

## **BARRY COUNTY FARMLAND PRESERVATION ORDINANCE**

Adopted by the Barry County Board of Commissioners on December 10, 2002

Amended July 12, 2005; Amended July 22, 2014; Amended April 12, 2016

AN ORDINANCE creating the Barry County Farmland Preservation Program that protects farmland by acquiring the development rights voluntarily offered by landowners by means of donation, cash purchase and/or installment purchase of such rights, placing a conservation easement on the property which restricts future development. Further, this Ordinance shall establish standards, procedures and guidelines for the acquisition of development rights/conservation easements on farmland in Barry County.

### **THE PEOPLE OF THE COUNTY OF BARRY, MICHIGAN, DO ORDAIN:**

#### **SECTION 1: DECLARATION OF PURPOSE**

##### **A. Purpose of the Program**

It is the purpose of the Barry County Farmland Preservation Program and this Ordinance to protect farmland, to maintain a long-term business environment for agriculture in Barry County, to preserve the rural character and scenic attributes of the county, to enhance important environmental benefits and to maintain the quality of life of Barry County Residents.

##### **B. Economic Importance of Farmland and Agriculture**

Agricultural land situated in Barry County is a valued and economically important resource that provides the essential and irreplaceable basis for production of dairy products, livestock, hay, grains, vegetables, fruit, nursery plants and greenhouse crops. Climate, topography, soil composition and accessibility make agricultural land in Barry County ideally suited for production, processing and distribution of agricultural products locally, regionally, nationally and internationally. Agricultural land in Barry County also supports a broad range of agriculturally dependant businesses such as farm machinery sales and maintenance, sale of farm supplies and fuel, services of veterinarians, grain dealers, transportation services and packaging plants, all of which contribute significantly to local and regional economies.

##### **C. Importance of Non-agricultural Attributes of Farmland**

In addition to its economic importance, agricultural land in Barry County enhances the overall quality of life for all county residents by providing scenic beauty, preserving open space, maintaining rural character, promoting hunting and recreational opportunities, preserving cultural heritage as well as protecting valued environmental benefit such as watershed quality and preservation of wildlife habitat.

Barry County is a recreation destination and the oasis of Michigan with hundreds of lakes and major rivers and streams which have promoted the construction of many vacation homes. The seasonal and year-round occupants of these homes are a source of significant income to businesses in the county. Our farmland is an important aspect in attracting vacationers to the area as well as one of the major contributors to the quality of life for Barry County's permanent residents.

#### D. Farmland Loss Results from Development Trends

Barry County is not exempt from the pressures of increasing population that necessarily results in agricultural land lost to residential and commercial development. The county's natural resources, productive farmland and rural character are major factors in making Barry County a desirable place to live, work and vacation. As the populations grows and people move to the countryside, agriculture land is converted to residential and other non-agricultural uses resulting in an increased size and number of residential parcels and the continued loss of farmland.

#### E. Impact of Farmland Loss

Land suitable for farming is a finite and irreplaceable natural resource with soil and topographic characteristics that have been enhanced, by the labor of generations of farming families in Barry County. When such land is lost to residential and other development uses that do not require the special characteristics inherent in agricultural land, a critical community resource is permanently lost to the citizens of the county. In addition, non-farm development in agricultural areas makes farming more difficult because it causes conflict with existing farm practices, increased trespass, greater liability exposure and increased property damage. Because agricultural land is an aesthetic, natural economic resource, Barry County should make an effort to maintain agricultural land in a substantially undeveloped state to ensure the long-term viability of agriculture, to create a long-term business environment for agriculture in the county, and enhancement of the quality of life for all residents.

#### F. State and Local Policies

It is the policy of the State of Michigan and Barry County to protect, preserve, and enhance farmland as evidenced by the; Barry County Master Plan; the Township Master Plan; the State Farmland and Open Space Preservation Program under Part 361 of the Michigan Natural Resources and Environmental Protection Act (MCL 324.36101 et seq), the Natural Resource and Environmental Protection Act; portions of the Michigan Zoning Enabling Act; and other state and local statutes and policies. However, these measures alone have not effectively provided adequate long-term protection for farmland in Barry County from existing and impending pressures of residential and commercial development.

#### G. Value of Development Rights

The features of good farmland such as permeable soils and open space views are the same features sought for residential sites and results in speculative purchase of farmland without regard to existing agricultural zoning designations. Agricultural investment is not sustainable when the market value of the farmland exceeds its agricultural value. 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. Mechanism to Preserve Farmland

Acquisition of development right/conservation easements on farmland and other eligible land through the Barry County Farmland Preservation Program and this Ordinance is a

public purpose of Barry County. Acquisition of development rights by Barry County shall be accomplished by entering into written agreements with landowners. Such written agreements shall provide that any real property from which Barry County has purchased or otherwise acquired development rights shall remain undeveloped and available for agricultural use into perpetuity unless specifically provided for herein.

#### I. Intent of Ordinance

The intent of this Ordinance is to establish a framework for the preservation of farmland and other eligible land. Mechanisms such as funding and scope of the program are left to the discretion of the Board of Commissioners.

## **SECTION 2: DEFINITIONS**

- A. "Agricultural conservation easement" means a conveyance by written instrument in which, subject to permitted uses, the owner relinquishes to the public, in perpetuity (forever), his or her development rights and makes a covenant not to undertake 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 and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae (deer-like animals), and similar animals; berries; herbs, flowers, seeds, grasses and nursery stock; fruits and vegetables; Christmas trees and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program or a federal conservation reserve program. Agricultural use does not include the management and harvesting of a woodlot.
- C. "Close relative" of the applicant means (1) A current or former spouse; (2) A father, mother, guardian, brother, sister, son, daughter; or (3) A father-in-law, mother-in-law, brother-in-law, sister-in-law, or daughter-in-law.
- D. "Conservation easement" means a conveyance by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant running with the land not to undertake development.
- E. "Development" means an activity that materially alters or affects the existing conditions of use of the land in a manner that is inconsistent with agricultural use.
- F. "Development Rights" means an interest in land that includes the right to construct a building or structure to improve land for development, to divide a parcel for development or to extract minerals incidental to a permitted use or as set forth in an instrument recorded pursuant to this Ordinance.
- G. "Farmland" means one or more of the following:
  - 1) A farm of 40 or more acres in one ownership with 51 percent or more of the land devoted to agricultural use.
  - 2) A farm of five (5) acres or more in one ownership, but less than 40 acres, with 51 percent or more of the land area devoted to an agricultural use and 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.

- 3) A farm designated by the U.S. Department of Agriculture as a specialty farm in one ownership that has produced a gross annual income from an agricultural use of \$2000.00 or more. Specialty farms include, but are not limited to, greenhouses, equine breeding and grazing; Cervidae breeding and grazing; pheasants and other game animals; bees and bee products; mushrooms; aquaculture; and other similar uses and activities.
  - 4) Parcels of land in own ownership that are not contiguous but which constitute an integral part of a farming operation being conducted on land otherwise qualifying, as farmland may be included in an application.
- H. "Land Conservancy" means a Michigan registered not-for-profit corporation designated as a 501c(3) tax exempt charitable trust pursuant to the Federal Internal Revenue Code, organized for the specific purpose to serve as a land conservancy.
  - I. "Owner" means a person having a freehold estate in land coupled with possession and enjoyment. If land is subject to a land contract, owner means the vendee in agreement with the vendor.
  - J. "Parcel" means a contiguous quantity of land in the possession of a single owner.
  - K. "Permitted Use" means any use expressly authorized within an agricultural conservation easement that is consistent with the farming operation or does not adversely affect the unique features, 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 by the farm operator for at least three (3) of the immediately preceding five (5) years. Permitted use does not include oil and gas exploration and extraction nor other mineral development that is inconsistent with an agricultural use.
  - L. "Person" includes an individual, corporation, Limited Liability Corporation, business trust, estate, trust, partnership, association of two (2) or more individuals having a joint or common interest in the land.
  - M. "Planning Commission" means The Barry County Planning and Zoning Commission created pursuant to Public Act 110 of 2006, as amended, being Michigan Zoning Enabling Act, which has vested with it all the powers and duties of a planning commission pursuant to said Act.
  - N. "Preservation Rights Ordinance" means an ordinance adopted under the Michigan Zoning Enabling Act 110 of 2006, MCL 125.3507 to 125.3509. The preservation rights ordinance may be incorporated into an existing County zoning ordinance, or it may be a separate ordinance.
  - O. "Prohibited use" means a use that is not consistent with an agricultural use for farmland subject to a development rights agreement or a conservation easement.
  - P. "Property Owner" means the party or parties having a freehold estate or fee simple interest in land.
  - Q. "PDR program" means a program as defined in the Michigan Zoning Enabling Act for the purchase of development rights by a county, and specifically includes the Barry County Farmland Preservation Program.

### **SECTION 3: AUTHORIZATION**

- A. Pursuant to the Michigan Zoning Enabling Act, the County Board of Commissioners is authorized to purchase the development rights of farmland throughout the County. Such acquisition may be by purchase, gift, grant, bequest, devise, covenant or contract. The

County shall only purchase development rights on farmland that are voluntarily offered for sale by a property owner.

- B. Pursuant to the Michigan Zoning Enabling Act, MCL 125.3301(10); the County Planning Commission is authorized to establish such committees it considers necessary and may engage any employees, including for technical assistance, it requires.
- C. The County is authorized to enter into installment purchase contracts, options and agreements or take receipt of donations of easements, consistent with applicable law. The County 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 purchase contract.
- D. The County may contract with recognized and legally established nonprofit land trusts or other experienced and qualified individuals, parties or entities that would assist the County in the process of negotiating easements and purchase contracts, establishing baseline studies and procedures for monitoring, and actual monitoring of any agricultural conservation easements acquired under the Ordinance.
- E. The County is authorized to seek grants from Federal and State government and private foundations, organizations and individuals for funding expenditures incurred in carrying out this Ordinance.

#### **SECTION 4: BARRY COUNTY CONSERVATION EASEMENT BOARD BARRY COUNTY CONSERVATION EASEMENT BOARD**

- A. The Agricultural Preservation Board will now be known as the Barry County Conservation Easement Board (BCCE). It will be a seven-member Board established by the Board of Commissioners. The Barry County Conservation Easement Board shall report to the Barry County Board of Commissioners. Administrative duties related to the Barry County Conservation Easement Board may be delegated to other qualified entities. The Barry County Conservation Easement Board Barry County Conservation Easement Board shall include:
  - 1) One member of the Barry County Planning Commission;
  - 2) Three individuals with agricultural interests;
  - 3) One individual with real estate or development interests;
  - 4) One individual with local conservation interests;
  - 5) One township elected official or designee representative;
  - 6) One individual representing the Barry County Board of Commissioners, (non-voting member)
- B. These appointments shall be made by the Board of Commissioners. Members of the Barry County Conservation Easement Board Barry County Conservation Easement Board shall serve three-year terms except where appointments made under Sections 5A.1, 5A.6 and 5A.7 of this Ordinance, which shall be made on an annual basis. The initial term of office for board members shall be staggered so that
  - 1) One of the agricultural representatives and the real estate representative shall serve one-year terms;
  - 2) One agricultural representative and the township representative shall serve two year terms initially and,
  - 3) One agricultural representative and the conservation representative shall serve three-years initially
- C. The Board of Commissioners shall have the discretion to remove members for neglect of duty or malfeasance in office or other good cause. Vacancies due to removal or resignation shall be filled for the remainder of a term by appointment by the Board of Commissioners. Members

shall not be compensated for their services, although reimbursement for attending meetings, for mileage and for other approved expenses shall be at the discretion of the Board of Commissioners when funding is available at rates established and approved by the Board of Commissioners.

- D. The Barry County Conservation Easement Board BCCE Board, shall oversee the Barry County Farmland and Open Space Preservation program and be responsible to:
- 1) Recommend selection criteria for ranking and prioritizing program applications. The recommendation shall be approved by the Board of Commissioners, before each selection cycle.
  - 2) Recommend a points-based appraisal formula for determining the value of development rights/agricultural conservation easements. The recommendation shall be approved by the Board of Commissioners,
  - 3) Review and score all applications according to the selection criteria previously approved by the Board of Commissioners.
  - 4) Rank and prioritize applications and make recommendations for purchase of development rights/agricultural conservation easements.
  - 5) Approve restrictions and permitted uses of development rights/ agricultural conservation easements consistent with this Ordinance. The restrictions shall be approved by the and the Board of Commissioners,
  - 6) Recommend a price to be offered to the property owner for development rights and authorize negotiations for the purchase of development rights and agricultural conservation easement(s). The Board of Commissioners shall approve or decline the acquisition of all development rights and agricultural conservation easements.
  - 7) Establish monitoring and oversight procedures and oversee subsequent monitoring to ensure compliance with acquired development rights/agricultural conservation easements.
  - 8) Prepare for recommendations to the Board of Commissioners applications for state, federal or other sources of grant funds to assist the purchase of development rights/agricultural conservation easements pursuant to the provisions of this Ordinance.
- E. Individual Barry County Conservation Easement Board members shall promptly disclose any potential conflict of interest and may not vote when a conflict exists. Conflicts of interest 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 application; (4) the board member, a relative, or a business associate could receive financial gain or benefit from the acceptance of the application. Barry County Conservation Easement Board members that make application to the program must fully disclose, in advance of the meeting at which the application is to be approved as well as in the Board's minutes of the meeting, (b) recuse themselves from all discussion and voting on the application and (c) concurrence of 2/3 majority vote of the BCCE Board. To the extent of available funding and as approved by the Board of Commissioners, the County may contract with qualified and experienced individuals or entities for administrative or staffing services.
- F. The Barry County Conservation Easement Board may adopt operating guidelines to the extent permitted under applicable state law, which shall become effective upon approval of the Board of Commissioners.
- G. The Barry County Conservation Easement Board shall provide an annual report on the activities of the BCCE. This report shall be first presented at the beginning of the following year.

## **SECTION 5: ELIGIBILITY FOR APPLICATION**

Any Barry County property owner may submit an application to the Farmland Preservation Program to the provided the application meets the following requirements:

- 1) The property owners have signed the application establishing an interest in voluntarily selling or otherwise conveying development rights/conservation easement to the parcel.
- 2) At least 51% of the parcel's area is devoted to an active agricultural use and no more than 49% of the parcel may be devoted to non-agricultural open space consisting of wetlands, woodlands, or otherwise unusable land.
- 3) The parcel is not zoned or planned for residential, commercial or industrial uses according to the respective Master Plans and Zoning Ordinances.
- 4) **SECTION 6: CRITERIA FOR REVIEWING AND RANKING APPLICATIONS**

The Barry County Conservation Easement Board shall establish selection criteria for ranking and prioritizing all eligible parcels submitted to Farmland and Open Space Preservation Program. The Board of Commissioners shall, approve selection criteria prior to each application cycle. The selection criteria shall place emphasis on the following:

- 1) The farm has a productive capacity suited for the production of feed, food, fiber, seed and horticulture crops and has a greater potential for long-term agricultural production. Specific selection criteria may be based on soil classifications, parcel size, agricultural income, the implementation of a soil conservation plan and/or enrollment in the Farmland and Open Space Preservation Program under Part 361 of the Michigan Natural Resources and Environmental Protection Act (MCL 324.36101 *et seq*).
- 2) The farm is under threat of development. Specific selection criteria may be based on the proximity of the land to public sanitary sewer or water, the extent of development activity in the county or the amount of road frontage.
- 3) The land complements other farmland protection efforts in Barry County. Specific selection criteria may include proximity to other permanently protected farmland, proximity to other land that is protected under a land trust or conservancy, land enrolled in the Farmland and Open Space Preservation Program under Part 361 of the Michigan Natural Resources and Environmental Protection Act (MCL 324.36101 *et seq*) or inclusion in an agriculturally zoned district.
- 4) The property is being donated or there are additional matched funds provided by the landowner, local unit of government or private sources for the purchase of development.
- 5) There are other factors considered important by the Barry County Conservation Easement Board such as physical, historical or environmental characteristics.
- 6) A general conservation plan has been implemented with the Natural Resources Conservation Service.
- 7) The city, village or township shall provide Barry County written approval of the proposed purchase.

#### **SECTION 7: APPLICATION AND SELECTION PROCESS**

- A. In accordance with the procedures set forth in this Ordinance, Barry County and the Barry County Conservation Easement Board may conduct an annual, voluntary application and selection process for property owners that wish to sell, donate, or otherwise convey development rights/agricultural conservation easements.
- B. The Barry County Conservation Easement Board shall begin each application cycle by giving notice at least ninety (90) days in advance of the application deadline that Barry County is

accepting applications for the Barry County Farmland Preservation Program through the Barry Conservation District. Notification shall be given in a newspaper of general circulation within the Barry County area and on the Barry County website.

- C. The application process may require information to be filled out by the property owner, the Barry Conservation District, and/or the local unit of government where the parcel is situated. The application may require a fee paid by the property owner at the time the application is submitted to the Barry Conservation District. An application fee may be established at the recommendation of the Barry County Conservation Easement Board subject to approval by the Board of Commissioners. At a maximum, the amount of the application fee shall reflect the actual administrative cost of scoring the application according to the approved selection criteria.
- D. Submission of an application shall signify intent to donate, sell or convey development rights associated with the property of the applicant to Barry County when mutually agreeable terms are reached. The application shall remain active with no additional fee for three years with the written request of the property owner unless the applicant rescinds the application in writing, the scoring criteria are modified or the application requirements are changed. If selected, Local townships will be asked to sign a letter of continued support for standing landowner applications, and all applications, both old and new, will be scored and ranked for each cycle.
- E. The Barry County Conservation Easement Board will give notice to each township in which an application for the purchase or donation of development rights has been received, and the disposition of that application.
- F. A determination of eligibility shall be made by the Barry County Conservation Easement Board or designated staff at the close of the application deadline. Property owners will be notified if the application does or does not meet eligibility requirements of the program. Eligible applications shall be evaluated and scored according to the selection criteria established by this Ordinance prior to the application cycle.
- G. The Barry County Conservation Easement Board shall rank parcels according to the selection criteria score but shall also individually evaluate and prioritize the top scoring parcels. If necessary, the Barry County Conservation Easement Board may re-evaluate and re-prioritize the top scoring parcels to identify which applicant's development rights should be purchased based on the availability of funds. The written rationale for reprioritization of the top scoring parcels shall be included with each application.
- H. The final ranking and prioritization of the applications shall be submitted to the Board of Commissioners for the approval prior to initial negotiation with selected landowners.
- I. Upon mutual agreement to the purchase terms of development rights/agricultural conservation easement, by the Barry County Conservation Easement Board and the property owner, and prior to signing and recording of the conservation easement, a title search will be conducted to establish that there are no hindrances or encumbrances, there is clear title to the property, and the landowner has the ability to sell or otherwise convey the development rights/agricultural conservation easements. If a clear title cannot be initially provided, the applicant shall resolve the matter prior to approval of the closing of the acquisition by the Board of Commissioners, and prior to the creation of the agricultural easements. Terms of the purchase of the development rights/agricultural conservation easements shall be in writing and contingent on the willingness of all persons and entities with interest in the Nominated Property to record the development rights/agricultural conservation easements as approved by the Board of Commissioners.
- J. The proposed purchase or conveyance of an agricultural conservation easement is subject to the approval of the Board of Commissioners. The Board of Commissioners may, at its

discretion alter, modify or deny the recommendations by the County Barry County Conservation Easement Board to purchase development rights for any reason.

- K. Once the application has been approved for purchase by the County Board of Commissioners, the County and the property owners shall sign the agricultural conservation easement and it shall be legally recorded with the County Register of Deeds.
- L. The County shall notify the appropriate local unit of government of each agricultural conservation easement.
- M. The agricultural conservation easement will be monitored in accordance with procedures and guidelines established by the Barry County Conservation Easement Board.
- N. A baseline study shall be completed for each newly acquired development rights/agricultural conservation easement. The baseline study shall include the following:
  - 1) Description of the property.
  - 2) Report on how the development rights were acquired.
  - 3) Report on how the parcel was selected.
  - 4) Intent of the grantor.
  - 5) Physical characteristics of the property (topography, soils, vegetation, human made structures, zoning, etc.)
  - 6) Current photographs and maps of the parcel and its vicinity.

## **SECTION 8: AGRICULTURAL CONSERVATION EASEMENT PROVISIONS**

- A. Upon the agreement of the purchase and sale or acquisition of development rights by , the property owner and the Board of Commissioners, the County and the property owner shall execute an agricultural conservation easement, approved by the Barry County Conservation Easement Board, the County Board of Commissioners, that will perpetually protect the parcel's agricultural value or use of the farmland. The agricultural conservation easement shall contain a provision indicating that the easement runs with the land and may not be terminated except as provided for in this Ordinance and the easement.
- B. Restrictions on that portion of the property included in the agricultural conservation easement shall include, but not be limited to, the following:
  - 1) Property shall not be divided into parcels less than 40 acres in size.
  - 2) The construction of residences for new owners of any divisions shall be prohibited.
  - 3) Construction of any other buildings, unless they are built for uses consistent with farming operations shall be prohibited.
  - 4) Commercial or industrial activity that is inconsistent with a normal farming operation shall be prohibited.
  - 5) Excavation of topsoil, sand, gravel, rock, minerals or other materials that significantly impairs or interferes with the agricultural values of the property shall not take place without prior written approval.
- C. Permitted uses and retained development rights in the agricultural conservation easement shall include, but not be limited to, the following:
  - 1) Construction of building necessary for and consistent with agricultural uses.
  - 2) The right to maintain, renovate, add on to, or replace existing structures. Structures built must be in conformance with all applicable federal, state, and local laws, ordinances and regulations.
  - 3) The right to sell, mortgage, bequeath or donate the property, provided that any conveyance shall be subject to the terms of the easement.

- D. Monitoring of easements shall be conducted by the Barry County Conservation Easement Board, or representative, as provided in the easement. Inspections shall be conducted to ensure that the terms of any easement are followed.
- E. Enforcement and penalties: If the owner or a successor in title of the land upon which a development rights agreement or easement has been recorded pursuant to this Ordinance changes the use of the land to a prohibited use or knowingly sells the land for a use other than those permitted in the development rights agreement or easement without first pursuing and receiving authorization under the provisions provided for under State law regarding such use changes, he or she may be enjoined by an enforcement action by a representative of Barry County, and is subject to a civil penalty for actual damages, which shall not exceed double the value of the land as established at the time the application for the development rights agreement or easement was approved. In addition to all other remedies, including penalties provided in this ordinance, the Barry County may commence and prosecute appropriate actions in the circuit court for the County of Barry or any other court having jurisdiction to restrain or prevent any noncompliance with or violation of any of the provisions of this ordinance, or to correct, remedy or abate such noncompliance or violation.

## **SECTION 9: DURATION OF THE AGRICULTURAL CONSERVATION EASEMENT**

- A. The intent of this Ordinance is to preserve farmland through the establishment of permanent agricultural conservation easements to be held in trust by the County of Barry, the participating local unit of government, the State of Michigan, the United States, land conservancy or other organization as deemed appropriate by the Board of Commissioners for the benefit of the citizens of Barry County and the State of Michigan. Agricultural conservation easements shall encumber the land into perpetuity without regard to transfers of property ownership.
- B. Development rights acquired pursuant to this Ordinance shall be held by Barry County in perpetuity, except when a court of competent jurisdiction has made the determination based on the doctrine of eminent domain that the use of the development rights is necessary for a specific public interest, need or purpose.
- C. Based upon a determination of eminent domain by a court of competent jurisdiction that the development rights held by Barry County must be purchased to serve a specific public interest, need or purpose, Barry County shall be paid either by the state, city, village or township exercising eminent domain over the land for the development rights.
- D. The purchaser shall pay to Barry County the fair market value of the development rights at the time of condemnation. Fair market value shall be calculated by a State Certified Appraiser or by utilization of the points based appraisal set forth in Section 8.
- E. If the appraiser discerns any actual or potential conflict of interest arising from his or her performance of an assigned appraisal, the appraiser shall, before undertaking work on the appraisal, disclose such actual or potential conflict of interest to the Board of Commissioners. If a conflict of interest or an unacceptable potential conflict of interest exists, the Board of Commissioners shall select a different appraiser.
- F. A determination of the fair market value shall be made prior to termination of the agricultural conservation easement.
- G. The value of the development rights shall be calculated as the difference between the fair market value of the property including the value of the development rights and the fair market value of the property based on its agricultural use under the existing agricultural conservation easement.
- H. The Barry County Treasurer shall deposit the proceeds from the repurchase of development rights/agricultural conservation easements into the Barry County Agricultural Preservation

Fund, the proceeds of which shall be used to purchase additional development rights/agricultural conservation easement on eligible farmland in Barry County and/or any other purpose consistent with the intent of this Ordinance.

- I. For development and conservation easement rights held jointly by Barry County and another entity, such as a land conservancy or the State of Michigan, all parties must concur with any alterations to the development rights interest in the land.

## **SECTION 10: METHOD OF DETERMINING VALUE AND PAYMENT**

- A. Upon approval of an application under the terms of this Ordinance, the Barry County Conservation Easement Board shall initiate an appraisal for determining the value of the agricultural conservation easement. Said appraisal shall be a “before and after” appraisal. Under the “before and after” scenario, one appraisal will determine the value of the full ownership of the land, before the development rights are severed, and one will determine the fair market value of the parcel with an agricultural conservation easement in place, after the development rights are severed. The amount to be offered would be the difference between the before appraisal and the after appraisal. The development rights value will be determined based on the legally permissible intensity of development as set forth by the zoning ordinance of the local unit of government in effect at the time the development rights are to be purchased. The formula-based process, authorized under P.A. 262 of 2000 (being M.C.L. 324.36201-324.36207), reduces administration costs, is more time efficient, and provides a consistent and objective value for all applications. When the formula-based process is used for determining value, it shall be established by the Barry County Conservation Easement Board prior to an application cycle such that a property owner may determine the value of his/her agricultural conservation easement prior to submitting an application. The Agricultural Preservation Board shall review the formula-based process at the end of each application cycle and compare agricultural conservation easement values to actual fair market sales in the county.
- B. All appraisals must be made by a licensed Michigan State Certified appraiser with no property, personal or financial interest in the selected parcel. Appraiser will be selected by the Barry County Conservation Easement Board. All appraisals will be in writing and will be made available for review before an acquisition offer is made. At the property owner’s discretion, a review appraisal from another state certified appraiser may be conducted at the property owner’s expense and filed with the Barry County Conservation Easement Board within 90 days of receipt of the initial appraisal.
- C. When development rights are to be acquired through purchase or donation, the Barry County Conservation Easement Board will, recommend to the Board of Commissioners a value to be placed on the purchased or donated conservation easement based on the value contained in the initial appraisal and, when a review appraisal has been filed, the review appraisal.
- D. Upon reviewing the application, the County Board of Commissioners shall, at a regular meeting of the Board:
  - 1) Approve the application; or
  - 2) Approve the application subject to specific conditions; or
  - 3) Deny the application, stating specific reasons for the denial; or
  - 4) Postpone action on the application to a specified date.
- F. Payment for the development rights/agricultural conservation easements shall occur at the time of closing pursuant to the contract between the landowner and Barry County.

## **SECTION 11: RELATED COSTS**

- A. The cost of services ordered by the County Barry County Conservation Easement Board in relation to the County's Farmland Preservation Program shall be paid from available Farmland Preservation Program funding sources with the County, including state and federal matching funds, which may include the cost of appraisal, engineering, surveying, planning, financial, legal, environmental assessment, title searches, development baseline assessments and monitoring easements.
- B. Barry County shall not be responsible for any expenses incurred by the property owner incident to this transaction that the Barry County Conservation Easement Board or the Board of Commissioners has determined is the responsibility of the property owner, which may include but is not limited to an application fee, title searches, appraisals, or surveying.
- C. Subparagraphs A and B of this section shall not preclude agreement by Barry County and the landowner to share costs such as engineering and surveying as negotiated.

**SECTION 12: BARRY COUNTY AGRICULTURAL PRESERVATION FUND (fund #252)**

- A. Funding for the Barry County Conservation Easement Board shall be deposited with the Barry County Treasurer in a special Barry County Farmland Preservation Fund. Money in the fund may be temporarily deposited with institutions or invested in obligations that are allowed by law.
- B. Revenue generated from such deposits and/or investments shall be used solely for the purpose of purchasing development rights/agricultural conservation easements, to make payments on installment purchase contracts, promote farmland preservation programs, pay costs of administering and enforcing the program and/or any other purpose consistent with the intent of this Ordinance.
- C. If funds become available from private sources, or federal or state agencies to pay a portion of the purchase price of development rights/agricultural conservation easements, the Board of Commissioners specific uses for such funds consistent with the intent of this Ordinance.
- D. The Board of Commissioners may finance the Barry County Farmland Preservation program through one or more of the following sources,
  - 1) General appropriations by the County
  - 2) Grants
  - 3) Donations
  - 4) Special assessments / millages as permitted by law
  - 5) Proceeds from the Sale of Development Rights by the County
  - 6) General fund revenue
  - 7) Bonds or notes
  - 8) Other sources approved by the Board of Commissioners and permitted by law.

**SECTION 13: AMENDMENTS**

Amendments to this Ordinance may be adopted at the discretion of the County Board of Commissioners by a majority vote of the members of the County Board of Commissioners elected and serving.

**SECTION 14: SEVERABILITY**

Any provision of this 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.

