

Peninsula Township Purchase of Development Rights Ordinance #23, Amendment #3
Summary of Revisions Proposed by the Purchase of Development Rights Study Group
6/22/2022

The Peninsula Township Purchase of Development Rights Ordinance was initially adopted by the Township Board on May 4, 1994. It was amended August 25, 2003 revising Section 8 to provide a process for amending easements and adding Section 14 Severability. It was amended again on February 28, 2017 revising Section 6(4) regarding Committee termination.

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 to discuss a potential renewal of the PDR millage in order to protect additional farmlands within the Agricultural Preserve Area. The group included the Township's Supervisor and Planner and representatives from the Township Board, Planning Commission, the initial PDR Drafting Committee, the PDR Selection Committee and the Grand Traverse Regional Land Conservancy (GTRLC).

An Evaluation of the Peninsula Township Farmland Preservation Program, which had been written by Tom Daniels, Ph.D. on behalf of the GTRLC in 2008, was reviewed and the conservancy staff recommended that the PDR Ordinance be updated to better define the management processes for PDR.

A core group, known as the PDR Study Group took on the task of updating the PDR Ordinance. There have been substantial changes to processes since the original 1994 PDR Ordinance was adopted that needed to be reflected in the third amendment to the PDR Ordinance.

The following is a list of things that occurred during the PDR years that have been taken into consideration during the ordinance amendment process:

- The PDR Program and other preservation efforts have been supported by the community and have been successful. As such, there are, according to the 2021 GTRLC Peninsula Township Protected Land Map, 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.

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 PDR Study Group's work resumed in December 2021. The PDR Ordinance has been edited numerous times after being reviewed by the Township's Planner, Assessor, Zoning Administrator, Treasurer, Planning Commissioners and the Township Attorney as well as the Grand Traverse Regional Land Conservancy's Staff and Attorney. The financial sections have been written under the guidance of a study group of resident financial experts, the Township's Treasurer, Marge Achorn, and Bond Counsel. There has also been valuable input from some agricultural land owners.

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 revised February 28, 2017 was used as the base document for the revisions. It has been reformatted for ease of reading and many changes have been made for clarity, grammar, to update terms and to better organize the document. Language has been added throughout the document for compliance with the Zoning Enabling Act of 2006.

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

SECTION 1 FINDINGS AND DECLARATION OF PURPOSE

- Updated the descriptions of agriculture.
- Merged previous "Section 11 - Township Purpose" with this section.

SECTION 2 DEFINITIONS

- Clarified definitions.
- Deleted definitions that are not used elsewhere within the ordinance.
- Revised the definition of "Value of Development Rights"
- Added several definitions including:
 - Accounts
 - Closing Costs
 - Conservation Easement
 - Contiguous
 - Excess Millage Revenue
 - Master Plan
 - Open Space
 - Peninsula Township Purchase of Development Rights Ordinance
 - Residential Development Rights
 - Zoning Ordinance.

SECTION 3 AUTHORIZATION

- Deleted previous Paragraph 5 regarding exchanges of property because transferring development rights is not authorized by this ordinance.
- Expanded paragraph 5 (previously paragraph 6) regarding the Township Board's authority to budget for managing, monitoring and enforcing the Purchase of Development Rights program.

SECTION 4 RETAINED RESIDENTIAL DEVELOPMENT RIGHTS

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

SECTION 5 ELIGIBLE LANDS AND PRIORITY OF ACQUISITION

- 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 matching funds.
- Previously, viewsheds were individually evaluated and the scoring was subjective. The new scoring is much simpler. If any part of the parcel falls within a viewshed, the parcel 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 matching 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. (The term "adjacent" has been replaced by "contiguous" throughout the ordinance for consistency. "Contiguous" has been defined in Section 2 - Definitions.)
- 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 PROCESS

- Streamlined, rearranged and added more detail to the process for selection.
- Clarified the appraisal criteria and process.
- Specified that appraisals of properties with Special Use Permits (SUP) shall include a written review of the SUPs and the section of the Zoning Ordinance that governs them as it applies to the value of residential and allowed uses. (#10)

- Deleted the original #1-c regarding viewshed scoring decisions because in the proposed scoring all properties within a viewshed receive 10 points.
- Added that the Selection Committee may re-score and re-prioritize applications as information and conditions change.
- Added language regarding appeals.

SECTION 8 CLOSING, MONITORING & ENFORCEMENT

This is a new section that includes:

- A list of closing requirements.
- Detailed expectations for monitoring.
- Details regarding enforcement actions.

SECTION 9 DURATION OF ACQUIRED INTERESTS AND RELINQUISHMENT OF ANY INTERESTS

- 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, the requirement was retained that there would need to be a majority vote of the township and added the requirement that there must be 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 10 AMENDMENT OF CONSERVATION EASEMENTS

- Specified exactly what the allowed outcomes are with a proposed amendment as opposed to a system that balanced the pros and cons of a proposed amendment’s outcome.
- 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 - This 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, as published by The Land Trust Alliance.
- #6. Standards -Principles that have been adopted by The Land Trust Alliance have been incorporated. A previously used list of conditions is now used as examples.
- #7. Appraisal of Changes in Value - The payment of an increase in value to the Township was deleted because according to the principle in #6a iii. “The amendment does not result in private inurement or confer impermissible private benefit.”

SECTION 11 TRANSFER OF DEVELOPMENT RIGHTS

- This section was added: The transfer of development rights onto a property encumbered by a conservation easement held by the Township is not allowed.

SECTION 12 RELATED COSTS

- No substantive changes.

SECTION 13 SUPPLEMENTAL FUNDS

- No substantive changes.

SECTION 14 PURCHASE OF DEVELOPMENT RIGHTS FUND

- This Section was totally reworked to address Bond Council and Peninsula Township Treasurer recommendations for accounting.

A. PURCHASE OF DEVELOPMENT RIGHTS ENFORCEMENT ACCOUNT

- Added that the Township Board shall not only establish, but shall maintain a PDR Enforcement Account and increase the budget amount from \$40,000 to \$250,000.

B. PURCHASE OF DEVELOPMENT RIGHTS MONITORING ENDOWMENT

- This section was added to establish and maintain a \$4,000,000+ PDR Endowment to provide funds in the future for monitoring, legal defense and future purchases.

C. PURCHASE OF DEVELOPMENT RIGHTS OPERATIONAL ACCOUNTS

- In addition to the account and endowment described in A. and B., three separate accounting funds shall be established.
 - Millage Receiving Account
 - Bond Project Account
 - Bond Payment Account

SECTION 15 SEVERABILITY

- No substantive changes.