

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 Development Rights
- 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 Wisconsin Statutes §66.1001, the Town has amended the Town's Comprehensive Plan to include the TDR Program. The Plan has been approved by Town Board as required by law.

SECTION IV – GENERAL OPERATION

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 the Town to verify the number of density units or development rights associated with their property.
- C. Note: The Comprehensive Plan 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 or development rights attendant to property which have been permanently restricted against further development by contract, deed restriction, or other non-revocable actions of the property owner, after January 1, 2015, 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. Sale of property with development rights to a governmental entity for dedication of that property as a public park is, and shall be deemed, a permanent termination.
- E. The Town shall not offer for sale Development Rights that have accrued to the Town, while a Town property owner is in good faith actively marketing TDR rights for sale on the Town's list. Good faith means the price and terms offered are comparable and not significantly higher or more limiting than historic TDR sales in Dane County. The Town reserves the right to assign or sell development rights accrued to the Town, for transfer to receiving areas of the Town where annexation may be reasonably anticipated, at any time, regardless of other sellers, in exchange for deed restrictions obligating the property owner to oppose annexation of the receiving property, for a minimum of 20 years after the assignment or sale.

SECTION VI – DEVELOPMENT RIGHTS

- A. Form. At the time that the density unit or development right is sold, the seller shall notify the Town in writing of the transfer. The TDR Notification allows the Town to keep an accurate record of the conveyance of the development rights and density units, and the current number associated with a parcel of land in the Town.

- B. Recording. Once approved, the TDR shall be recorded by the Dane County Register of Deeds, with a copy provided to the Town Clerk. No Land use, zoning or building permits will be issued by the Town until the TDR Document is recorded. The Town makes no representations with respect to the tax impacts of a TDR.

SECTION VII – NEGOTIATIONS FOR THE ACQUISITION OF DEVELOPMENT RIGHTS

All negotiations for the acquisition of private development rights shall be handled by the private property owners involved in the transaction. Contracts for transfer of development rights or density units may be made contingent upon approval of the transfer and any associated zoning changes by the Town of Berry. The transferee of a contingent contract has standing to apply for approval of the transfer and any associated zoning changes, which shall become effective upon notification and filing pursuant to SECTION VI, above.

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. The Town density study is available on its website.
- D. Simultaneously apply for needed zoning changes and initiate the plat review and approval process. If the receiving property is in legacy zoning, it shall be rezoned to Berry’s current zoning ordinance.

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, <https://townofberry.org/government/comprehensive-plan/>, 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.

Adopted this 15th day of August, 2022

Posted: August 18, 2022

Brenda Kahl, Clerk/Treasurer
David Evert, Supervisor
Christine Molling, Supervisor

Anthony Varda, Chair
Michael Statz, Supervisor
Travis Austin, Supervisor