

PLAN COMMISSION RESOLUTION 2016-5

ADOPTING AND RECOMMENDING THE AMENDMENTS TO THE COMPREHENSIVE  
PLAN OF THE TOWN OF BERRY IN DANE COUNTY, WISCONSIN

WHEREAS, the Town has prepared a document, named *Town of Berry Comprehensive Plan, amended July 16, 2012*, containing all maps and other descriptive materials, the comprehensive plan for the Town under §66.1001, Wisconsin Statutes; and

WHEREAS, the Town of Berry Plan Commission has amended the *Town of Berry Comprehensive Plan, amended July 16, 2012*, in 2016;

NOW, THEREFORE, BE IT RESOLVED that the Plan Commission of the Town of Berry hereby adopts the amendments made in 2016 to *Town of Berry Comprehensive Plan* as the Town's comprehensive plan under §66.1001(4); and

BE IT FURTHER RESOLVED that the Plan Commission certifies a copy of the amendments to the *Town of Berry Comprehensive Plan* to the Town Board; and

BE IT FINALLY RESOLVED that the Plan Commission hereby recommends that the Town Board adopt an Ordinance, which will constitute its adoption of the amended *Town of Berry Comprehensive Plan* as the Town's comprehensive plan under §66.1001.

Dated this 7<sup>th</sup> day of November, 2016

Posted: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Brenda Kahl, Clerk/Treasurer

\_\_\_\_\_  
Anthony Varda, Chair

\_\_\_\_\_  
Joe Kruchten, Member

\_\_\_\_\_  
Leroy Baker, Member

\_\_\_\_\_  
Michael Theis, Member

\_\_\_\_\_  
Robert Agee, Member

## AMENDMENTS TO THE JULY 16, 2012 TOWN OF BERRY COMPREHENSIVE PLAN

### Page 36, Policies, letter c

c. Keep new development away from wetlands, floodplains (open space corridors), hydric soils, soils with low or very low potential for dwellings with basements, soils least suitable for on-site waste disposal systems, and slopes greater than 20 percent. Development should also be discouraged on slopes between 12 percent and 20 percent where other more appropriate sites are available. However, in Berry we have extensive slopes and limited farmland, resulting in the need to accommodate reasonable use of slopes to prevent loss of farmland. Therefore, development of slopes over 20% is only permitted when the proposed structure and landscaping is supported by architectural and engineering plans that demonstrate the design accommodates the existing topography with minimal changes and environmental impact. A review fee equal to the estimated fees charged by the Town Engineer to review the proposed plans shall be paid at the time of application. (Unused review fees shall be refunded to the applicant, regardless of the outcome.) “Minimal Impact” includes a written plan which, upon completion, attempts not to increase surface water runoff, retains water infiltration at 90% of pre-development standards on an annual basis, and allows no active erosion on site. ~~A plan meeting the parameters of Dane County Ordinance 14.51, Storm Water Management Plan Requirements (2011)(or any subsequent renumbered or revised adaptation of that ordinance) shall be presumed to meet this requirement.~~ No building permit shall be issued for development of slopes over 20% until the applicant complies with this Policy to the satisfaction of the Town and has been issued written confirmation of compliance, and an amount equal to the total actual review fee charged by the Town Engineer to review the proposed plans has been paid to the Town, by the applicant. It is important to emphasize that this Plan does not prohibit development on all parcels containing steep slopes. Rather, this Plan encourages landowners to direct site development or disturbance away from steep slopes and into more appropriate portions of their property. Guidelines for siting residential development on hillsides and ridgelines are provided as Attachment A of this Plan. General depictions of these features are included on Map 3 and in the *Dane County Map Book, Town of Berry* (2001). These features are also shown on Map 5 as an overlay district, “Soils with Building Limitations.”

### Page 39, Policies, letter j

~~j. Town has developed a detailed Policy #500.2, adopted July 21, 2008, which governs the Towns approval of any conditional use permit for placement of communication towers and is incorporated hereby reference. It is found here as attachment D.~~

### Page 56, Policies, number 5

5. Development Rights: Development rights may be transferred between parcels according to the Town ordinance “500.5 “Transfer of Development Rights (TDR) Program Ordinance”, which is appended to this plan as attachment E. Density units or development rights attached to property which have been permanently restricted against further development by contract, deed restriction or other non-revocable action by the owner of that property, rendering the density unit or development rights unusable at that property, shall be considered extinguished and an equal number of density units or development rights shall be made available by the Town of Berry for transfer from the Town of Berry in accordance with Town Ordinance 500.5. In no event shall

new or additional density units or development rights be created beyond the total number available in the Town of Berry based on the “one residential dwelling unit per 35 acres” policy calculated and interpreted as of April 13, 1981.

**Page 62, Policies, letter f**

f. Buildings shall not be placed in **wetlands, floodplains, hydric soils, soils with low or very low potential for dwellings with basements**. Buildings should be discouraged on slopes greater than 12 percent. Development of slopes over 20% is only permitted when the proposed structure and landscaping is supported by architectural and engineering plans that demonstrate the design accommodates the existing topography with minimal changes and environmental impact. A review fee equal to the estimated fees charged by the Town Engineer to review the proposed plans shall be paid at the time of application. (Unused review fees shall be refunded to the applicant, regardless of the outcome.) “Minimal Impact” includes a written plan which, upon completion, attempts not to increase surface water runoff, retains water infiltration at 90% of pre-development standards on an annual basis, and allows no active erosion on site. ~~A plan meeting the parameters of Dane County Ordinance 14.51, Storm Water Management Plan Requirements (2011)(or any subsequent renumbered or revised adaptation of that ordinance) shall be presumed to meet this requirement.~~ No building permit shall be issued for development of slopes over 20% until the applicant complies with this Policy to the satisfaction of the Town and has been issued written confirmation of compliance, and an amount equal to the total actual review fee charged by the Town Engineer to review the proposed plans has been paid to the Town, by the applicant. General depictions of these features are included on Map 5; steep slopes, wetlands, and floodplains are specifically shown on Map 3; and hydric soils and soil potential for basements are included in the *Dane County Map Book, Town of Berry* (2001).

**Page 75, Policies, add k**

k. Accept longer driveways, consistent with construction requirements in our ordinance. As necessary to allow driveways to go around productive farmland and avoid “side of the road” development, and place structures where they are less visible to others. No absolute limit on the length of a driveway should arbitrarily apply since it would interfere with those objectives designed to maintaining the rural character of the Town.

**Page 126-127, E, add this paragraph**

If the Town of Berry leaves Dane County Zoning pursuant to Wis. Stat. §60.23(34), all references to Dane County, as well as its Committees, Boards, staff and Ordinances, herein shall immediately be deemed removed from this Comprehensive Plan and replaced by the appropriate Town Commission, Board or Ordinance serving the function previously served by Dane County, or its Committees, Boards, staff and Ordinances.

## 500.5 Transfer of Development Rights (TDR) Program Ordinance

I	Background
II	Purpose
III	Authority
IV	General Operation
V	Density Units or Development Rights
VI	TDR Easement
VII	Negotiations for the Acquisition of Development Rights
VIII	Procedural Considerations
IX	Criteria for Approval
X	Effective Date

### SECTION I – BACKGROUND

- A. A transfer of development rights program means that owners of land can sell their density units or development rights.
- B. Town Density Units or development rights are determined by the Town's Comprehensive Plan.
- C. Sending Areas. Town Density Units cannot be transferred to areas outside of the Town's boundaries. The Town's Sending Area is defined as the entire Town.
- D. Receiving Areas. Town Density Units can be transferred to areas within the Town's boundaries. The Town's Receiving Area is defined as the entire Town.
- E. Density Units originating from areas outside of the Town's boundaries cannot be transferred into the Town.

### SECTION II – PURPOSE

The Town having conducted public hearings and open meetings, and having sought technical advice and public comment hereby finds that;

- A. A TDR program serves the following public purposes including, but not limited to:
  1. Agricultural preservation;
  2. Establishing a mechanism to allow farmers to have the economic benefit of the density units associated with their land without the burden of having a residential parcel adjacent to the farm;
  3. Reducing urban sprawl;
  4. Directing development to areas better suited for land divisions for residential purposes;
  5. Creating conservation easements that allow agricultural preservation and open space protection.
- B. The Town also finds that the existence of the TDR Program does not reduce the property rights that any property owner has in his or her property. Rather, the TDR Program provides an option in the Town that may be of benefit to both those who wish to develop at higher density, but do not have necessary development rights, and those who do not wish to develop their property at allowed densities, but wish to be compensated for density units or development rights associated with their property.

### SECTION III – AUTHORITY

Under the Town's planning authority in Wis. Stats. §66.1001, the Town will amend the Town's Comprehensive Plan to include the TDR Program. The Plan is to be approved by the Planning Commission, and the Town Board ~~and/or the Dane County Board, as required by law.~~

### SECTION IV – GENERAL OPERATION

As set forth in more detail below, the TDR Program operates as follows:

- A. Owners of property in the Sending Area may choose to sell the density units or development rights associated with their land to a buyer for use on a specified property located in a Receiving Area. The buyer then uses those density units or development rights to develop property in a Receiving Area at a higher density than otherwise provided under law.

## SECTION V – DENSITY UNITS OR DEVELOPMENT RIGHTS

- A. Density Units or development rights are described and defined in the Town's Comprehensive Plan.
- B. All persons participating in the TDR Program must obtain a Density Study from Dane County and the Town to verify the number of density units or development rights associated with their property.
- C. Note: The Comprehensive Plan confirms that the Town participates in Dane County's Exclusive Agricultural Zoning (A1-EX), as do most towns in Dane County. The Comprehensive Plan also confirms the Town's use of a development or density ratio that is commonly referred to as one residential dwelling unit as defined in the Town's Comprehensive Plan.
- D. Density units and development rights attendant to property which has been permanently restricted against further development by contract, deed restriction, or other non-revocable actions of the property owner, rendering the density units or development rights unusable at that property, shall be considered extinguished and an equal number of density units or development rights shall be made available by the Town of Berry for transfer from the Town of Berry in accordance with this ordinance. In no event shall new or additional density units or development rights be created by this provision.

## SECTION VI – TDR EASEMENT

- A. Form. At the time that the density unit or development right is sold, the seller shall enter into a TDR Easement with the Town and Dane County. The TDR Easement shall serve the following purposes:
  - 1. The TDR Easement shall track the conveyance of the development rights.
  - 2. The TDR Easement shall be a conservation easement that confirms that the sending property may continue to be used for agricultural or open space but may not be used for residential development purposes.
- B. Recording. The TDR Easement shall be recorded by the Dane County Register of Deeds, with a copy provided to the Dane County Planning and Development Office and the Town Clerk. No zoning permit shall be issued by Dane County and no building permits will be issued by the Town until the TDR easement is recorded. Neither the Town nor Dane County makes any representations with respect to the tax impacts of a TDR Easement.

## SECTION VII – NEGOTIATIONS FOR THE ACQUISITION OF DEVELOPMENT RIGHTS

All negotiations for the acquisition of development rights shall be handled by the private property owners involved in the transaction.

## SECTION VIII – PROCEDURAL CONSIDERATIONS

A person seeking approval of Transfer of Development Rights shall undertake the following steps:

- A. Present an application to Transfer Development Rights to the Plan Commission for review, verification and recommendation to the Town Board.
- B. A density unit, not 35 acres of land, is needed to build a dwelling. Most dwellings are built on parcels of land less than 35 acres. The availability of a density unit does not guarantee that a dwelling can be built on a parcel.
- C. Include the Town's ~~and Dane County's~~ density study of the Sending property.
- D. Simultaneously apply for needed zoning changes ~~with Dane County~~ and initiate the plat review and approval process.

## SECTION IX – CRITERIA FOR APPROVAL.

The Town's Comprehensive Plan, shall set the standards for judging the suitability of any transfer of development rights application. Approval of a TDR application is conditioned on the results of the transfer being consistent with the goals, objectives and policies of the Town Comprehensive Plan. The portion of the Comprehensive Plan that describes the Plan's goals, objectives and policies, typically found at the end of each chapter, and is incorporated herein by reference, for the primary purpose of providing the context in which the Town will interpret this TDR Ordinance. Note: The Town recommends that all persons interested in participating in the TDR Program obtain and carefully review the goals, objectives and policies set forth in the

Town Comprehensive Plan. The Comprehensive Plan for the Town of Berry is found on-line at the Town website, <http://www.townofberry.org/compplan.html>, and is available from the Town Clerk.

**SECTION X – EFFECTIVE DATE**

This Ordinance shall take effect and be in force from and after the day after passage and publication as required by law.