

ORDINANCE NO.37

AN ORDINANCE authorizing Dexter Township to acquire property development rights in real estate within the township and establishing the procedure for acquiring and financing the acquisition of the development rights.

THE DEXTER TOWNSHIP BOARD OF TRUSTEES ORDAINS:

SECTION 1: Findings and Declaration of Purpose

The Board of Trustees finds that:

(1) Dexter Township is a desirable place to live, work and visit in large part because of the availability of farmland and the relief that agricultural fields bring. Scenic views, agriculture, open spaces and wildlife habitat are all considered invaluable natural and aesthetic resources and should be protected.

(2) The climate, variety of soils and terrain make the Township well suited to the production of a great number of row crops, specialty crops and livestock, including many foods available for direct human consumption. 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) Dexter Township is experiencing substantial residential development, however, because of its location to the highly urbanized areas of southeast Michigan, its attractive landscapes and its 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) The agricultural industry in Dexter Township provides the opportunity to harvest locally grown foods to sell at roadside stands, farmer's markets, local retail food stores and other local outlets in the area. Land suitable for farming is an irreplaceable natural resource with soil and topographic characteristics that have been enhanced by generations of agricultural use. When such land is converted to residential or other more developed uses which do not require those special characteristics, a critical community resource is permanently lost to the citizens of Dexter Township.

(5) It is the policy of the State of Michigan and Dexter Township to protect, preserve and enhance agricultural lands as evidenced by the Township General Development Plan, the Township Zoning Act, 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 been effective in providing long-term protection of farmland under the pressure of increasing residential development.

(6) Agriculture in Dexter Township produces a notable array of products, from corn and soybeans to vegetables and fruit to cattle. The Township's agricultural acreage contributes tens of thousands of dollars to the local economy in direct sales of agricultural products at the farm gate.

(7) Generally, farmland which is close to urban centers has a greater market value for future residential development than its 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 fact 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 farmers and removed from agricultural uses.

(8) The permanent acquisition of voluntarily offered interests in farmland 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 farmland in the Township.

(9) Properties on which the Township has purchased the development rights should remain substantially undeveloped in order to promote their agricultural use.

(10) The acquisition of interests in farmland as provided in this Ordinance is a public purpose of Dexter 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.

(11) This ordinance is authorized by Sections 31 to 33 of the Township Zoning Act, MCL 125.301 B 125.303.

SECTION 2: Definitions

(1) "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.

(2) "Agricultural Use" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including fruits, nuts, vegetables, greenhouse plants, Christmas trees and lumber, forages and sod crops, grains and feed crops, dairy and dairy products, livestock (including breeding and grazing), poultry and other similar uses and activities.

(3) "Chairperson" means the member of the Farmland Preservation Board who is elected Chairperson by the Preservation Board.

(4) "Board of Trustees" means the Dexter Township Board of Trustees.

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

(6) "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.

(7) "Development Rights Easement" means a grant by an instrument whereby the owner relinquishes to the public in perpetuity the right to develop the land as may be expressly reserved in the instrument, and which contains a covenant running with the land not to develop, except as this right is expressly reserved in the instrument.

(8) "Eligible Land" means farmland for which the purchase of "development rights easements" with tax funds and other monetary sources are authorized pursuant to this Ordinance.

(9) "Farmland" means those lands shown in the Township Master Plan as being zoned for agricultural uses, as adopted and amended from time to time by the Township Planning Commission.

(10) "Farmland Preservation Board" means the board formed pursuant to Section 6 of this Ordinance to advise the Board of Trustees in the selection of Eligible Lands for easement purchases.

(11) "Full Ownership" means fee simple ownership.

(12) "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.

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

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

(15) "Permitted Use" means any use contained within a development rights easement essential to the farming.

(16) "Supervisor" means the Dexter Township Supervisor.

(17) "Value of Development Rights" means the difference between the fair market value of full ownership of the land (excluding the buildings thereon) and the fair market value of the agricultural rights plus any residential development rights to be retained by the owner.

SECTION 3: Authorization

(1) The Board of Trustees is hereby authorized to expend funds to acquire property interests in the farmland described and prioritized in Section 5 of this Ordinance. The property interest acquired may either 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 funds shall be used to acquire such property interests only upon application of the Owner and in a strictly voluntary manner.

(2) The Township 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.

(3) The Board of Trustees is further authorized to contract with recognized and legally established nonprofit land trusts (for example, American Farmland Trust and Washtenaw Land Trust) or other experienced and qualified nonprofit groups to participate jointly in the acquisition of interests in eligible lands.

(4) The Township may contract with recognized and legally established nonprofit land trusts or other experienced and qualified nonprofit groups or consultants that would share in the process of negotiating easements and establishing both the baseline studies and the procedures for monitoring of any conservation easements acquired under this Ordinance and would be done in accordance with "The Standards and Practices Guidebook" by the Land Trust Alliance.

SECTION 4: Eligible Lands and Priority of Acquisition

Funds shall be used to purchase property interests in the following lands in the following order of their priority subject to the provisions of Section 7.

Primary Criteria that all properties must meet:

Voluntary application by the property owner and those lands shown in the Township Master Plan as being zoned for agricultural uses, or as rural residential where agriculture is practiced on larger parcels, as adopted and amended from time to time by the Township Planning Commission.

Criteria for Selection:

The following criteria shall be used in determining the order in which applications will be prioritized in any Selection Round 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 farm sites for the purchase of conservation easements. It is the intention of the users of this system to direct efforts toward high quality farmland 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 shown in the Township General Development Plans as being zoned for agricultural uses, as adopted and amended from time to time by the Township Planning Commission.

DESCRIPTION OF THE SYSTEM. The farmland ranking system consists of four sections as follows. The maximum point value is 100, with some additional points possible in the event of a tie.

PART	TOTAL POINTS
I – Characteristics of the Land	44
II – Stewardship of the Land	18
III – Context	12
IV – Acquisition Considerations	26

PRIORITIES. The point value arrived at through the use of this system will be used to prioritize farm 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.

PART I

CHARACTERISTICS OF THE LAND
MAXIMUM POINTS = 44

A. Type of Agricultural Land

Multiply the percentage of the nominated parcel featuring prime, unique or locally important agricultural soils by 20.

B. Size of Parcel Offered for Development Rights Purchase

Acreage	Score
>80 acres	8
40-80 acres	5
<40 acres	2

C. Proximity to Protected Land

Distance	Score
Adjacent	8
One mile or less	5
More than one mile	2

D. Farm Buildings

Buildings	Score
Usable, functional farm buildings on site	4

E. Amount of Road Frontage

Frontage	Score
1,000 feet or more	4
500 to 999 feet	2

PART II

STEWARDSHIP OF THE LAND
MAXIMUM POINTS = 18

A. Conservation Plans

Extent of Conservation Plan	Score
Conservation plan fully implemented or conservation practices used to the fullest extent necessary	8
Conservation plan partially implemented or some practices used	4

B. Commitment to Farming

Enrollment in P.A. 116 or Duration of Ownership	Score
Farm is enrolled in P.A. 116 <u>and</u> land has been in the same ownership for at least 50 years	10
Farm is enrolled in P.A. 116 <u>or</u> has been in the same ownership for at least 50 years	6

PART III
CONTEXT
MAXIMUM POINTS = 12

A. Current Adjacent Zoning Classification

Percent of Perimeter in Agricultural Zoning	Score
---	-------

90% or more	4
-------------	---

50-89%	2
--------	---

<50%	1
------	---

B. Current Adjacent Land Use

Percent of Perimeter in Agricultural Use	Score
--	-------

90% or more	4
-------------	---

50-89%	2
--------	---

<50%	1
------	---

C. Groundwater Recharge Area

Percent of Property Serving as Groundwater Recharge	Score
---	-------

>75%	4
------	---

50-75%	2
--------	---

<50%	1
------	---

PART IV

ACQUISITION CONSIDERATIONS
MAXIMUM POINTS = 26

A. Matching Funds

Percent of Appraised Value	Score
>50%	16
20-50%	10
<20% (but >0)	5

B. Landowner Donation

Percent of Appraised Value	Score
>20%	10
10-20%	6
<10% (but >0)	2

SECTION 5: Farmland Preservation Board

(1) A five-member Farmland Preservation Board (the "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 lands on which development rights are offered for acquisition by their owners. Selection of eligible lands 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 Township Board of Trustees, a natural resources professional, a citizen 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 three-year terms, except that the initial term of three members shall be three years and terms of two members shall be two years. Members may be removed by the Board of Trustees for good cause as determined by the Board of Trustees. Members 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 6: Selection

The Farmland Preservation Board shall conduct a voluntary property selection process (herein called the "Selection Round") generally as follows:

(1) In each selection round the development rights on all eligible land properties shall be eligible for purchase. In all selection rounds, properties of higher priority shall be purchased with available funds before properties of lower priority are purchased, 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 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 affected property owners.

(2) The Preservation Board shall begin each selection round by giving notice in one newspaper of general circulation in Dexter Township. The notice shall describe the properties eligible for purchase in the selection round; the general procedure to be followed in the selection process (including an estimated time schedule for the steps in the process); and shall invite the owners of such properties to make application for purchase of development rights by the Township and to describe the property interest which the owner is willing to sell. Applications shall be submitted to a location to be specified by the Preservation Board and stamped with the date of receipt.

(3) Upon closing of the application period, 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 4, 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 plus any specifically retained residential development rights.

(5) Appraisals shall be made by State certified appraisers selected by the Preservation Board. The selected appraiser shall not have a property interest, personal interest or financial interest in eligible lands. 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 owners of the property appraised, but corrections of the appraisal may be made only by the appraiser.

(7) Terms and conditions of sale and information on the effect of the sale may be discussed by the entire Preservation Board with owners prior to the submission of written applications.

(8) Written applications by owners who desire to have their 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 owners.

(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 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.

(12) Additional residential dwellings are not permitted on lands from which development rights have been purchased.

SECTION 7: Duration of Acquired Interests

(1) Development rights acquired pursuant to this Ordinance shall be held in trust by the Township for the benefit of its citizens in perpetuity. After 50 years have passed, however, the owner may make application to the Preservation Board that farmland described in this Ordinance has (a) become landlocked with non-agricultural uses, (b) farming is no longer feasible and (c) the release is for the public good. The Preservation Board evaluate the feasibility of farming by determining whether the land is no longer and never will be suitable for any kind of agriculture, with wooded land left fallow not necessarily to be considered unsuitable.

(2) Upon receiving the recommendations of the Preservation Board, the Board of Trustees shall take final action on such recommendations. The Board of Trustees must support the request by an owner to repurchase development rights by a five-member majority of the total seven Trustees.

(3) For those properties for which the Board of Trustees approves the return of development rights as specified in Subsection (1), the Preservation Board shall cause an appraisal of the applicant's property interest to be made at the owner's expense. Payment for this appraisal shall be made by the owner in advance. 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 plus any specifically retained residential development rights.

(4) Appraisals shall be made by State certified appraisers selected by the Preservation Board. The selected appraiser shall not have a property interest, personal interest or financial interest in eligible lands.

(5) 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 owners of the property appraised, but corrections of the appraisal may be made only by the appraiser.

(6) At any time in this process, the owner may choose to withdraw the request for the return of development rights without penalty, while still being responsible for the Township's appraisal of the property as specified in Subsection (2).

(7) If the Board of Trustees approves the return of development rights, the Township shall have a right of first refusal to purchase the remaining rights at the fair market value of the agricultural rights plus any retained development rights, as determined by a State certified appraiser. Upon receiving the recommendations of the Preservation Board, the Board of Trustees shall take final action on such recommendations. If the Board of Trustees chooses to exercise this right of first refusal, an offer to purchase the remaining rights at the appraised value shall be submitted. Acquisition of lands shall not be made with funds authorized for development rights acquisition pursuant to this Ordinance. The owner may at that time choose to not sell the remaining rights and instead retain ownership of the property.

(8) If (a) a request to re-purchase development rights is denied by the Board of Trustees, or (b) the landowner chooses not to sell the remaining rights the Township chooses to exercise its right of first refusal or (c) more than a year passes from the Board of Trustees' authorization for the re-purchase of development rights, the landowner must wait five years before re-applying to re-purchase development rights.

(9) The Township may convey development rights acquired pursuant to this Ordinance to a conservation, open space preservation, historic preservation or similar organization under terms ensuring that the public benefits for which the Township purchased the development rights will be maintained.

SECTION 8: Related Costs

The costs of appraisal, easement development, baseline documentation, legal and other services lawfully incurred incident to the acquisition of interests in eligible lands by the Township shall be paid by the Township. The Township shall not be responsible for expenses incurred by the owner incident to this transaction.

SECTION 9: 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, or some lesser interest in eligible lands or to supplement or enlarge such acquisition. The Farmland Preservation Board is hereby authorized to utilize such funds to purchase interests in eligible lands or to otherwise supplement Township funds in the manner provided by this Ordinance and in accordance with the applicable laws or terms governing such grant.

SECTION 10: Purpose

The Board of Trustees finds and declares that the use of Township funds for the purpose of paying in whole or in part the cost of acquisition of interests in eligible lands as set forth herein, including any costs necessarily incident to such acquisition, and the monitoring and enforcement of development rights easements, or to participation with any party for such purposes will promote the public health, safety and general welfare of the people of Dexter Township.

SECTION 11: Development Rights Acquisition Fund

The funds for purchasing development rights on farmland shall be placed in a designated Development Rights Acquisition Fund to be hereafter created in the office of the Treasurer of Dexter Township (here and after "Acquisition Fund"). 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.

The funds and any interest received from the deposit or investment of such funds shall be applied and used solely for the purposes set forth in this Ordinance.

SECTION 12: 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.

This ordinance shall be effective seven (7) days after publication.

Made and passed by the Board of Trustees of the Township of Dexter, County of Washtenaw, State of Michigan, at a duly noticed Special Meeting of the Dexter Township Board of Trustees on the 29th day of August, 2005.

Date of First Reading:	Tuesday, August 16, 2005
Date of Second Reading:	Monday, August 29, 2005
Date of Adoption by Township Board:	Monday, August 29, 2005
Date of Publication:	Thursday, September 8, 2005
Date Ordinance Shall Take Effect:	Thursday, September 15, 2005

Harley B. Rider, Clerk
Dexter Township