

**WASHTENAW COUNTY**  
**SUPERIOR CHARTER TOWNSHIP**  
**ORDINANCE 194**  
**PURCHASE OF DEVELOPMENT RIGHTS**  
**FIRST READING**

This Ordinance authorizes Superior Charter Township to acquire voluntarily offered land and property development rights within Superior Charter Township and establishes the procedure for acquiring and financing the acquisition of the land and development rights pursuant to Sections 507, 508 and 509 of the Michigan Zoning Enabling Act.

**SUPERIOR CHARTER TOWNSHIP BOARD ORDAINS:**

**Section 1 Findings and Declaration of Purpose**

The Board of Trustees finds that:

- 1.1 Superior Charter Township is a desirable place to live, in part because of the natural features, open spaces, and farmlands. The Township Master Plan includes scenic views, farmlands, open spaces and wildlife habitat as valuable natural and aesthetic resources that should be protected. The “green” and pastoral landscape is highly valued by residents. The land is relatively flat or gently rolling and open. The wetlands, watersheds and a segment of the Huron River Valley are key natural highlights. Wildlife habitats abound in farmland hedgerows, woodlots, open spaces, wetlands and along stream corridors. Scenic roadways offer picturesque views of the natural countryside.
- 1.2 The climate, variety of soils and terrain make the Township well suited for agriculture and woodlands. Wetlands and open spaces naturally occur and are reestablished. Such lands provide unique aesthetic and economic benefits to the citizens of the Superior Charter Township and are an important part of the Township's natural and agricultural heritage.
- 1.3 Superior Charter Township is attractive for residential development because of its attractive landscapes and the close proximity to Plymouth, Northville, Ann Arbor, Ypsilanti and Canton. Superior Charter is also popular for biking, hiking, golf, tennis and equestrian activities. The community character strongly favored by citizens, as noted in the Master Plan, is highly dependent upon the preservation of natural features.

- 1.4 The streams and drains in the Township contain headwaters and tributaries of the Huron and Rouge River systems, which contribute to the water quality of downstream communities. The preservation of existing natural vegetation along these streams and drains provides protection for wildlife.
- 1.5 It is the policy of the State of Michigan, Washtenaw County and Superior Charter Township to protect, preserve and enhance lands as evidenced by the Township Master Plan, the Michigan Zoning Enabling Act, MCLA 125.3101 et seq., the Washtenaw County PDR Ordinance, 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 effectively provided long-term protection of agricultural areas and open space from pressure of increasing residential development.
- 1.6 The Township recognizes the agricultural industry's significant contributions to the local economy. A goal of Superior Township is to maintain existing agricultural activities in the Township and retain agricultural use of existing farmland.
- 1.7 Generally, farmlands which are close to urban centers have a greater market value for future residential development than their market value for farming or open space. Prime agricultural land often has the same features (such as soils that perk) that are components of desirable residential areas. This 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.
- 1.8 The permanent acquisition of voluntarily offered interests in farmland and open space 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 those lands in the Township.
- 1.9 Properties on which the Township has acquired the development rights will remain substantially undeveloped in order to promote their natural and/or agricultural use.
- 1.10 The acquisition of interests in land and open space as provided in this Ordinance is a public purpose of Superior Charter 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.
- 1.11 This Ordinance is authorized by Sections 507, 508 and 509 of the Michigan Zoning Enabling Act (MCLA 125.3507 to 125.3509).

## **Section 2    Definitions**

The following definitions are intended to clarify the meaning of words and terminology in this Ordinance but are not intended to be all-inclusive. For the most part, the meanings of other words and terms are intended as commonly used and commonly understood by the public.

- 2.1    "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.
- 2.2    "Agricultural Use" means 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, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vineyards and wineries, 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 harvest of a woodlot.
- 2.3    "Application" means the documentation and information submitted to the Township by a landowner on an approved application for offering to sell, donate or otherwise grant to the Township a conservation easement, development rights or title to lands in the Township.
- 2.4    "Board of Trustees" and "Township Board" means the Superior Charter Township Board of Trustees.
- 2.5    "Chairperson" means the member who is elected Chairperson by the Land Preservation and Conservation Board.
- 2.6    "Conservation easement" means the document in which a perpetual non-possessory interest in real property is voluntarily granted by a landowner to a qualified entity in accordance with MCL 324.2140 et seq. for the purpose of retaining and enhancing agriculture or preserving natural, scenic or open space values of real property; restricting or preventing the development or improvement of the land for purposes other than agricultural production and natural values; or other like or similar purposes.
- 2.7    "Development" means an activity which materially alters or affects the existing conditions or use of any land in a manner that is inconsistent with agricultural use or open space character.
- 2.8    "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.

- 2.9 "Eligible Land" means farmland and open space land for which the purchase of fee simple interest or development rights is authorized pursuant to this Ordinance.
- 2.10 "Farmland" means those lands designated in the Township Master Plan or zoning ordinance for agricultural use.
- 2.11 "Full Ownership" means fee simple ownership.
- 2.12 "Governmental Agency" means the any agency of the United States, the State of Michigan, Washtenaw County, or Superior Charter Township.
- 2.13 "Land Preservation and Conservation Board" means the Board of Superior Charter Township appointed by the Superior Charter Township Board of Trustees and authorized to investigate and recommend the acquisition of lands and/or development rights per this Ordinance.
- 2.14 "Market Value" means the amount of value that land or development rights is worth as determined by an independent real estate appraiser.
- 2.15 "Master Plan" or "Township Master Plan" means the current Superior Charter Township Master Plan as adopted on July 19, 2010 and as be amended from time to time thereafter.
- 2.16 "Matching Funds" are defined as other financial contributions from private or public sources that could be applied to a property's application and result in a lower local cost for development rights purchase.
- 2.17 "Open Space" means substantially undeveloped land that is not devoted to agricultural use, but possesses special qualities including woodlots, natural areas, scenic views, wildlife habitat and threatened and endangered species.
- 2.18 "Owner" means the party or parties having the fee simple interest in land.
- 2.19 "Parcel" means all property under a single ownership that is included in the application.
- 2.20 "Planning Commission" means the Superior Charter Township Planning Commission.
- 2.21 "Residential Development Rights" means the right to sell portions of a property, or to construct houses on a property, for residential uses not related to the agricultural use of the property.
- 2.22 "Substantially Undeveloped Land" means land on which there is no more than one residential dwelling unit (exclusive of housing units directly associated with the farming operation) for each 40 acres of land.
- 2.23 "Supervisor" means the Superior Charter Township Supervisor.

- 2.24 "Township" means Superior Charter Township, a Michigan municipal corporation, situated in the County of Washtenaw, State of Michigan.
- 2.25 "Township Staff" means the Superior Charter Township Attorney, Township Planner, Township Engineer, or other Township Professional or Administrative Expert Personal.
- 2.26 "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 and/or the open space value plus any residential development rights to be retained by the owner.
- 2.27 "Zoning Ordinance" means the Superior Charter Township Zoning Ordinance.

### **Section 3 Superior Charter Township Board of Trustees**

The Board of Trustees is authorized under state law and this Ordinance to:

- 3.1 Expend revenue to acquire land or interests in land in accordance with the criteria and procedures established in this Ordinance. The interest acquired may either be fee title, development rights, conservation easements, or any lesser interest, easement, covenant, or other contractual right pertaining to such rights. Acquisition of land and land rights may be achieved through purchase, grant, covenant or contract but only at a price that is equal to or less than the value cited in a qualified real estate appraisal. In particular, the Board of Trustees can acquire development rights to agricultural lands and other eligible land. The revenue shall be used to acquire eligible lands only upon application of the owner as authorized by this Ordinance.
- 3.2 Enter into cash purchase contracts, installment purchase contracts, cash purchase/non-cash purchase donation agreements or similar agreements establishing the rights and responsibilities of the Township and the owner in the transfer of land, purchase of development rights, or the granting of conservation easements or other easements or covenants consistent with applicable law and this Ordinance. 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.
- 3.3 Enter into contracts with recognized and legally established nonprofit land trusts or conservancies (for example, the Southeast Michigan Land conservancy), other experienced and qualified nonprofit groups and units of government to participate jointly in the acquisition, retention and management of land, development rights, conservation easements and other easements involving eligible lands.
- 3.4 Enter into contracts with recognized and legally established nonprofit land trusts, other experienced and qualified nonprofit groups, other local units of government and consultants that would assist the Township in acquiring land and development

rights, establishing baseline studies and developing procedures for monitoring and/or management of any land or conservation easements acquired under this Ordinance. Such studies and monitoring must conform to the "The Standards and Practices Guidebook" issued by the Land Trust Alliance.

- 3.5 Enter into agreements for the joint acquisition, retention and management of land and development rights, conservation easements, or other easements involving eligible lands with other governmental agencies to the extent permitted by law and in accordance with this Ordinance.

#### **Section 4 The Land Preservation and Conservation Board of Superior Charter Township**

##### **4.1 Membership**

- a. The Land Preservation and Conservation Board shall consist of five (5) members nominated by the Supervisor and appointed by the Board of Trustees.
- b. Members shall be residents of the Township.
  - i) One member shall be a member of the Board of Trustees. This requirement does not apply to Advisory members of the Land Preservation and Conservation Board.
  - ii) At least one member shall be a member of the Planning Commission who shall be different from the Board of Trustee member. This requirement does not apply to Advisory members of the Land Preservation and Conservation Board
- c. Members shall serve two-year terms, except that in the initial term two members shall serve for one year. Members may be re-appointed.
- d. Members may be compensated for their service and reimbursed for expenses related to Board business.
- e. No member shall vote on a selection or recommendation of individual parcels in which they have an ownership interest or parcels adjacent to property in which they have an ownership interest.
- f. The Board of Trustees may appoint no more than one additional member of the Board of Trustees and no more than one additional member of the Planning Commission as Advisory members to the Land Preservation and Conservation Board who will have no voting rights or right of decision and will not be counted for the purpose of establishing a quorum.
- g. Any member may be removed by the Board of Trustees.

## 4.2 Organization

- a. The Land Preservation and Conservation Board shall annually elect a chairperson and a secretary.
- b. The Land Preservation and Conservation Board shall meet at a minimum on a quarterly basis at a date and time to be determined by the Land Preservation and Conservation Board.
- c. A majority of the members of the Land Preservation and Conservation Board, that is three members, shall constitute a quorum.
- d. A majority vote of the membership, that is three members, shall be required to make a selection of eligible lands and to authorize an action of the Land Preservation and Conservation Board.
- e. Consistent with this Ordinance and subject to the Board of Trustees approval, the Land Preservation and Conservation Board shall develop by-laws and standing rules that further define the functional and procedural aspects of the Land Preservation and Conservation Board's duties.
- f. The secretary shall be responsible for taking written minutes of the meeting of the Land Preservation and Conservation Board. The records of the Land Preservation and Conservation Board shall be kept by the Township Clerk.
- g. Meetings shall be conducted in accordance with the Open Meetings Act, MCLA 15.261 et seq.

## 4.3 Powers and Duties

- a. To advise and make recommendations to the Board of Trustees. To enhance public awareness, commitment and active participation in the stewardship of agricultural lands and open space.
- b. To review applications and make recommendations to the Board of Trustees for the purchase of land and development rights in accordance with and for the purposes of this Ordinance.
- c. To advise the Board of Trustees on monitoring and enforcement of the terms and provisions of any conservation easements acquired by the Township.
- d. To publish and present an annual report, no later than March 31 of the following year, which shall include a listing of all parcels of land donated or for which conservation easements or other easements have been acquired, and the method of acquisition; a map showing the location of acquired lands and dates of acquisition; financial cost, and land characteristics; other parcels on which other governmental entities own land or hold conservation

easements; a listing of the number of applications made, the number of unsuccessful applications and the categorical reasons they were not accepted.

- e. To prepare and submit to the Board of Trustees an annual budget by September 1, for land and development rights acquisition, preservation, and management within the Township.
- f. To review and recommend to the Board of Trustees alternate sources of funding, such as grants, gifts, endowments, etc., for land and development rights acquisition, preservation, and management.
- g. To work collaboratively with Superior Charter Township boards and commissions which have responsibilities for specific issues, including but not limited to the Planning Commission.
- h. To hold public forums, separately or with other municipal boards or commission, for the purpose of identifying needs in the community on natural land matters.
- i. To meet with municipal boards and commissions in other jurisdictions and other public and private organizations to address regional and state land and land rights preservation matters.
- j. In addition to the powers and functions herein provided, the Board of Trustees may delegate to the Land Preservation and Conservation Board by resolution other powers and functions permitted by law concerning the acquisition of land and development rights.

## **Section 5 Application and Selection Process for Acquisition of Land and Development Rights.**

- 5.1 The Preservation and Conservation Board shall develop an application form with which interested landowners may submit their property for evaluation and consideration of the sale of land or development rights.
- 5.2 Applications shall be available at the Township hall and on the Township web site.
- 5.3 To locate owners of eligible land who would like to voluntarily participate in the land preservation program, the Land Preservation and Conservation Board may annually publish notice in a newspaper having general circulation in the Township which invites those owners to submit an application. The Land Preservation and Conservation Board may prioritize the applications based on the criteria set forth in Section 7 and submit a list of those properties to the Board of Trustees and seek its guidance on which properties, if any, to pursue.
- 5.4 A completed application must be submitted on the approved application form. An owner or a duly authorized representative of the owner may apply. All applications



must be signed. A separate application is required for each non-contiguous parcel of land offered for acquisition. The Township Board shall establish and publish procedures for submission and assist owners with the application process. These procedures shall be available from the Township Clerk and may be placed on the Township website.

5.5 The following information shall be included in a completed application:

- a. Adequate identification of the parcel of land to be considered for purchase. The description should also include a map showing the location of the parcel.
- b. A description of the agricultural use carried out on the parcel or other current uses on the parcel.
- c. A statement by the owner of any contingencies that may affect the property in the future (such as death, estate plans, etc.).
- d. A description of the features of the property, such as presence of water bodies, scenic views, woodlots, wetlands, rare species or other desirable features.
- e. A statement by the owner granting access for the purpose of inspection and appraisal of the parcel by the Township, its employees or contractors and the Land Preservation and Conservation Board.
- f. A list of any and all liens and encumbrances on the parcel.
- g. Existence of any surface or subsurface leases or easements.
- h. All other information requested on the application.

5.6 If the application is complete and the minimum criteria established are met, the application shall be evaluated. Member(s) Preservation and Conservation Board, the Township Board, Township staff and other authorized persons shall view each parcel for which an application is submitted, and a written report shall be made by staff or its designee evaluating the application according to the established selection criteria.

5.7 The Preservation and Conservation Board, upon an affirmative majority vote of its members, may authorize staff to continue to process the application whereupon the Land Preservation and Conservation Board shall obtain the following:

- a. Title Commitment: To determine if the owner has clear, marketable, fee simple title to the land.
- b. Real Estate Appraisal: For purchases of development rights or conservation easements, a “before and after” qualified appraisal of the property and the

interest offered for purchase shall be conducted by an independent real estate appraiser. The qualified appraisal shall contain an analysis of the highest and best use of the parcel of land, the valuation methodology used by the appraiser to determine the value, the fair market value of the full ownership of the land (excluding the buildings thereon, if any) and the value of the agricultural rights and any retained residential developments rights. The value of the owner's retained rights or interest in the land shall be listed separately in the qualified appraisal. For purchases of land in fee simple, the qualified appraisal shall contain only the analysis of the highest and best use of the parcel of land and the valuation methodology used by the appraiser to determine the fair market value of the full ownership of the land (excluding the buildings thereon, if any).

- c. Other Studies: If appropriate, an environmental assessment, soil analysis, boundary survey or other testing may be conducted.
- 5.8 At the conclusion of all testing and completion of the title search, a complete property analysis, including a baseline documentation of the property, and recommendation shall be prepared with its tentative recommendation.
- 5.9 The owner shall be entitled to a copy of the property analysis. The owner may, at his or her own expense, provide additional information to the Land Preservation and Conservation Board on the findings and determinations included in the property analysis or withdraw his or her application within 30 days of receipt of the property analysis.
- 5.10 The Land Preservation and Conservation Board shall submit to the Board of Trustees a copy of the report, appraisal, studies, submissions by the owner, and other pertinent information, together with its recommendation. The Board of Trustees, upon a majority vote of its members, may authorize the Land Preservation and Conservation Board to proceed with the application, enter into negotiations, and submit a written offer to the owner or the Board of Trustees may enter negotiations directly. The offer shall be for a time certain accompanied by a proposed deed or easement or title in accordance with the offer made in the application.
- 5.11 For a development rights purchase, the Land Preservation and Conservation Board shall have drafted a conservation easement to ensure the natural and agricultural values of a property may not be altered. Such easement shall be signed by the landowner and the Township supervisor or clerk and recorded with the Washtenaw County Register of Deeds. All conservation easements shall be perpetual and run with the property regardless of owner.

## **Section 6 Eligible Lands and Priority of Acquisition**

Revenues may be used to purchase property interests in the following lands if all of the following are met:

## 6.1 Primary Criteria and Initial Screening

- a. The parcel of land proposed for purchase must be located within the Township.
- b. Voluntary application by the property owner.
- c. The applicant or applicants must have good, marketable, fee simple title to the land. Mortgaged land is acceptable if and only if the applicant agrees to discharge the mortgage prior to closing with the Township.
- d. Development rights have not already been purchased or other deed restrictions conveyed on the property, or property is not owned by a public agency.
- e. Current uses of the property are permitted according to the Zoning Ordinance.
- f. The nominated property does not contain any contamination according to the owner's knowledge and is not otherwise known as a contaminated site.

## 6.2 Criteria for Selection The following criteria may be used in determining the order in which applications will be prioritized on all eligible lands for which complete applications have been received by the Township. After initial screening, sites will be evaluated using these criteria. It is the intention of the users of this system to direct efforts toward high quality farmland and open space in areas of the Township where its preservation is most appropriate.

- a. Agricultural Lands. soil quality, parcel size, road frontage, groundwater recharge areas, public water resources frontage, adjacent zoning, adjacent land use, master plan designation, proximity to protected land, scenic/historic value, matching funds, landowner donation, PA 116 enrollment, percent of property in ag use, presence of natural features.
- b. Open space lands. quality of habitat, parcel size, road frontage, wetlands/floodplain, groundwater recharge areas, steep slopes, public water resources frontage, adjacent zoning, adjacent land use, proximity to protected land, scenic/historic value, matching funds, landowner donation.
- c. Whether the property meets Township need and is consistent with the Township's Master Plan.

## 6.3 Scoring System The Land Preservation and Conservation Board shall develop a numerical scoring system utilizing these criteria to prioritize farm sites and open space for the purchase of land or conservation easements.

## **Section 7     Retained Residential Development Rights**

- 7.1     To promote agricultural use of properties on which the Township has purchased the development rights, it has been determined that such properties should remain substantially undeveloped.
- 7.2     Applications for the sale of development rights may include a provision to retain 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 eighty (80) acres of land. This is not to preclude the sale of all existing dwelling units on the site at the time the development rights are purchased. Sale of these existing dwelling units shall be in accordance with the conservation easement on the property.
- 7.3     The building locations for retained residential development rights may be restricted in the negotiated conservation easement in order to protect other important features of the property. Building locations and lot sizes must also conform to the existing zoning regulations.

### **Duration of Acquired Interests**

Development rights acquired pursuant to this Ordinance shall run with the land and be held by the Township, for the benefits of its citizens, in perpetuity.

## **Section 8     Related Costs**

The costs of appraisal, engineering, surveying, planning, financial, legal, environmental assessments and other services lawfully incurred in relation to the purchase of land or development rights shall be paid by Superior Charter Township or any of its contributing partners. Payment of these costs shall be negotiated between contributing partners. Superior Charter Township shall not be responsible for any 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 land or development rights, or some lesser interest in eligible lands or to supplement or enlarge such acquisition. The Board of Trustees 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    Funding**

- 10.1    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 conservation easements, or to

participation with any party for such purposes, will promote the public health, safety and general welfare of the people of Superior Charter Township.

10.2 Funding for acquiring land and development rights may come from one or more of the following sources:

- a. Donations and contributions.
- b. Grants and/or gifts.
- c. Earned interest income on investments not to exceed \$200,000 annually.
- d. Shared purchases with Washtenaw County Parks & Recreation, City of Ann Arbor Greenbelt and other land preservation and conservation organizations.
- e. Other sources approved by the Township Board of Trustees and permitted by law including an elector approved tax levy.

## **Section 11 Donations**

If a donation or gift of land or developments rights, or any ownership interests in land or development rights is made to the Township, the provisions of this Ordinance may not apply.

## **Section 12 Enforcement**

The Township Board of Trustees shall administer and enforce, and the Township Attorney shall prosecute, any violations to terms of conservation easements acquired pursuant to this Ordinance. The Land Preservation and Conservation Board will advise and make recommendations to the Township Board concerning monitoring and investigation of complaints of violation of conservation easements. The Land Preservation and Conservation Board shall at least once annually ascertain whether the owner is complying with all conditions of the easement or deed. Inspection findings shall be in writing and maintained.

## **Section 13 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.

## **Section 14 Repealer**

All ordinances or portions of ordinances in conflict with this ordinance are, including but not limited to any purchase of development rights ordinance previously adopted by the Township, to the extent of such conflict, hereby repealed.

## Section 15 Publication and Effective Date

Publication of this Ordinance shall be made within 30 days after the passage by publication of a true copy or summary once in a newspaper having general circulation in the Township and shall take effect on the date following publication. Within 1 week after publication of the Ordinance the Township Clerk shall record the Ordinance, record the date of passage of the Ordinance, the names of the members of the Township Board voting, and how each member voted.

YEAS: \_\_\_\_\_  
NAYS: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

Ordinance Declared Adopted on \_\_\_\_\_, 2020.

\_\_\_\_\_  
Kenneth Schwartz  
Township Supervisor

### CERTIFICATE OF ADOPTION AND PUBLICATION

I, Lynette Findley, the duly elected Clerk of the Charter Township of Superior, certify that the foregoing ordinance is a true and correct copy of the ordinance enacted by the Township Board of the Charter Township of Superior on \_\_\_\_\_, 2020 and published in a newspaper, circulated in the Charter Township of Superior on \_\_\_\_\_, 2020.

\_\_\_\_\_  
Lynette Findley, Clerk  
Charter Township of Superior