

MOTION: ANGRY

**May 4, 2021
Regular Meeting
Ord. No. 21-26**

SECOND: BODDYE

RE: COUNTY CODE AMENDMENT #DPA2017-00007, PURCHASE OF DEVELOPMENT RIGHTS – COUNTYWIDE

ACTION: APPROVED

WHEREAS, on September 20, 2016, the Prince William Board of County Supervisors in Resolution Number (Res. No.) 16-730 initiated an amendment to the County Code to create a Purchase of Development Rights Program; and

WHEREAS, the proposed County Code amendment creates a Purchase of Development Rights (PDR) program to sever residential density from eligible properties in the Rural Area through a voluntary process for permanently conserving agricultural and forestry uses of lands and preserving rural open spaces, historic and cultural landscapes, and natural and scenic resources; and

WHEREAS, on June 24, July 30, and September 24, 2019, the Planning Office held public meetings to discuss the proposed PDR ordinance and program as well as other recommendations from the Rural Area Preservation Study; and

WHEREAS, on October 23, November 13, and December 2, 2020, the Planning Commission held work sessions for the PDR ordinance and program at which time the draft County Code amendment was available for public review and input; and

WHEREAS, the Prince William County Planning Commission held a public hearing on County Code Amendment #DPA 2017-00007 on March 17, 2021, recommending approval as stated in Res. No. 21-029; and

WHEREAS, the Prince William County Board of County Supervisors duly ordered, advertised, and held a public hearing on May 4, 2021, at which time all interested members of the public were heard and the merits of the above-referenced County Code amendment were considered; and

WHEREAS, amending the County Code for the above-referenced issue is authorized under Section 10.1-1700 *et seq.* of the Code of Virginia, Ann.; and

WHEREAS, the Board finds that adoption of this ordinance secures and promotes the health, safety, and general welfare of the County and its inhabitants;

NOW, THEREFORE, BE IT ORDAINED that the Prince William Board of County Supervisors hereby adopts County Code Amendment #DPA2017-00007, Purchase of Development Rights.

May 4, 2021
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Ord. No. 21-26
Page Two

ATTACHMENT: Text Amendment

Votes:

Ayes: Angry, Bailey, Boddye, Candland, Franklin, Lawson, Vega, Wheeler

Nays: None

Absent from Vote: None

Absent from Meeting: None

ATTEST: _____

Andrea P. Madden

Clerk to the Board

Chapter 32.1 Purchase of Development Rights

Article I. - IN GENERAL

Sec. 32.1-100.- Purpose.

Pursuant to the authority granted by § 10.1-1700 et seq. of the Code of Virginia, a purchase of development rights (PDR) program is established, the purpose of which is to sever residential density from eligible properties in the Rural Area of the County as shown in the Prince William County Comprehensive Plan through a voluntary process for permanently conserving agricultural and forestry uses of lands and preserving rural open spaces, historic and cultural landscapes, and natural and scenic resources. The PDR program is intended to supplement land use regulations, resource protection efforts and open space programs.

The purposes of this PDR Ordinance include, but are not limited to:

- Promote the public health, safety, and general welfare of citizens of Prince William County by establishing procedures, methods, and standards for the purchase of development rights.
- Provide an effective and predictable process for property owners of rural and agricultural land to preserve lands with a public benefit.
- Establish a program enabling the County to acquire open-space easements voluntarily offered by property owners to serve as one means of assuring that Prince William County's resources are protected and efficiently used.
- Preserve open space and scenic views, including contributing to greenways and wildlife corridors.
- Conserve rural character through preserving farmland and forested areas.
- Protect lands, resources and structures of aesthetic, architectural, archaeological, and historic significance.
- Conserve and protect water resources and environmentally sensitive lands, waters, and other natural resources.
- Assist in shaping the character and direction of the development of the County.
- Improve the quality of life for the citizens of Prince William County.
- Promote recreation tourism through the preservation of scenic and historical resources.
- Work cooperatively with the federal government, and/or non-profit organizations to locate funding, and leverage financial and other resources.
- Work cooperatively with Marine Corps Base Quantico to support their encroachment control program for lands located near the Base.

Sec.32.1-101. - Definitions

The Program Administrator shall use the following terms and definitions. In the event a term is not defined in this part, the Program Administrator must refer to other chapters of the Prince William

County Code for guidance. If ambiguity remains, the Program Administrator must then rely upon the conventional, recognized meaning of the word or phrase (e.g., current edition, Merriam-Webster's Dictionary).

As used in this chapter, the term:

Batch means a grouping of contiguous parcels for purposes of making application for the sale of development rights.

Board means the Prince William Board of County Supervisors.

Committee means the Prince William County Purchase of Development Rights Committee designated by the Board of County Supervisors to oversee program implementation.

Open-space easement means a nonpossessory interest of a public body in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.

County Executive means the County Executive of Prince William County or their designee.

County Attorney means the County Attorney of Prince William County or their designee.

Development rights means the number of lots into which a parcel could be divided and developed with a residential dwelling unit and all associated improvements and utilities under the County Code, excluding family subdivision lots. Each development right represents the right to build one single-family dwelling unit on the property.

Director means the Director of the Planning Office or their designee.

Forced sale means a sale of a parcel with unused development rights in a manner prescribed by law that is conducted under a judgement, order, or the supervision of a court of competent jurisdiction, other than a sale arising from a partition action; a sale resulting from bankruptcy or foreclosure under the laws of the Commonwealth of Virginia; or, a sale that is not the voluntary act of the owner but is compelled in order to satisfy a debt evidenced by a mortgage, judgment, or a tax lien deed of trust.

Lot means a designated parcel, tract or area of land established by plat, subdivision or as otherwise permitted by law, to be used, developed or built upon as a single-family dwelling unit. The grant of an interest, for security or other purpose, in less than an entire lot, or the foreclosure or sale of such interest, shall not be deemed to create a lot.

Owner means the equitable owner of the fee simple title to a parcel of land or, with respect to a parcel not encumbered by a deed of trust or mortgage, the legal owner of such title. Where more than one person or entity is the legal and/or equitable owner, the term refers to all such persons or entities jointly.

Open space means any land which is provided or preserved for (i) park or recreational purposes; (ii) conservation of land or other natural resources; (iii) historic or scenic purposes; (iv) assisting in the shaping of the character, direction, and timing of community development; or (v) wetlands as defined in Code of Virginia § 28.2-1300; or (vi) agricultural and forestal production.

PDR program means the purchase of development rights program established by this chapter.

Program Administrator means the County Executive for Prince William County or their designee.

Property ranking system means the formula or deliberations by which applications for the sale of development rights are ranked in order of priority of acquisition of such rights.

Wetlands means both vegetated and non-vegetated wetlands.

Article II. - Applicability and Administration

SEC. 32.1-200 . - Applicability

The PDR program is available for properties located within Rural Area as shown in the Prince William County Comprehensive Plan. Provided the properties meet all other requirements of this chapter. Any open-space easement acquired pursuant to this program must be voluntarily offered by the owner.

Part 201. - Program Administrator established; power and duties.

Sec. 32.1-201.1. - Power and duties.

The Program Administrator administers the PDR program and has powers and responsibilities to:

1. Establish reasonable and standard procedures, processes, and forms consistent with this program for the administration and implementation of the PDR program.
2. Promote the PDR program, in cooperation with the Committee, by providing educational materials to the public and conducting informational meetings.
3. Investigate and pursue, in conjunction with County, State, federal, and other programs, additional public and private resources to fund the PDR program and maximize private participation.
4. Evaluate all applications to determine their eligibility and their ranking score. Rank applications based on their ranking score as determined by the property ranking system and make recommendations thereon to the Committee.
5. Negotiate with the owner relating to open-space easement terms.
6. Provide staff support to the Committee.
7. Maintain a master list of current open-space easements, potential lots, and priority farmland lots for the PDR program.
8. For each open-space easement accepted into the PDR program, establish baseline data and assure that the terms and conditions of the open-space easement are monitored and complied with by coordinating a monitoring program with each easement holder.
9. Review rankings of applications and make recommendations to the Board as to which open-space easements should be purchased as determined by the property ranking system, and other applicable information.

Part 202. - Purchase of development rights committee established; powers and duties.

Sec. 32.1-202.1. - Establishment.

1. The Committee shall consist of five (5) members appointed by the Board and shall include one (1) member of the Planning Commission. Each member shall be a resident of Prince William County. The Committee should be, but is not required to be, comprised of members

who are knowledgeable in the fields of conservation, conservation biology, farming, forestry, planning, real estate, and rural land appraisal, and may also include members of conservation easement holding agencies or other applicable organizations.

2. The members of the Committee shall serve at the pleasure of the Board. Each member shall serve two (2) year terms that begin on July 1st and expire on June 30th.

Sec. 32.1-202.2. - Powers and Duties.

The Committee has the following powers and duties:

1. Promote the PDR program in cooperation with and under the guidance of the PDR Administrator, by providing educational materials to the public and conducting informational meetings.
2. Annually review the program's eligibility and ranking criteria and recommend to the PDR administrator any changes needed to maintain the PDR program's consistency with the Comprehensive Plan, or to improve the administration, implementation, and/or effectiveness of the PDR program.

Part 203. - Appraisal review committee established; powers and duties.

Sec. 32.1-203.1. - Establishment.

The appraisal review committee is hereby established, as provided herein:

1. The appraisal review committee consists of three (3) members appointed by the Board of County Supervisors. The appraisal review committee shall include one (1) real estate professional, the Prince William County Director of Finance or designee, and one member of the Committee.
2. The members of the appraisal review committee serve at the pleasure of the Board.
3. The members of the appraisal review committee serve without pay, but the Board may, in its discretion, reimburse each member other than the County Director of Finance for expenses incurred in the performance of their duties.
4. The County Director of Finance or their designee shall serve as the chair of the appraisal review committee.

Sec. 32.1-203.2. - Power and duty.

The appraisal review committee has the power and duty to review appraisals to assure they are consistent with appropriate appraisal guidelines and practices and to make recommendations to the Board.

Part 204. - Eligibility and Ranking Criteria

Sec. 32.1-204.1. - Eligibility.

To be eligible for the PDR program, a lot must meet the following criteria:

1. The property must be no less than twenty (20) acres in area or be included in a batch in which the combined area of contiguous parcels is no less than twenty (20) acres in area.

2. The property or batch must be wholly located within the Rural Area as shown in the Comprehensive Plan.
3. The property must be capable of being qualified for subdivision for residential uses without Board approval.
4. The proposed use of the property as permanent open space conforms the Comprehensive Plan;
5. No uses or structures may be located upon the property other than those permitted by the deed of open-space easement; and
6. If any portion of the property being considered contains land that is currently reserved or set aside for open space, passive recreation, or similar purposes pursuant to the provisions of a proffer, special use permit, variance, or any ordinance or regulation, that portion must be excluded from the evaluation process.

Sec. 32.1-204.2. - Ranking Criteria

The Program Administrator prioritizes parcels for which open-space easement applications are submitted using a ranking system. The Program Administrator and the Committee approve the initial ranking system and any subsequent changes. The Program Administrator uses the ranking system to prioritize their recommendation the Board regarding the acquisition of open-space easements.

Part 205. - Purchase of development rights procedure

Sec. 32.1-205.1. - Application submission.

1. Applications to sell development rights must be on a form prescribed by the Program Administrator and must be signed by the owner and submitted to the Program Administrator. An application fee in the amount established by the Board is required.
2. The Program Administrator may require supporting documentation, including, but not limited to: deeds, surveys, mortgages, deeds of trust, liens, title reports, or other legal instruments, to be submitted with the application.
3. An owner(s) may submit an application for each parcel or may submit a single application for a batch. Applications for batched parcels must follow the same procedure and must be signed by all owners.
4. Applications must be received in a location designated by the Program Administrator by the close of business on the last day of an open application period to be eligible for consideration during that open application period.

Sec. 32.1-205.2. - Evaluation process.

1. The Program Administrator shall review each application to determine whether the eligibility criteria set forth in this chapter are met. In the event a lot, or portion thereof, fails to meet the eligibility criteria set forth in this chapter, such lot, or portion thereof, shall not be considered for inclusion in the PDR program. In the event the ineligibility of a lots or portion thereof, renders the remaining property that is the subject of the application ineligible, none of the property shall be considered for inclusion, unless it can independently meet the minimum criteria.

2. The Program Administrator evaluates each application received and determines whether the application is complete. If the application is incomplete, the Program Administrator informs the owner of the information that must be submitted for the application to be deemed complete.
3. When the application is deemed complete, and the Program Administrator has determined that the lot(s) satisfy the eligibility criteria set forth in this chapter, the Program Administrator applies the ranking system.
4. The Program Administrator evaluates each application using the criteria of the property ranking system and ascertains the necessary facts and information for ranking the priority of acquisition of the lot(s) included in the application.
5. The Program Administrator notifies the applicants in writing of the evaluation of their properties. An applicant may request, in writing, a meeting with the Program Administrator to discuss the evaluation. The Program Administrator must hold the meeting within ten (10) business days after receiving the meeting request. The Program Administrator has sixty (60) days from the receipt of additional information to advise the applicant whether and how the evaluation is changed, if at all.

Sec. 32.1-205.3. - Evaluation by Program Administrator.

The Program Administrator reviews the list of ranked lots submitted and forwards to the Board its recommendations as to which open-space easements should be purchased.

Sec. 32.1-205.4. - Invitation to sell.

1. After the Program Administrator ranks the properties proposed for open-space easements, the Program Administrator selects the initial pool of lots to be considered for acquisition of open-space easements and assigns a value to be considered for acquisition of each selected open-space easement. In accordance with the action, the Program Administrator invites the owner of each selected lot to sell to the County an open-space easement on that lot for the amount determined by the Program Administrator and subject to the terms and conditions of a proposed deed of open-space easement.
2. The invitation to sell must be in writing and must include the proposed purchase price, the proposed deed of open-space easement, and the date by which the written offer must be received by the Program Administrator in order to be accepted. The invitation may contain a firm offer to be returned by the owner if the owner desires to sell an open-space easement.

Sec. 32.1-205.5. - Evaluation by Board of County Supervisors.

The Board shall review the list of ranked lots submitted by the Program Administrator and the offers returned by the owners desiring to sell their development rights and identify which open-space easements should be purchased and their priority of purchase. Nothing in this chapter shall obligate the Board to purchase development rights on any property that is deemed eligible for purchase.

Sec. 32.1-205.6. - Acceptance.

The Program Administrator must accept the offers to purchase development rights based upon the priority for purchase approved by the Board, subject to the availability of sufficient funding.

Sec. 32.1-205.7. - Offers not made; offers not accepted; invitation to other owners.

If an owner whose offer is accepted elects not to sell the developments rights, then the Program Administrator may accept the offer to sell from the owner(s) of the next highest prioritized lot (s) remaining on the list, subject to Board approval and the availability of sufficient funding.

Sec. 32.1-205.8. - Reapplication.

An owner of a lot not selected by the Board for purchase of development rights may reapply in any future open application period.

Part 206. - Program Non-exclusivity

This chapter shall not be construed in any way as a limitation upon the County's authority to acquire land for public purposes.

Part 207. - Open-space Easements, Inspection, and Enforcement

Sec. 32.1-207.1. - Monitoring

For each open-space easement accepted into the PDR program, the Program Administrator shall:

1. Establish baseline data for each open-space easement and assure that the terms and conditions of the easement are monitored and complied with including provisions related to public access and/or amenities such as trails to connect open spaces.
2. Conduct periodic inspections of each open-space easement site to assure compliance with the terms of the easement.
3. Coordinate this effort with the land development process for approving subdivisions and building permits.
4. Assist owners in determining whether proposed uses or activities are consistent with the open-space easement restrictions on particular properties.
5. Coordinate inspection and enforcement efforts where an open-space easement is held jointly by the County and another organization.
6. Coordinate the inspection program with, and seek the assistance of, the soil and water conservation district where applicable.

Sec. 32.1-207.2. - Enforcement

The Program Administrator is authorized to enforce this chapter and the terms of any open-space easement acquired under this chapter, in consultation with the County Attorney, and to take all appropriate action to assure compliance with this chapter and the terms of any open-space easement acquired under this chapter.

Part 208. - Restriction on buy-back; extinguishments and exchange of easements

Sec. 32.1-208.1. - Restriction on buy-back.

The owner does not have the option to reacquire any property rights relinquished under the open-space easement, except as provided in this section. The deed of open-space easement may allow an exchange of easements as follows:

1. Petition to the Board. Upon the expiration of 25 years from the date on which an open-space easement was recorded, the owner or successor in interest to the property which is subject to the open-space easement may petition the Board for the extinguishment of such easement in exchange for the conveyance to the County of an open-space easement on a different parcel of property meeting all of the eligibility requirements as set forth in county code sec. 32.1-204.1.
2. Requirements. No such extinguishment and exchange of open-space easement may be authorized, unless a majority of the Board finds that:
 - (a) The extinguishment and exchange is determined to be essential to the orderly development and growth of the County;
 - (b) The extinguishment and exchange is in accordance with the Comprehensive Plan in effect at the time of the extinguishment and exchange;
 - (c) The extinguishment and exchange does not adversely affect the County's interests in accomplishing the purposes of this chapter; and
 - (d) There is substituted other real property which is (a) of at least equal fair market value and at least equal acreage; (b) of greater value as permanent open-space land than the land upon which the easement is extinguished, (c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land upon which the easement is extinguished and (d) is in accordance with the Virginia Open-Space Land Act, Virginia Code §10.1-1700 et seq.
3. Expenses. The petitioner must bear the expenses and fees in connection with the exchange, including, but not limited to purchase of the substituted open-space easement, site assessments, surveys, closing costs, recording fees and taxes, title search, and title insurance, if required.