpose in the Ordinance. Examples of enhancement include:
- a residence or reserved building is moved from the current location to a location further away from land being actively farmed;
  - a residence or future building site is moved and placed in an area of existing buildings;
  - a residence or future building site is moved to a location on adjacent property that consolidates residences in a cluster;
  - an existing building is moved from a prime scenic view and relocated to another site that is out of prime scenic view;
  - a building or reserved building site is moved from a location that creates an adverse impact on farming operations due to its location or access to a site that has less of an adverse impact;
  - the amendment will result in a larger block of agricultural land without an existing residence or future building site.

The Township Board shall make written findings of fact as to the foregoing conditions and standards.

- (6) Appraisal of Changes in Value: Prior to a final decision on a proposed amendment to a recorded Conservation Easement, the Township shall

obtain an appraisal of the property (paid for by the property owner) to determine if the value of the retained development rights is increased as a result of the amendment. If the appraisal indicates that the value of the retained development rights is increased as a result of the proposed amendment, the property owner shall pay to the Township Purchase of Development Rights Fund an amount equal to the amount of the increase in the event the amendment is approved.

- (7) Publication. The Township Board shall publish its decision to amend a Conservation Easement in the same manner as an amendment to the Township Zoning Ordinance.
- (8) Referendum. A decision by the Township Board to amend a Conservation Easement shall be subject to a referendum with the same standards and procedures for a referendum on a Zoning Ordinance amendment. A petition for referendum shall stay any action until the decision has been approved by the voters.
- (9) Recording. All approved amendments that are no longer subject to referendum shall be recorded at the Grand Traverse County Register of Deeds Office along with written findings of fact which explain the reasons for the amendment.

2. Peninsula Township hereby ordains that a new Section 14 shall be added

to the Purchase of Development Rights Ordinance as follows:

SECTION 14: SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any portion of this Ordinance other than said part or portion thereof.

This Amendment No. 1 to Peninsula Township Ordinance No. 23 shall take effect the day following the date of publication.

ROBERT K. MANIGOLD, Supervisor  
MONICA A. HOFFMAN, Clerk  
Peninsula Township Board  
Passed by the Township Board on:  
August 12, 2003  
Prepared in the law offices of:  
Running, Wise & Ford, P.L.C.  
By: Richard W. Ford

Township Attorneys  
326 E. State St., P.O. Box 686  
Traverse City, MI 49685-0686

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TO THE RECORD EAGLE:

Please publish on: August 25, 2003

Please send affidavit to: Richard W. Ford

Please send bill to: Monica A. Hoffman  
Peninsula Township Clerk  
13235 Center Road  
Traverse City, MI 49686

E-MAILED TO THE RECORD EAGLE ON AUGUST 14, 2003