

Elk Rapids Township Farmland and Open Space Development Rights Ordinance Antrim County, Michigan

**Adopted by the Elk Rapids Township Board of Trustees
Ordinance No. 2004-01**

ADOPTED: July 9, 2004

AN ORDINANCE creating a farmland and open space protection program in cooperation with other local units of government, designed to protect farmland and open spaces by acquiring development rights voluntarily offered by landowners creating agricultural conservation easements. This ordinance sets forth the guidelines, procedures and restrictions.

BE IT ORDAINED BY THE Elk Rapids Township Board of Trustees TO:

SECTION 1. DECLARATION OF PURPOSE

- A. *Purpose of the program.* It is the primary purpose of the Elk Rapids Township Farmland and Open Space Preservation Program and this Ordinance to implement a permanent option to protect farmland; to maintain a long-term positive business environment for agriculture; preserve the rural character and scenic attributes; enhance tourism and other important environmental benefits and to maintain the quality of life of Elk Rapids Township residents.
- B. *Mechanism to achieve purpose.* The purchase of development rights and the placement of an agricultural conservation easement on farmland through the Antrim County Farmland and Open Space Preservation Program as provided for in this Ordinance is a public purpose of the Elk Rapids Township. Financing of such purchases requires that Elk Rapids Township enter into agreements with property owners to obtain such development rights. Properties of which the Township has purchased development rights and entered into agricultural conservation easements should remain substantially undeveloped in order to remain viable for agricultural use.
- C. *Economic importance of farmland and agriculture.* Elk Rapids Township's agricultural lands are an economically important resource. These lands support a locally important and globally unique agricultural industry, which includes excellent fruit production and processing, dairy, and livestock, food from grains, and vegetables, as well as nursery and greenhouse crops. The climate, micro-climate, topography and accessibility of the area make Elk Rapids Township uniquely suited for the production, processing, and distribution of agricultural products on a regional, national, and international

level.

- D. *Importance of other non-agricultural attributes of farmland.* In addition to its economic benefits, Elk Rapids Township's farmland contributes significantly to open space and natural resources that are important to the region's tourism industries. Preserving the rural character, scenic beauty, and cultural heritage of the area as well as other recreational opportunities such as hunting will help maintain the quality of life and continue to make the Township an attractive place to live, work and visit.
- E. *The impact of farmland loss.* Land suitable for farming is a non-renewable natural resource with soil and topographic characteristics that have been enhanced by generations of agricultural use. When such land is converted and fragmented, a critical community resource is permanently lost to the citizens of the Township. Residential development in agricultural areas also makes farming more difficult by increasing conflict over farming practices, increased trespass, liability exposure and property damage. Because agricultural land is an invaluable economic, natural and aesthetic resource, the Township should make an effort to maintain agricultural land in a substantially undeveloped state to ensure the long-term viability of agricultural and to create a long-term business environment for agriculture within the Township.
- F. *State and local policies.* It is the policy of the State of Michigan, Antrim County and Elk Rapids Township to protect, preserve and enhance farmland and open spaces. This is evidenced by the township master plans, the Farmland and Open Space Preservation Act, the State Agricultural Preservation Fund, the Conservation and Historic Preservation Easement Act, portions of the County Zoning Act, Township Zoning Act and other state and local statutes and policies. These measures alone have failed to effectively provide the sufficient long-term protection of farmland in Elk Rapids Township from the pressure of increasing residential and commercial development.
- G. *Value of development rights.* Certain features of good farmland in Elk Rapids Township have a greater market value for future residential development than market value for farming. Agricultural and residential development share the demand for well-drained soils, slope, proximity to water, elevation and open spaces. This fact encourages the speculative purchase of farmland at high prices for future residential development, regardless of the current zoning. Farmland, which has a greater development potential and market value than its agricultural value does not attract sustained agricultural investment and eventually is sold to non-farmers and removed from agricultural use.

- H. *Coordination with the County Purchase of Development Rights Program.* It is the intent of Elk Rapids Township to fully support and participate in the Antrim County Farmland and Open Space Preservation Program. The purpose of this ordinance is to provide guidelines for the use of any funds provided by the Township and to defer to the County for all aspects of program administration and implementation, in accordance with County Ordinance #01-04, passed by the Antrim County Board of Commissioners on July 8, 2004.

SECTION 2. DEFINITIONS

The Township defers to the Antrim County Farmland and Open Space Preservation Ordinance, which defines terms in the following manner:

- A. *“Agricultural conservation easement”* means a conveyance by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public, in perpetuity, the development rights creating a covenant running with the land preventing non-farm development.
- B. *“Agricultural use”* means substantially undeveloped land 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 harvesting of a wood lot.
- C. *“Agricultural Worker Housing”* means housing owned by the farm operation that is not occupied by the owner(s) and is being provided rent-free to farm labor who’s primary source of income is derived from that farm operation.
- D. *“Development”* means an activity that materially alters or affects the existing conditions or use of any land in a manner that is inconsistent with an agricultural use.
- E. *“Development rights”* means and interest in land that includes the right to construct a building or structure, to improve land for development, to divide a parcel for development purposes or to extract minerals incidental to a permitted use or as set forth in an agricultural conservation easement.
- F. *“Development rights ordinance”* means an ordinance adopted under the County or Township Zoning Act. The development rights ordinance may be

incorporated into an existing zoning ordinance, or it may be a separate ordinance.

- G. *"Farmland"* means 1 or more of the following:
- (I) A farm of 40 or more acres in 1 ownership, with 51% or more of the land area devoted to an agricultural use.
 - (ii) A farm of 5 acres or more in 1 ownership, but less than 40 acres, with 51% or more of the land area devoted to an agricultural use, that has produced a gross annual income from agriculture of \$200.00 per year or more per acre of cleared and tillable land. A farm described in this subparagraph enrolled in a federal acreage set-aside program or a federal conservation reserve program is considered to have produced a gross annual income from agriculture of \$200.00 per year or more per acre of cleared and tillable land.
 - (iii) A farm designated by the Department of Agricultural as a specialty farm in 1 ownership that has produced a gross annual income of \$2,000.00 or more from an agricultural use. Specialty farms include, but are not limited to, greenhouses; equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; bees and bee products; mushrooms; aquaculture; and other similar uses and activities.
- H. *"Intensity of development"* means the height, bulk, area, density, setback, use and other similar characteristics of development.
- I. *"Parcel"* means a contiguous quantity of land in the possession of a single owner.
- J. *"Permitted use"* means any use expressly authorized within an agricultural conservation easement consistent with the farming operation or that does not adversely affect the productivity or agricultural use of the land. Storage, retail or wholesale marketing, or processing of agricultural products is a permitted use in a farming operation if more than 50% of the stored, processed, or merchandised products are produced on that farm operation for at least 3 of the immediately preceding 5 years. Permitted use includes oil and gas exploration and extraction, but does not include other mineral development that will adversely affect the productivity or agricultural use of the land. Permitted use also includes the renovation or establishment of Agricultural worker housing.

- K. *“Property owner”* means the party or parties having a freehold estate or fee simple interest in land.

SECTION 3. AUTHORIZATION

- A. **Pursuant to the Township Zoning Act, MCL 125.301, 125.302, 125.303 125.310, the Township is authorized to purchase the development rights of farmland throughout the Township and may provide funding for such acquisitions. Such acquisition may be by purchase, gift, grant, bequest, devise, covenant or contract. The Township shall only purchase development rights of farmland that are voluntarily offered for sale by a property owner.**
- B. **The Township is authorized to coordinate development right purchases with Antrim County and to authorize Antrim County to purchase development rights within the Township. The Township defers to the Antrim County Farmland and Open Space Preservation Ordinance, which establishes guidelines for the following:**
- I. Establishing landowner eligibility and application procedures.
 - ii. Approval of selection criteria for ranking and prioritizing of applications to the program.
 - iii. Establishing a points-based appraisal formula for determining the value of the agricultural conservation easements.
 - iv. Reviewing and scoring all applications according to the adopted selection criteria.
 - v. Ranking and prioritizing the top scoring applications for acquisition and determining whether the development rights should be purchased.
 - vi. Approving the restrictions and permitted uses under the agricultural conservation easements.
 - vii. Establishing the price to be offered to the property owner and authorize negotiations for the purchase of development rights and agricultural conservation easement.
 - viii. Establishing monitoring procedures and overseeing subsequent monitoring to insure compliance with the agricultural conservation easement. Enforcement of the agricultural conservation easement in the case of non-compliance shall be the responsibility of the respective

Antrim County Board of Commissioners.

- C. Pursuant to the Township Zoning Act, the Township, upon approval by the Township Board of Trustees, may finance the Farmland and Open Space Preservation Program through 1 or more of the following sources:**
- I. General appropriations by the township.
 - ii. Proceeds from the sale of development rights by the township under Section 7.
 - iii. Grants.
 - iv. Donations.
 - v. General fund revenue.
 - vi. Bonds or notes.
 - vii. Special assessments as permitted by law.
- D. This Township ordinance only applies to such acquisitions whereby matching funds have been provided by the Township. Regardless of extent of Township funding, if any, the Township encourages landowners to participate in the Antrim County Farmland and Open Space Preservation Program, in accordance with the County Farmland and Open Space Development Rights Ordinance.**

SECTION 4. ADMINISTRATION

- A. Township Board of Trustees shall be responsible for the following:**
- I. Establishing the amount of funding available on an annual basis for awarding matching funds.**
 - ii. Determining the amount of matching funds, if any, for each application.**
 - iii. Allocating matching funds in coordination with the Antrim County Farmland and Open Space Preservation Program.**
- B. Individual members of the Township Board of Trustees shall disclose any potential conflict of interest and may not deliberate or vote when a conflict exists. Conflict of interests include, but are not confined to, situations where (1) the board member is the applicant; (2) the member is a close relative of the applicant; (3) the board member has a close business association or ties with the applicant; (4) the board member, a relative, or a business associate could receive financial gain or benefit from the acceptance of the application. These qualifications are in addition to but not in lieu of any other statutory or**

common law provisions relating to conflict of interest or incompatibility of office provisions.

SECTION 5. ELIGIBILITY FOR APPLICATION

Any Township landowner may submit an application for Township matching funds to the Antrim County Farmland and Open Space Preservation Program provided it meets the requirements of the Antrim County Farmland and Open Space Preservation Ordinance, which are:

- A. The property owner has signed the application indicating they are interested in voluntarily selling the development rights to the parcel.
- B. At least 51% of the parcel's area is devoted to an active agricultural use.
- C. The preservation of the parcel is consistent with the Township's Master Land Use Plan.
- D. The property is not designated for commercial, industrial or high density residential uses under the County, Township, City or Village Master Plan.
- E. Agricultural activities are a permitted use on the parcel under all applicable zoning ordinances.
- F. The property owner has completed the application required by the County Farmland and Open Space Preservation Program and meets all the requirements of the County Ordinance.

SECTION 6. TOWNSHIP APPLICATION AND SELECTION PROCESS

- A. Upon approval of Township funds, the Township shall, in coordination with Antrim County's application cycle, conduct a voluntary application and selection process for property owners who wish to sell development rights under the Antrim County Farmland Preservation Program and desire consideration for Township matching funds.**
- B. The application for Township matching funds will be the same application form as required by the Antrim County Farmland and Open Space Preservation Program. The application will remain active per annual written approval of the landowner, provided there is no subsequent modifications to the scoring criteria or application that requires additional information.**

- C. All applications for Township matching funds shall be scored and ranked utilizing the approved selection criteria of the Antrim County Farmland and Open Space Development Rights Ordinance.**
- D. The Elk Rapids Township Board of Trustees shall establish guidelines for allocation of matching funds in coordination with the County's application cycle. The Township shall provide matching funds to the highest scoring parcels and allocate matching funds in a manner to provide the most competitive advantage to landowner's application for County, State or Federal matching programs. The Township Board of Trustees may decide, based on available Township funds, to allocate matching funds to one or more parcels.**
- E. Following the Township's approval of landowner application(s) a letter of intent to Antrim County shall accompany the application(s) indicating a total amount of matching dollars the Township anticipates is available and the maximum percentage match to each application. The funds shall be applied to the highest ranking parcels from the Township and shall be applied to as many parcels as possible.**
- F. If parcel(s) are not selected for County, State, Federal or Private matching funds, the funds previously allocated by the Township may be reevaluated and redirected to other parcels utilizing the County scoring system.**

SECTION 7. CONSERVATION EASEMENT PROVISIONS AND EASEMENT DURATION

For land that utilized Township matching funds, in addition to the provisions within the County Farmland and Open Space Development Rights Ordinance #01-04 passed by the Antrim County Board of Commissioners on July 8, 2004:

- A. The Township shall also sign the agricultural conservation easement that is executed by the County and the landowner upon the sale of development rights.**
- B. If a development rights re-purchase is ordered by eminent domain the Township shall deposit the Township's share of any proceeds resulting from the repurchase of development rights into the farmland preservation fund and the proceeds shall be used to purchase additional development rights and agricultural conservation easements on additional farmland within the township.**

- C. If the farm is determined not “marketable for farm use” by a vote of the Antrim County Board of Commissioners, it shall also require approval by a vote of the Elk Rapids Township Board of Trustees. The Township shall also deposit the Township’s share of these proceeds resulting from the repurchase of development rights into the Farmland Preservation Fund and proceeds shall be used to purchase additional development rights and agricultural conservation easements on additional farmland within the Township.

SECTION 8. TOWNSHIP FARMLAND PRESERVATION FUND

Available Township funding for the Farmland and Open Space Preservation Program and all interest accrued, shall be deposited in a special farmland preservation fund within the Township. Money in such farmland preservation fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Township money. Revenues from the deposit and/or investment of the farmland preservation fund shall be applied and used solely for the purpose of administering and purchasing development rights and agricultural conservation easements under the Ordinance on farmland within the Township. Funds may be used in making payments obligated under installment purchase contracts, promoting and educating farmland about the preservation program, or paying for costs of administering or enforcing the Farmland Preservation Program.

SECTION 9. AMENDMENTS

This ordinance may amended after receiving a majority vote of those elected and serving on the Elk Rapids Township Board of Trustees.

SECTION 10. SEVERABILITY

Any provision of the Ordinance which is found by a court of competent jurisdiction to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision contained in the Ordinance and such other provisions shall remain in full force and effect.

TOWNSHIP OF ELK RAPIDS
Carolyn Boals , Clerk