

DEVELOPMENT RIGHTS ORDINANCE

Williamstown Township Ingham County, Michigan

AN ORDINANCE ENACTED PURSUANT TO MICHIGAN PUBLIC ACT 184 OF 1943, AS AMENDED, FOR THE PURPOSES OF ESTABLISHING, FINANCING AND PROVIDING FOR THE ADMINISTRATION OF A PROGRAM FOR ACQUISITION OF DEVELOPMENT RIGHTS (ADR).

WILLIAMSTOWN TOWNSHIP HEREBY ORDAINS:

ARTICLE 1.00 – TITLE AND PURPOSE

Section 1.1 Title

This Ordinance shall be known and cited as the “Development Rights Ordinance of Williamstown Township.”

Section 1.2 Findings and Purpose

The Township Board finds that:

1. Williamstown Township contains lands that are particularly well-suited for farming, and adjacent to these farmlands are other woodlands, wetlands, and open lands that contribute to aesthetic and economic value of the community.
2. These lands are a valuable and irreplaceable natural resource. When these lands are converted to residential or other urban uses an important community resource is permanently lost.
3. Williamstown Township is experiencing development pressure because of its location in the Lansing/East Lansing metropolitan area. Many of the same characteristics that make the land valuable for agricultural use also make it desirable for residential use.
4. It is the policy of the Williamstown Township to protect and preserve agricultural and open space lands. This policy is set forth in the Township’s Master Plan, Zoning Ordinance, and Subdivision Control Ordinance.
5. The Master Plan, Zoning Ordinance, and Subdivision Control Ordinance are not sufficient to dissuade speculative purchase of farmlands for future development, thus driving the cost of farmland beyond its value for agricultural use. These circumstances result in decreased agricultural investment.

6. The permanent acquisition by the Township of interest in farmland and open space lands will provide the opportunity to retain their use for agricultural and open space, and provide for the long-term protection of public interests which are served by farmlands and open space in the Township.
7. Accordingly, this Ordinance has been created to establish, finance, and provide for the administration of a program for Acquisition of Development Rights (ADR) program to protect agricultural land and other eligible land (as defined herein).

ARTICLE 2.00 – DEFINITIONS

Section 2.1 Definitions

The following definitions shall apply in the interpretation and enforcement of this Ordinance:

Agricultural Land: Substantially undeveloped land devoted to the production of plants and animals useful to humans, including forage 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, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities.

Conservation Values. The agricultural, natural, open space, scientific, biological, and ecological values of a parcel of property that are found to be worthy of protection.

Development: An activity that materially alters or affects the existing conditions or use of any land.

Development Rights: The rights to develop land to the maximum intensity of development authorized by law.

Development Rights Easement: A grant, by a legal instrument, whereby an owner relinquishes to the public the right to develop the land except as expressly reserved in the instrument, and which contains a covenant running with the land describing the easement terms, conditions, and development rights.

Full Ownership: Fee simple ownership, or outright ownership of real property, including the ownership of all aspects of title, including the ability to transfer the totality of the title.

Intensity of Development: The height, bulk, area, density, setback, use, and other similar characteristics of development.

Other Eligible Land: Land that has a common property line with agricultural land from which development rights have been purchased and that is not divided from that agricultural land.

Owner: The party or parties who has/have legal title to or an equitable interest in the property.

Parcel: A measured portion of land that is described by virtue of a proposal to include the parcel in an agreement to acquire or transfer development rights, in accordance with the provisions of this Ordinance.

Permitted Use: Any use reserved within a development rights easement essential to the farming operation thereon or which does not alter the open space character of the land.

Substantially Undeveloped Land: Land on which there is no more than one (1) residential dwelling unit (exclusive of migrant housing units) for each twenty (20) acres of land.

Supervisor: The Williamstown Township Supervisor.

Township Board: The Supervisor, Clerk, Treasurer and Trustees of Williamstown Township, Ingham County, Michigan.

Value of Development Rights: The difference between the fair market value of Full Ownership of the land (excluding buildings thereon) and the fair market value of the agricultural rights plus any residential development rights to be retained by the Owner.

ARTICLE 3.00 – AUTHORIZATION AND FINANCING

Section 3.1 Authorization

1. The Township Board is authorized to establish an Acquisition of Development Rights (ADR) program to acquire property interests in Agricultural and Other Eligible Land from willing landowners in Williamstown Township. The property interest acquired may be either the Development Rights, or any lesser interest, easement, covenant or other contractual right. Acquisition of Development Rights under this ordinance may not be accomplished through condemnation. Participation in this program by a landowner shall be voluntary; the Township shall have no authority to force a landowner to participate.
2. Acquisition of property interests through the ADR program may be accomplished by purchase, gift, grant, bequest, devise, covenant or contract, but only at a cost that is equal to or less than the appraised value, as provided in this Ordinance.
3. The Township Board is authorized to contract with other land conservation organizations or farmland conservation trusts to participate in the acquisition of interests in land or to administer the rights obtained by the Township under the ADR program.

Section 3.2 Financing

The Township Board is authorized to finance the ADR program through one (1) or more of the sources identified in Section 33 of Michigan Public Act 184 of 1943, as amended, including general appropriations by the Township, proceeds from the sale of development rights, grants, donations, bonds or notes, general fund revenue, special assessments, and other sources approved by the Township Board and permitted by law.

ARTICLE 4.00 – ELIGIBLE LAND

Section 4.1 Agricultural Lands Identified in the Master Plan

Development Rights on a parcel of land may be acquired under this ADR program only if the parcel of land is identified as “Agriculture” or “Agriculture/Residential” on the Future Land Use Map in the Township’s Master Plan.

Section 4.2 Guidelines to Establish Acquisition Priority

In the event that financial resources of the Township are inadequate to allow acquisition of Development Rights on all of the parcels voluntarily offered for acquisition, the following guidelines shall be used to establish acquisition priorities:

1. **Essential Land Protection Goals.** Every ADR project should be related to one or more of the following land protection goals:
 - a. The project aids in the conservation and stewardship of productive agricultural or forest land.
 - b. The project aids in the protection of wetlands, floodplains, stream or river banks, ponds, or groundwater recharge areas that have an important role in maintaining ground or surface water quality.
 - c. The project preserves significant natural areas that have recognized ecological value.
2. **Positive Conservation Values.** Projects shall generally be ranked highest based on the number of the following conservation values they exhibit:
 - a. There is widespread community support for the project.
 - b. If acquisition is not accomplished under the ADR program, the land is likely to be developed for a use that does not preserve its special conservation value.
 - c. The project protects prime farmland adjacent to other lands that are currently being farmed.
 - d. The project protects scenic qualities visible to the public from public roads, from the Red Cedar River, or from public parks.
 - e. There is a reasonable possibility that other valuable property rights on other nearby properties could be acquired, thereby expanding the overall conservation value of the project.

- f. The parcel is of sufficient size that the conservation resources of the parcel are likely to remain intact, even if adjacent properties are developed.
 - g. Protection of the property is consistent with current zoning.
3. **Negative Conservation Values.** The priority of projects shall generally decline if they exhibit any of the following negative conservation values:
- a. There is little community support for the project.
 - b. The project has limited value for the community as a whole.
 - c. The parcel of land is not especially productive for agricultural use (although conservation of open land for future agricultural use may be considered a positive conservation value). Agricultural productivity shall be a key consideration when comparing parcels of land for possible acquisition.
 - d. The parcel of land is surrounded by land that has already been taken out of agricultural production, creating potential conflict between agricultural operations and more urban land use.
 - e. The parcel of land is small and there is little likelihood of adjacent properties being protected.
 - f. The land that is proposed to be protected is part of a development proposal that, overall, is likely to have significant adverse impact on conservation of natural resources.
 - g. The project will be unusually expensive and will use significant financial resources.
 - h. The parcel of land is subject to mining that would destroy the features the Township would like to protect.

ARTICLE 5.00 – PROJECT SELECTION

Section 5.1 Procedures

1. **Planning Commission as an Advisory Body.** The Township Planning Commission shall have the responsibility for reviewing proposed ADR projects and advising the Township Board. Upon completing its review, the Planning Commission shall make a recommendation to the Township Board, based on the requirements and standards in this Ordinance.
2. **Review by Experts.** The Planning Commission may consult experts as it determines necessary, provided that if there is a cost for such services, the Township Board has appropriated funds for that purpose.
3. **Conflict of Interest.** No member of the Planning Commission or Township Board shall vote on a proposed ADR project in which they have an ownership interest or that is located adjacent to property in which the member has an ownership interest.
4. **Application Forms.** Consideration of a ADR project shall be initiated by submitting an application on forms supplied by the Township. The Planning Commission shall oversee the preparation of such application forms, which shall require the following information, at minimum:
 - a. Parcel identification, legal description, and parcel size.
 - b. Identification of rights-of-way or easements on the property.
 - c. Complete ownership information, including a certification that the interests of all joint tenants, financial institutions, and any party with an interest in the property are disclosed.
 - d. Property value data, including assessed value and estimated market value.
 - e. Existing land use on and adjacent to the parcel.
 - f. Identification of significant natural features (wetlands, woodlands, ponds, streams, rivers, habitat containing endangered or threatened species or species of special concern, etc.).
 - g. Identification of known environmental concerns on the property (e.g., evidence of buried waste, soil contamination, ground or surface water contamination, etc.).
 - h. Location of buildings, walls, shelters, fences, bridges, trails, roads, and other built features.
 - i. Type of development rights transfer anticipated (e.g., gift, purchase, bequest, etc.).
 - j. Type of development rights acquisition anticipated (e.g., fee ownership, undivided interest, conservation restriction, retained life estate, reversionary interest).
 - k. Description of the residential development rights the owner wishes to retain.

1. Explanation of the status of mineral rights.

Required information may be provided on the application form, in written documents and/or on maps, as appropriate.

5. **Project Review and Appraisal.** The Planning Commission shall review the proposed ADR project with respect to the requirements of this Ordinance and other applicable ordinances and laws. If a proposed project satisfies the applicable criteria and requirements, the Planning Commission may request the Township Board to allocate funds for an appraisal. A “before” and “after” appraisal shall be made to determine the value of the development rights. The appraisal shall determine the fair market value of Full Ownership of the land (excluding buildings thereon) and shall determine the fair market value of the Agricultural Rights plus any Residential Development Rights specifically retained.
 - a. Appraisals shall be made by State Certified Appraisers selected by the Planning Commission on a bid basis. The selected appraiser shall not have a property interest, personal interest, or financial interest in the project parcel. In the event that the low bidder has a conflict of interest, the second lowest bidder shall conduct the appraisal.
 - b. Appraisals shall be in writing and shall be furnished to the Owners for review. Errors of fact in any appraisal may be called to the attention of the appraiser by the Township or the Owners, but corrections to the appraisal shall be made only by the appraiser. If an Owner believes the property has not been properly appraised, the Owner may have the appraisal reviewed, at the Owner’s expense, by another State Certified Appraiser. The Planning Commission shall consider both appraisals in making its recommendations to the Township Board regarding project eligibility and value of development rights.
6. **Planning Commission Recommendation and Township Board Decision.** Before making a recommendation, the Planning Commission shall hold a public hearing, following the public notice and hearing requirements for Special Land Uses in Section 27.03 of the Zoning Ordinance. Following review of the application, supporting data and maps, appraisals, and any reports from experts, the Planning Commission shall make a recommendation to the Township Board. The Township Board shall have the authority to take final action on all ADR proposals. The decision by the Township Board is discretionary; the findings and recommendation of the Planning Commission shall not obligate the Township Board to approve or reject a proposal to acquire Development Rights. The Township administration shall maintain a list of properties on which development rights have been acquired with the conditions of acquisition.

7. **Conditions of Approval.** Township Board action to approve an ADR proposal shall be set forth in a written agreement that is in a form that is suitable for recording. The agreement shall specify conditions of approval, including the following, at minimum:
- a. **Runs with the Land.** An agreement to convey development interests shall state that such conveyance shall run with the land.
 - b. **Property to Remain Substantially Undeveloped.** To promote the agricultural use, or to preserve the opportunity for agricultural use of properties on which the Township has acquired Development Rights, such properties shall remain Substantially Undeveloped.
 - c. **Rights Retained by Owner.** An agreement for the sale or transfer of Development Rights may include provisions by the Owner to retain certain rights, including but not limited to:
 - i. **Residential Development Rights.** The right to build residential dwellings (Residential Development Rights), provided that no retained Residential Development Rights would result in more than one dwelling unit per twenty (20) acres of land. The building locations for retained Residential Development Rights may be restricted in a negotiated “Development Rights Easement.”
 - ii. **Right to Convey Retained Rights.** The right to sell, mortgage, bequeath, or donate the retained property rights, provided that subsequent interest holder shall be bound by the conditions of approval of the ADR proposal.
 - iii. **Maintaining Existing Structures.** The right to maintain, renovate, and replace existing structures, provided that any such activity shall not substantially alter the character or function of the structures.
 - d. **Prohibited Activities.** Any activity on or use of the ADR project property is prohibited if such activity is inconsistent with the purposes of this Ordinance or detrimental to the conservation values being preserved. By way of example, the following activities and uses are prohibited:
 - i. Any division or subdivision of the property.
 - ii. Commercial or industrial use (for the purposes of this Ordinance, an agricultural use shall not be considered commercial or industrial).
 - iii. The placement or construction of any buildings, structures, fences, walls, roads, parking lots, or other improvements, unless expressly permitted.

- iv. Cutting of trees and vegetation, unless expressly permitted.
 - v. Mining or alteration of the land surface, except where mineral rights have been retained by another owner and where the other owner has explicit rights to mine on the property (such information shall be disclosed on the application).
 - vi. Dumping of waste or other materials.
 - vii. Alteration to natural water courses, wetlands, or other natural water features.
 - viii. Use of motorized off-road vehicles, such as snowmobiles, dune buggies, all-terrain vehicles, and motorcycles.
 - ix. Construction of billboards and other advertising signs.
- e. An agreement to convey development interests shall provide the Township or its agent with certain rights needed to monitor the protection of the Conservation Values of the property. These rights shall include:
- i. **Right to Enter.** The Township shall have the right to enter the property at reasonable times to monitor or enforce compliance with the conditions of approval of the ADR proposal. The Township, however, shall not unreasonably interfere with the Owner's retained rights on the property.
 - ii. **Right to Preserve.** The Township shall have the right to prevent any activity or use of the property that is inconsistent with the conditions of approval of the ADR proposal.
 - iii. **Right to Require Restoration.** The Township shall have the right to require restoration of the areas or features of the property that are damaged by activity inconsistent with the conditions of approval of the ADR proposal. The Township or land trust shall also have the right to conduct studies on the property to determine the appropriate types of restoration activities, if necessary.
 - iv. **Signs.** The Township shall have the right to place signs on the property to indicate that the property is being protected under the terms of a ADR agreement.
- f. An agreement to convey development interests may provide the Township with the right to engage in activities that restore the biological and ecological integrity of the property. Such activities may include inventorying plant and animal species on the property, planting native vegetation, removal of undesirable vegetation, etc.
8. **Duration of Acquired Interests, Re-purchase of Development Rights.** Development Rights acquired pursuant to this Ordinance shall be held in trust for an indefinite period of time by the Township or by a land conservation

organization or trust. Where the Township holds an interest in the land and the Township Board finds that, due to changing circumstances, the Essential Land Protection Goals can no longer be achieved or the Positive Conservation Values can no longer be reasonably protected, then the Township Board may act to dispose of the Township's interest in the land. Disposition may be accomplished by transfer to a land conservation or trust, pursuant to Section 3.1, or by sale. If disposition is to be by sale, then the Township Board shall submit to the voters a proposition to approve of the disposition of interest in the land. If a majority of those voting approve such a proposition, then the Township Board shall cause an appraisal to be made, in the same manner as the initial appraisal, as described herein. The Owner of the land from which the Development Rights were acquired (or his/her successor) shall be given the right of first refusal to re-purchase the Development Rights for an amount not less than the appraised value. If the Owner does not wish to re-purchase the Development Rights, then they shall be offered to the general public for an amount not less than the appraised value. Proceeds from the sale of Development Rights shall be held by the Township to only fund the continuing activities of the ADR program, and for no other purpose.

ARTICLE 6.00 – FEES, ENFORCEMENT, SEVERABILITY, EFFECTIVE DATE

Section 6.1 Fees

The Township may charge a fee for review of applications for acquisition of development rights. The fee shall be established by resolution of the Township Board in an amount necessary to cover the cost of review.

Section 6.2 Enforcement

1. **Enforcement Officer.** For the purposes of investigating a possible violation of this Ordinance, the Township Supervisor shall be the Enforcement Officer, unless the Township Board appoints another person to serve as Enforcement Officer.
2. **Notice.** If the Township determines that the owner of the remaining property rights is in violation of the conditions of approval of the ADR application, or that a violation is threatened, the Township shall provide written notice to the Owner, which shall identify the violation and request corrective action to cure the violation and restore the property within a specific period of time.
3. **Failure to Act.** If the violation has not been cured and property restored within the specified period of time, the Township is authorized to take appropriate legal action, which may include injunctive or other equitable relief, issuance of an appearance ticket, issuance of a civil infraction citation, or prosecution in the Circuit Court for the County of Ingham or any other court having jurisdiction.
4. **Misdemeanor.** Any violation of this Ordinance shall constitute a misdemeanor. Any person violating any provision of this Ordinance shall be subject to punishment by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment not exceeding ninety (90) days for each offense, or both, at the discretion of the Court. Each day a violation occurs or continues shall constitute a separate offense.
5. **Acts Beyond the Owner's Control.** The Township may not bring action against an Owner for modifications to the property resulting from causes beyond the Owner's control, such as unintentional fires, storms, or trespassers. The Township may, however, bring action against another party for modifications that impair the continued protection of the land.

Section 6.3 Severability

This Ordinance and each of the various parts, sections, sub-sections, provisions, sentences and clauses are severable. If any part, section, sub-section, provision or clause is found to be invalid or unenforceable for any reason by a court of competent jurisdiction, such finding shall not affect the validity of the remainder of this Ordinance, which shall remain in full force and effect.

Section 6.4 Effective Date

Motion to approve having been made by Trustee _____ and seconded by _____, this Ordinance was made and passed by the Board of Trustees of Williamstown Township on the 29th day of June, 1999. This Ordinance shall take effect on the _____ day of _____, 1999, thirty (30) days following publication in a newspaper of general circulation in Williamstown Township, as required by law.

Norman Obst, Supervisor

Shirley Graham, Township Clerk