

July, 1997
Volume 3, Number 4

Purchase of Development Rights-- An Idea Whose Time Has Come

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One of the most serious land use problems facing Wisconsin today is the accelerating rate at which prime farmland is being sold, subdivided and developed for non-agricultural use. Evidence of rural land conversion can be seen virtually everywhere.

The problem of rural farm conversion has resisted conventional solutions. Wisconsin's Farmland Preservation Program (FPP) was established in 1977 in an attempt to encourage farmers to keep their land in agricultural use. Since the program was established a total of over \$433 million has been paid out in tax credits to farmers. Unfortunately, the tax credits paid out have often been insufficient to persuade farmers to keep their land in agricultural use. The average farmland preservation tax credit in 1995 was only \$1210 per farm. On an average sized farm, tax credits can amount to only \$4 - \$5 per acre-- hardly enough to cause a farmer to turn down an offer of \$3000 per acre from a prospective developer or home-buyer.

Nor is there much reason to expect that use value assessment of agricultural land, which began to take effect in 1996, will slow the rate at which agricultural land is converted to non-agricultural use. Under current administrative rules, land can qualify for use value assessment even if it is zoned for development, and even if the landowner has no intention of leaving the land in agricultural use. Many believe that use value assessment, as currently offered, merely makes it less costly for speculators to prematurely buy and hold agricultural land prior to developing it.

Finally, requiring minimum lot sizes of 40 - 80 acres-- an approach traditionally relied on in rural areas to preserve rural character and discourage development,

has done little to slow rural development. When market demand for "farmettes" and "hobby farms" is as strong as it is, requiring that individual houselots contain 40-80 acres can actually increase sprawl by accelerating the rate at which rural land is sold and converted to non-agricultural use.

Citizens and local officials have therefore been forced to look for more effective ways to preserve agricultural land. One way of managing growth and protecting farmland that is receiving increased attention in Wisconsin is the idea of *purchasing development rights* (PDR).

Purchase of Development Rights Comes to the Midwest

PDR was virtually unheard of in the Midwest until 1994 when voters in Peninsula Township, Michigan, north of Traverse City, approved a property tax increase of \$1.25 per \$2,000 valuation (an extra \$62 per year on a \$100,000 home) to raise \$2.6 million over a 15 year period to fund a PDR program in the town. A year later, residents of the Town of Dunn, in Dane County, Wisconsin voted to approve a tax rate increase of 50 cents / \$1000 valuation for the sole purpose of purchasing the development rights of agricultural land in the town. The tax rate increase approved by voters in the Town of Dunn generated \$140,000 for PDR in its first year. Moreover, as property values increase over time, the amount of revenue collected by the Town for PDR will increase as well.

What is PDR ?

When the development rights to a farm are sold, the farmer receives payment equal to the difference between the fair market value of the land (the price a developer would pay for the land if it were able to be developed)

and the price the land would command for agricultural use. In return for this payment, a conservation easement is recorded on the deed to the property, and stays with the land so as to be binding not only on the current owner but future owners of the property as well.

Two important features of PDR need to be emphasized. First, when the development rights to a farm are sold, the farm remains in *private ownership*. The private landowner still retains the right to occupy and make economic use of the land for agricultural purposes. The main difference is that by selling the development rights the landowner gives up the right to develop the property for some other use in the future. The second thing that needs to be emphasized is that farmers are not compelled to sell their development rights. Participation in PDR programs is entirely voluntary.

Although PDR has only recently begun to be used in the Midwest, it is not a new idea. PDR programs are currently in operation in fifteen states. Six of these states-- in Massachusetts, Maryland, Washington State, Connecticut, New Hampshire, and New York State-- established PDR programs in the 1970's. Another seven states-- California, Colorado, New Jersey, North Carolina, Pennsylvania, Rhode Island and Vermont-- established PDR programs in the 1980's. Maine and Michigan established PDR programs in 1990 and 1994 respectively.

Of the seven states mentioned above, the state of Maryland is the leader in using PDR to protect agricultural land and open space. As of 1990, conservation easements had been purchased on over 90,000 acres of Maryland farmland. More recently as part of its "Smart Growth" Program, the State of Maryland appropriated another \$128 million for its Open Space and Agricultural Land Preservation Program-- funding that is expected to boost the amount of protected acreage by another 61,000 acres.

Advantages Of PDR

The main advantage of PDR over other approaches to farmland preservation is that it offers a permanent, long-lasting solution. Farmland preservation tax credits and use value assessment of agricultural land encourage farmers to keep their land in agricultural use somewhat longer than otherwise might be the case, but do not assure that farmland will remain in agricultural use. On the other hand, PDR virtually assures that land that is subject to PDR will remain forever in agriculture, because it extinguishes the right to develop agricultural land for non-agricultural uses.

Another major advantage of PDR is that it is perceived as an equitable and fair way to preserve agricultural

land. It is difficult if not impossible to preserve agricultural land without severely limiting the ability of owners of farmland to develop their property. But if local regulations go too far in limiting development, such use restrictions can be challenged and ruled an unconstitutional "taking" of private property. Property rights advocates and supporters of PDR argue that limiting the right of farmers to develop their land lowers the value of their land, and in effect makes farmers pay for the cost of farmland preservation. They argue that a more equitable way of preserving farmland is to compensate owners of farmland when they relinquish the right to develop their property.

A third major advantage of PDR is that it provides a way to correct a major shortcoming of the current FPP by targeting limited financial resources to preserve and protect agricultural land most worthy of preservation. When the FPP was established in 1977, the tax credit formula that was approved was designed to award higher tax credits to farmers with relatively low incomes, and lower tax credits to farmers with relatively high incomes. In this regard, the FPP tax credit formula was consistent with Wisconsin's progressive tradition. However, an unintended consequence of the formula is that farms that are most productive and generate the greatest amount of farm income receive smaller tax credits. Also, under the FPP tax credits are paid to thousands of acres of low value farmland that are under no threat whatsoever of being developed.

PDR can also achieve the following secondary purposes:

- It can provide farmers with working capital that can be reinvested to keep a farm financially stable and successful.
- It assures that the price at which the property is sold in the future will be based solely on its value for agriculture-- thereby assuring that farmland will remain affordable for future generations of farmers.
- It confers permanent tax relief on owners of agricultural land by lowering the assessed value of agricultural land. In so doing, it also enhances the income stream of agricultural producers by lowering the costs of holding agricultural land.
- It can enable a farmer to plan for retirement without having to sell the family farm.
- It can save local governments money in the long run, by enabling them to avoid expenditures for development-related infrastructure and facilities. Indeed, a growing number of fiscal impact studies have shown that preserving farmland can be locally fiscally beneficial.