

QUESTIONS AND ANSWERS FOR PROPERTY OWNERS CONSIDERING CONSERVATION EASEMENTS

The following information was taken from “Is a Conservation Easement the Right Tool for My Farm Business? A Guide for Farm Business Owners” by Ora Rothfuss III, April 2003.

What are development rights?

Development rights are the rights to develop and/or subdivide property. The property owner has certain rights as owners of the property. The owner can restrict, sell, lease or give away any of these rights without necessarily impacting the others. For example, the owner can sell the right to run a power line across the property to the power company and still retain all of the other rights to the property. They are each separate and can be owned or held by separate parties.

What is a conservation easement?

In order to define and control specific rights, the landowner can develop a conservation easement, which is a legal document filed in the County Clerk’s office and is public record. Anyone interested in buying a piece of property with an easement attached can see what the property restrictions are. There are many forms of conservation easements with a wide range of intended outcomes. If you are considering the use of a conservation easement, it is strongly advised that you seek the assistance of an attorney.

What is an agricultural conservation easement?

Agricultural conservation easements are conservation easements that intend to protect the agricultural viability and productivity of a farm property. The agricultural conservation easement tries to define the acceptable uses of a property. The property cannot be developed but can be used for an agricultural business. Examples of normal agricultural uses of property, which may or may not be restricted by an easement include barns, farm-worker housing, silos and farm stands.

Who holds the conservation easement?

Conservation easements are generally held by a municipality or land trust (an entity created to hold, steward and monitor easements and/or land). Placing an easement on your property is in effect creating a partnership between the landowner and the entity, which holds the easement.

Who monitors the easement?

Conservation easements are monitored by the municipality or land trust that holds them. This is generally an annual visit to ensure that the terms of the easement are being met. A monitoring plan establishing the process for monitoring is usually defined at the creation of the easement. The holder of the

easement has enforcement responsibilities to ensure the terms of the easement are being met.

How is an easement valued?

Easements are valued with an appraisal. The property is valued at its current (high value) market value, or what the owner could reasonably expect to receive for the property in an arm's length sale (a sale with no special circumstances). A second appraisal is then performed to determine the market value of the restricted property (low value). Or with the easement in place. The appraiser can use comparable sales of familiar farmland in areas away from development pressure. An income-based appraisal, what the property would be worth based on potential profit as farmland, might be performed. A third way to determine the "restricted value" of the farmland would be to compare sales of land with easements in place. The value of the development rights (conservation easement) is the difference between high and low values of land.

Why use conservation easements?

The property owner should use conservation easements as a management tool; therefore the decision to place the property in a conservation easement should be the result of careful consideration. There are many different reasons for using conservation easements and it is critical that property owners review their reasons before committing to the sale or donation of their development rights.