

ATTACHMENT E: TRANSFER OF DEVELOPMENT RIGHTS PROGRAM ORDINANCE

500.5 Transfer of Development Rights (TDR) Program Ordinance

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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.

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, beyond the number of density units and development rights calculated and interpreted to be allowed in the Town of Berry as of April 13, 1981.

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 density study of the Sending property.
- D. Simultaneously apply for needed zoning changes 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.