

PURCHASE OF DEVELOPMENT RIGHTS (PDR) FREQUENTLY ASKED QUESTIONS



*Prepared by
Sheboygan County UW-Extension*

GENERAL QUESTIONS

1- What is PDR?

Property law in the United States establishes the concept that certain rights are attached to parcels of land, such as water, air and mineral rights, and the right to sell or develop the land. It is also generally accepted that these rights are distinct from one another and transferable. Under a PDR program, a landowner voluntarily sells the development rights to part or all of his or her land. The development rights are purchased by a government agency or trust, which pays the landowner the difference between the value of the undeveloped land and what it would be worth if it was developed. A conservation easement is drawn up and recorded on the property deed. This permanent easement forbids development in perpetuity, allowing only specified uses such as agriculture or open space. The land remains on the tax rolls and the landowner maintains all other rights and responsibilities for the land.

2- Is PDR being used elsewhere?

PDR programs have been implemented in at least 27 states. Suffolk County, New York first used PDR to preserve farmland in 1974, and since then PDR has been used across the nation to purchase development rights on an estimated 400,000 acres of farmland (an area slightly larger than the size of Sheboygan County). Other programs have focused on natural areas and open spaces. A major PDR program in Lancaster County, Pennsylvania has purchased the development rights on over 54,000 acres of farmland since 1981. Closer to home, the Town of Dunn, located near Madison, initiated a PDR program in 1996. The Wisconsin Department of Natural Resources (WDNR) has used PDR for farmland and natural areas in the North Branch Watershed of the Milwaukee River, including within the Town of Sherman in Sheboygan County. PDR program proposals have also been rejected by referenda in Washington County and the Town of Mukwonago.

3- What is a “conservation easement”?

A conservation easement is a legal document that is recorded on the property through the County Register of Deeds Office. Such an easement limits the future use of a property to farming or open space, preventing other types of development such as residential and commercial uses. As part of a standard title search, the easement stays with the property when it is sold or passed on through inheritance, thereby assuring that development will not occur in the future.

4- What else is covered in a conservation easement?

Farm improvements and expansions are generally not restricted, but all farming operations must comply with applicable environmental standards. Conservation easements have been used to preserve sensitive natural and cultural areas like wetlands, woodlands, stream corridors and archeological sites, while limiting such things as building, grading, mining, or land divisions. The easement can be tailored to some extent to meet the needs of each property and landowner.

5- How does a conservation easement affect land ownership?

The landowner retains control of the land and may use or lease the property to others for agricultural or open space/recreational purposes. The land can still be sold, bequeathed, or otherwise transferred to others just as any other property, but the development restrictions remain with the property. The owner retains all other rights and responsibilities that normally apply to land ownership, such as paying property taxes and complying with applicable regulations. Only the development rights have been relinquished. Whether to allow public access is a condition that can be negotiated between the landowner and the easement holder.

6- How much is a conservation easement worth?

The value of a conservation easement varies with each property and the specific conditions of the easement. A certified professional land appraiser must determine the easement value, using “comparable sales” on similar properties in the area. The appraiser first determines the value of the property as agricultural land. The appraiser then determines the value of the land if it was developed, following applicable land use plans and regulations. The difference between these two values is the value of the development rights or conservation easement.

However, because in most programs there are usually many more applicants wishing to sell their development rights than there is money available for purchasing, somewhat less than the appraised difference can be offered if the program allows. As a result, landowners in certain PDR programs have willingly sold their development rights for approximately half of the appraised value of the development rights. (The difference between the full appraised value and the accepted purchase price can often be claimed as a charitable deduction on income tax forms.)

7- How are properties selected for PDR?

PDR programs operate on a voluntary seller/donor basis. Programs typically announce applications are being accepted, and then follow a codified process to review and rank submittals for possible funding. Ranking systems are generally designed to ensure public funds are spent on properties most consistent with the objectives of the program. Key considerations might include:

- Soil productivity
- Parcel size and location
- Consistency with adopted land use plans
- Development likelihood
- Cost and matching funds/donations
- Public uses (trails, etc.) or scenic values

8- Due to limited financial resources, it is likely that not everyone who applies for a program would be selected. Could this open the door to favoritism?

In most, if not all, credible PDR programs landowners who receive payments must qualify for selection by achieving high scores under a program’s scoring system. If this scoring system, along with eligibility rules and the application form, are created in an open government setting, there should be ample opportunity for public oversight.

Wisconsin’s Open Meeting Law ensures that all government meetings at which PDR discussions take place and recipients are selected are open to the media and any citizens. (The Open Meetings Law does allow negotiations involving price and terms to take place in closed session.) All program documents would be available for public scrutiny through open records requests. While it is possible for the rules, application, or scoring system to be intentionally devised to give certain individuals an advantage, it would require a majority of the governing board to be in collusion, and for such collusion to be undetected, which is unlikely, since this concern is usually one that is raised early in the process.

FUNDING ISSUES

9- Why are local dollars needed to fund a PDR program?

Local or county funds are needed to leverage matching funds from state, federal, and private sources. Matching funds make a big difference in how the development rights purchasing power of counties and local governments. From 1997 through 2003, the Town of Dunn, for example, received \$2,657,757 in matching funds from the USDA-NRCS Farm and Ranchlands Protection Program.

10- What would \$1 million per year buy?

Costs for conservation easements vary considerably from county to county and state to state, averaging about \$2,000 per acre in Wisconsin. If local or county funds are matched by other funding sources, then \$1 million could become up to \$2 million and likely allow the purchase of development rights on about 1,000 acres per year. To put this in perspective, there are approximately 187,000 acres of farmland in Sheboygan County (*Bay-Lake Regional Planning Commission, 2002 land use inventory*).

11- Aren't there other important items that tax dollars could be spent on, such as services, roads, and law enforcement?

Quality of life is based on a number of factors, some of which require financial investments. Since the investment pool of dollars is limited, the challenge is to prioritize and find a balance when allocating dollars to various programs, facilities, and services. If called upon to vote in a PDR referendum, individuals will have to make a personal value judgment: Is farmland and open space preservation important enough to merit setting aside substantial funds each year?

12- Will a PDR program increase property taxes?

Lands where development rights have been sold and conservation easements are in place remain on the tax roll. All of these lands will either be 1) farmland, which due to use-value assessment contributes less to property tax revenues than in the past, or 2) natural, open space areas, which are assessed accordingly and typically contribute only a limited amount to property tax revenues. Since such lands, even with their development rights relinquished, would remain in private ownership, property taxes would still be due, at or near pre-easement levels.

While it is true that a property without development rights can no longer host new residential development and the associated property tax payments, a multitude of studies throughout the nation have shown that residential development is not guaranteed to generate more in property tax revenues than it requires in public services such as schools, fire protection, road maintenance, etc. Commercial and industrial development, on the other hand, *are* likely to generate more revenues than they require in services, but a PDR program based on sound land use planning would seldom, if ever, target properties better suited for commercial or industrial development.

One must also consider that each year funds would be reallocated from certain planned future projects or services to a PDR program instead. If the governmental unit wanted to keep all of these planned projects and services intact, it would have to come up with additional funding to offset what is reallocated for PDR. This could result in a tax increase unless alternatives are found or the planned projects or services are eliminated from the budget.

13- Doesn't a PDR program benefit few while taxing all?

The same argument could be made regarding a variety of programs. Whether or not this is appropriate is a choice that citizens and elected representatives have made in the past and will continue to make in the future.

In the case of PDR, the landowner is the primary beneficiary. However, the benefits do not stop there. Just as there is often a public benefit when land is developed, there are public benefits when land is not developed. Groundwater recharge areas, wildlife habitats, and scenic views are left undisturbed, for example, and each of these benefits extends beyond the landowner. Since there are benefits to both development and preservation, it's important to find an appropriate balance between the two.

14- What is "bonding" or "long term debt obligation"?

Bonding is the sale of government bonds to investors with a guaranteed payback plus interest. Bonding can provide a lump sum of money for a unit of government to use upfront to fund a project with long-term value, such as land acquisition, building projects, or road construction. The sale of bonds becomes a long term debt obligation for the unit of government, because the unit of government must pay a market interest rate over the life of the bonds (usually 10+ years), essentially acting like a bank loan. The Town of Dunn and other towns and counties have sold bonds to help finance their PDR programs.

LAND USE ISSUES

15- Could PDR be used to block cities and villages from growing?

In states where growth boundaries are used, PDR has sometimes been a tool to help implement the boundary. In Wisconsin, however, growth boundaries cannot be imposed by the state or a county; only a city or village can fix its boundaries. Due to locational and market factors, purchasing development rights near cities and villages is more expensive than purchasing development rights farther away, which is a compelling reason to avoid purchases near the borders of urban areas.

16- How do homebuilders feel about PDR?

According to a white paper authored by the Milwaukee Metropolitan Builders Association (MBA), the MBA encourages communities considering whether to implement a PDR program to involve and inform its citizens and the business community about the advantages and disadvantages of such a program.

The MBA recommends that any proposed PDR program plan be approved by a referendum that clearly states the amount of any tax increase and the estimated number of acres protected per year. This ensures that the community clearly understands the program and can make a sound decision on whether or not to support it.

17- Will PDR slow the pace of development?

Since PDR programs are not intended to set aside all, or anywhere near all, remaining undeveloped land (this would require more money than would ever be available), thousands of acres throughout a given county would still be available for development. A PDR program would simply target key lands in priority agricultural and natural areas. Other areas would be left as is, available for development as designated by local communities in their land use plans.

Residents hoping PDR will stop or at least slow their county's population growth could be disappointed.

18- Will PDR make less land available for development and raise prices for new housing?

Clearly, since some land is intended to be set aside through PDR, there will be less land available for development. However, there will still be substantially more acres available for development than will be removed. The question is, will the removal of a relatively small amount of land from the market through PDR (see Question #10) be significant enough to make the remaining land more valuable? If so, sale prices for the remaining land could increase, causing higher capital costs for developers, which will have to be recovered through higher lot prices for homes.

Nationally, in some communities with PDR programs lot prices have held steady, while in other communities prices have increased. Because of the number of variables involved, it is difficult to say for certain whether PDR had an effect on prices in either case. Consequently, it is difficult to predict with certainty what might happen in a particular county.

19- Why do we need to worry about preserving land – most of Sheboygan County is still open, undeveloped land.

According to the most recent data from the Bay-Lakes Regional Planning Commission, over two-thirds of Sheboygan County is farmland, wetlands, woodlands, surface water, or some other type of open land. At first glance, this would seem to be “plenty.” It is also important, however, to consider the rate at which land is being converted from undeveloped to developed. In 1975, approximately 66 percent of the County was farmland. Today, that percentage is about 56 percent, a decrease of 10 percent over 30 years. In that period 30,000 acres of farmland was converted to some other use—about 1,000 acres per year. If this trend continues, the County will have no farmland remaining by the year 2194. This projection assumes, however, the same rate of conversion. The rate could increase as the Milwaukee metropolitan area fills up and spills over into neighboring counties. The rate of conversion could also slow as farmland becomes scarce.

Regardless of the percentages, the *amount* of land is not the only consideration. Farming and wildlife habitat both benefit from large, contiguous tracts of land. Even though an area might have a substantial amount of undeveloped land, farming operations and the viability of wildlife will be hindered if land continues to be fragmented into small parcels.

20- Aren't farmers paid not to plant? Don't we currently have more farmland than we use or need?

There have been federal farm programs used in the past to help reduce surplus crops, and these programs did in fact ask farmers not to plant; or farmers could destroy a percentage of their crops to be eligible for payments. These programs are no longer in existence.

The primary government program across the nation that has taken the most acres out of crop production is the Conservation Reserve Program (CRP), enacted in 1985. CRP was originally put in place to encourage highly erodible and marginal land to be taken out of production, to stabilize land prices, and to reduce chronic surplus production. CRP has had a smaller impact in Wisconsin than in states farther west. Of Sheboygan County's approximately 187,000 acres of farmland, about 3,600 acres (1.9 percent) are enrolled in CRP.

Data from the Food and Agriculture Organization indicates farmers are producing more than ever with each acre thanks to improved genetics, management, and technology. USDA data supports the supposition that such increases have led to excess production. The USDA estimates 96 billion pounds of food are wasted each year in the United States, which is approximately one-quarter of the nation's food supply. This could be taken to mean there is 25 percent more food production than is absolutely necessary right now. However, land is a limited resource, and it is possible that at some point in the future increases in population could outstrip food production.

21- How can PDR set aside land in perpetuity when nobody knows what the land use needs of future generations will be?

While a PDR program's intent is to ensure development rights are removed from the property permanently, many programs include provisions that allow landowners, under very limited conditions, to buy back development rights (a penalty is sometimes included to prevent this provision from becoming an interest free loan). Another option allows the holder of the development rights, typically a county or town, to sell the development rights in the future if conditions change to the extent that the easement no longer serves the intended purpose. Again, strict conditions must be met.

Secondly, the power of eminent domain can override a conservation easement, thus allowing a government entity to remove the easement restrictions if a public purpose exists and fair-market compensation is paid to the landowner and easement holder.

22- Is it true that once farmland is paved over or built on, it's lost forever?

Redevelopment takes place all of the time. Former factories have been torn down and replaced with condominiums. Dilapidated housing has been razed and replaced with parks or other public facilities. Gravel pits have been restored to meadows or turned into housing sites. Conversion processes are expensive, however, especially when hazardous materials are involved. Demolishing a 100-acre subdivision and disposing of the materials in order to return the site to agriculture is possible, but not without substantial cost and effort. Therefore, it would be unwise to allow a certain land use to be converted to another if there was still a need for the first use.

23- Why can't farmland be kept farmland through agricultural zoning?

Because Sheboygan County has locally controlled zoning, there are a number of reasons why agricultural zoning alone is not always a sufficiently effective tool for preserving farmland and natural areas.

- 1) Zoning is not permanent. Local zoning ordinances, districts, allowable densities, and lot sizes can change significantly from one election cycle to the next, depending on who is elected and what his or her priorities are. No referendum is required, only a majority vote of the town board.
- 2) When zoning restrictions on development are strictly enforced, large landowners end up "biting the bullet," unable to realize a fuller value for their property, so other residents in the area who do not similarly sacrifice may continue to enjoy unspoiled views, low traffic, solitude, etc.
- 3) Because even the most restrictive agricultural zoning in Sheboygan County allows at least some land divisions, the fragmentation of farmland can still occur since it is not unusual for people to buy large rural lots for single homes and locate the home in the middle of the lot.

24- Won't the new Smart Growth plans protect the lands we want to protect?

A plan is an important piece of any community's land use future. It is true that a community's Smart Growth or comprehensive plan can contain policies to constrain development in certain areas. A plan can even show these areas on a future land use map. By statute, these policies and maps must be followed. However, a plan all by itself cannot stop or direct development. A plan is only a set of intentions unless there are tools, funds, and actions available to make the plan become reality. One such tool, zoning, would be strengthened by a plan, but the limitations described in Question #23 would still exist, except that it would take an amendment to the plan to approve a land use change that was previously not allowed.

25- Will funds be used to purchase development rights on lands that include wetlands and floodplains, which aren't developable anyway?

The purpose of a PDR program is to set aside qualifying properties from development. Since wetlands and floodplains are already regulated and usually not able to be developed, there would rarely be a need to spend scarce funds on acquiring the development rights for these lands. Because the program would include an application and scoring process, landowners seeking to sell development rights on acreage consisting primarily of wetland and/or floodplain would not usually score well enough to be funded. Even if for some reason the development rights on such a property were purchased, the cost would likely be low, since wetlands and floodplains do not carry high appraisal values.

ISSUES SPECIFIC TO FARMERS AND OTHER RURAL LANDOWNERS

26- Is PDR a blank check for farmers without limits or controls?

In almost all cases where PDR is used, regulations specify that no PDR purchase prices are allowed to exceed certified professional appraisal values. Limitations and controls are clearly described in the required conservation easement recorded on the property deed and filed in the Register of Deeds Office.

27- Is PDR another farm subsidy?

Farm subsidies are theoretically temporary measures designed to serve the purposes of 1) protecting farmers from drastic fluctuations in price and production, and 2) helping to ensure a minimum and stable level of food supply and security. Purchasing development rights, on the other hand, is a one-time voluntary business transaction between a government entity and a farmer. The farmer gives up something concrete and of real value (the development rights to the farmland) for fair compensation—and the effect is permanent. The land remains farmland or open space even after all payments are made to the farmer, while the perceived public benefits continue in perpetuity.

Regarding subsidies and taxpayer funded incentives, it is worth noting that many sectors of the economy receive subsidies and incentives. For example, Wisconsin's tax incremental financing (TIF) mechanism, which has been used in hundreds of cities and villages, shifts the costs for infrastructure (e.g., roads, sewer, water, etc.) from developers to taxpayers as a means to spur commercial, industrial, and even residential development

28- How much of a typical PDR program's dollars actually make it into a farmer's hands?

PDR programs across the nation show that 95% of funds are used to buy development rights, with 5% used to pay for land appraisals and other program administrative costs.

29- Does a landowner incur a substantial capital gains obligation when he or she receives a PDR payment?

If the payment is made as a lump sum, the answer is likely to be yes. A landowner's tax advisor might be able to suggest strategies to limit this obligation. It is also possible to structure a PDR program so that payments are spread out over time on an installment basis, which greatly reduces the capital gains tax burden.

30- What happens to the value of farmland after its development rights are sold?

Because of the number of factors involved, it is difficult to say with certainty what will happen to values in a given area. At least one study, done in 2001, suggests that farmland on which development rights have been sold sells for nearly as much as surrounding farmland without restrictions. This is partly because farmers, who are the primary buyers of such land, value knowing that an area is committed to agriculture. Land use conflicts will be minimized. While this is good for resales, this trend can, ironically, make it more difficult for young farmers looking to purchase inexpensive farmland.

31- Does a conservation easement affect a farmer's ability to borrow?

The experience of those farmers who have participated in existing PDR programs in other states is that their ability to borrow operating funds for the farms is not affected by the presence of the easement. If a lending institution holds a lien on a property, it must approve the sale of the conservation easement just as it would need to sign off on any transaction on the property. Since a farm loan is usually based on the ability of the farm operation to carry the loan, a conservation easement, which only affects non-farm development activities, not the farm operation, would not typically have a bearing on the performance of the loan.

32- What if a farmer who sold his or her development rights wants to later split off a lot to build a home for a son or daughter interested in becoming part of the farming operation?

It is impractical to deny a farmer this opportunity, especially if the viability of the farm operation depends on the future contributions of adult children. Therefore, many PDR programs contain allowances for the sale of lots for residential use. However, if enough of these allowances occur in a given area, the original purpose of an ag-only district could be compromised, especially if career preferences change and these homes are later resold to non-farmers. Furthermore, there is sometimes nothing to prevent a farmer from selling development rights on only part of the farm, reserving the remainder for the possibility of a future home site.

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Sources: Metropolitan Builders Association; Washington County Land Conservation Partnership; Bay-Lake Regional Planning Commission; Mackinac Center for Public Policy; Michigan Land Institute; State University of New York at Albany; Wisconsin Department of Agriculture, Trade and Consumer Protection; Town of Dunn; American Farmland Trust; Economic Research Service - USDA; *Hoard's Dairyman*;
Holding Our Ground: Protecting America's Farms and Farmlands