

ORDINANCE ADOPTING ZONING CODE FOR THE TOWN OF BERRY

WHEREAS, 2015 Wisconsin Act 178 authorized towns in a county having a population of more than 485,000 to take certain actions which allow that town to withdraw from coverage of the county zoning ordinance;

WHEREAS, the Town of Berry adopted a notice of intent to withdraw on July 18, 2016 as provided by sec. 60.23 (34)(b)(1) and gave notice of that action;

WHEREAS, the Town re-adopted its Comprehensive Plan under sec. 66.1001, and adopted an Official Map under sec. 62.23 (6);

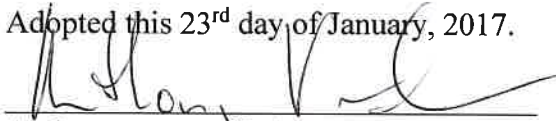
WHEREAS, the Town recommended approval of a model zoning ordinance which was prepared by the towns which issued a notification of intent to withdraw, and has duly considered that model ordinance;

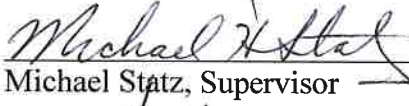
WHEREAS, the Town has determined that it is in the best interests of the Town to adopt the model zoning ordinance as the zoning ordinance of the Town upon its withdrawal from county zoning;

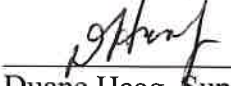
NOW, THEREFORE, the Town Board of Supervisors of the Town of Berry do hereby ordain as follows:

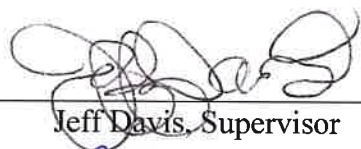
1. The Town of Berry hereby adopts the attached zoning ordinance as the general zoning code of the Town, which shall take effect upon the happening of the following events:
  - a. The Town Board adopts an Ordinance to withdraw from coverage of the County zoning ordinance.
  - b. Ratification of the Ordinance of withdrawal by the Town's annual meeting, to the extent such is required by statute.
  - c. Transmission of certified copies of the Official Map, Comprehensive Plan and the Zoning Ordinance to the County Clerk, which shall be done by the Town Clerk on October 1, 2017.
2. The Town Clerk shall publish a Notice of Adoption of the ordinance as a class 1 notice, and shall place the Ordinance on the Town's website.


Adopted this 23<sup>rd</sup> day of January, 2017.

  
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Anthony Varda, Chair

  
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Michael Statz, Supervisor

  
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Duane Haag, Supervisor

  
\_\_\_\_\_  
Jeff Davis, Supervisor

  
\_\_\_\_\_  
Joe Kruchten, Supervisor

Attest: Brenda Kahl  
Brenda Kahl, Clerk/Treasurer

I, Brenda Kahl, Clerk of the Town of Berry, Dane County, Wisconsin, certify that at the regular meeting of the Town Board of the Town of Berry, held on January 23, 2017, the town board, adopted on proper notice with a quorum and by a roll call vote of a majority of the town board present and voting, the attached Zoning Ordinance for the Town of Berry, which is on file at the Town Hall for the town and on the Town's website.

Dated this 23<sup>rd</sup> day of January, 2017.

Brenda Kahl  
Brenda Kahl  
Town Clerk, Town of Berry

ORDINANCE AMENDING AND READOPTING THE COMPREHENSIVE PLAN  
OF THE TOWN OF BERRY

The Town Board of Supervisors of the Town of Berry, does hereby ordain as follows:

Section One. Findings. The Town Board finds as follows:

- A. On March 1, 2016, 2015 Wisconsin Act 178 took effect. That Act allows towns in Dane County to withdraw from the Dane County Zoning Ordinance.
- B. After adoption of the Act, the Town Board began evaluating the merits of whether or not to withdraw from County zoning.
- C. On July 18, 2016, the Town Board adopted a Resolution which gave notice that the Town may decide to withdraw from County zoning.
- D. Act 178 provides that, prior to withdrawal, the Town must enact take certain actions, including adoption of a Comprehensive Plan.
- E. The Town adopted its Comprehensive Plan on November 18, 2002. [The Town amended the Comprehensive Plan on July 16, 2012]. Dane County has incorporated the Comprehensive Plan into its County Comprehensive Plan.
- F. The Comprehensive Plan was based on studies of the current conditions and needs of the Town, identifying important policy needs in major areas of government services. The Plan contains all elements required by Wisconsin law. The Town Board, as the governing body for the Town, is always aware of the major issues confronting the Town, and the circumstances of the community.
- G. The Town Board has reviewed the current Comprehensive Plan, which was adopted to provide policy guidance for land use decision-making by the Town and Dane County. The policies and goals which were established in the Comprehensive Plan are, at this time, sufficient to provide the necessary policy guidance for the Town in adopting and implementing Town zoning, should the Town elect to withdraw from County Zoning.
- H. References in the Comprehensive Plan to the current County-Town zoning system will need to be applied with the understanding that the County no longer will have a role in supporting, administering, advising or enforcing the Town zoning ordinance.
- I. The Portions of the Comprehensive Plan which relate to implementation and intergovernmental cooperation also will be administered and applied with the understanding that the County will no longer be involved in approving, administering or enforcing the Town's general zoning.
- J. The Town finds that the existing Comprehensive Plan provides an adequate factual and policy basis for implementation of new zoning for the Town if the Town elects to withdraw from County zoning. Changes in the Town since the Comprehensive Plan was last revised are minimal and do not require a full study process before re-adoption of the Plan. The Town further finds that after the Town has gained experience administering zoning, the town may elect to further revise and update the Comprehensive Plan, and that deferring any studies until that time is a more prudent use of public resources.

- K. The Town Board determines that this Ordinance shall be adopted by the Town Board as an administrative and policy decision, and waives any requirements for Plan Commission action to the extent such action might otherwise be required.

Section Two.

- A. The Town Board hereby incorporates the attached Town Comprehensive Plan into this Ordinance, as if fully set forth here.
- B. The Town Board amends the Comprehensive Plan as follows:
  - 1. The following reference changes shall be made:

Old Term	New Term
Dane County Zoning Ordinance [Chapter 10]	Town Zoning Ordinance [nearest equivalent provision, as determined by the Town Board].
Dane County Non-Metallic Mining Ordinance [Chapter 74]	Town Zoning Ordinance
Dane County Land Division Ordinance [Chapter 75]	Town Land Division Ordinance
Dane County Zoning Administrator	Town zoning administrator
Dane County Board of Supervisors, with respect to general zoning, land division and infrastructure	Town Board of Supervisors
Dane County Zoning and Land Regulation Committee	Town Plan Commission or Town Board, as determined by the Town Board
Dane County Comprehensive Planning Ordinance [Chapter 82]	Town Zoning and General Ordinances

- 2. The following section shall be added to the Implementation section of the Town Comprehensive Plan:

This Plan shall apply to all zoning and land division actions taken by, or affecting, the Town. In the event that it is necessary to interpret any provision of this Comprehensive Plan, the interpretation shall be made by the Town Board of Supervisors. The interpretation of the Town Board shall be followed by all governmental bodies or agencies which are applying this Comprehensive Plan.

- 3. The following pages shall be amended to read as indicated:

**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. 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 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. 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.

4. Attachment A to the Town Comprehensive Plan shall be amended to read as set forth in Attachment A hereto, which shall become the amended the Town of Berry’s **500.5 Transfer of Development Rights (TDR) Program Ordinance**.
5. This Comprehensive Plan, as amended above, is adopted pursuant to sec. 60.62 (6), Wis. Stats. This Comprehensive Plan shall be incorporated, without change, into the Dane County Comprehensive Plan.

Section Three.

This ordinance shall be effective upon its adoption by the Town Board in accordance with the process for revision of the Comprehensive Plan. The Town shall give notice of the adoption of this Ordinance and the amended Comprehensive Plan, including a copy of these documents, to:

1. Every governmental body that is located in whole or in part within the boundaries of the Town.
2. The clerk of every local governmental unit that is adjacent to the Town.
3. The Wisconsin Department of Administration.
4. The Capital Area Regional Planning Commission.

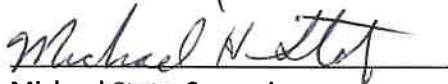
5. The Public Library for the Town.

Section Four. This ordinance is effective upon its adoption.


Dated this 23 day of January, 2017

TOWN BOARD OF THE TOWN OF BERRY

  
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Anthony Varda, Chair

  
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Michael Statz, Supervisor

  
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Duane Haag, Supervisor

  
\_\_\_\_\_  
Jeff Davis, Supervisor

  
\_\_\_\_\_  
Joe Kruchten, Supervisor

CERTIFICATION

I, Brenda Kahl, the Town Clerk of the Town of Berry, do hereby certify that the above Ordinance was duly adopted by a majority vote of the Town Board of the Town, at a meeting of the same, proper notice of which was given pursuant to the Wisconsin Open Meetings Law.

  
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Brenda Kahl, Clerk/Treasurer

Posted: January 31, 2017

## ATTACHMENT A

### 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.

### **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.