

ORDINANCE OF THE TOWN OF COTTAGE GROVE, WISCONSIN
Adopted pursuant to Sec. 25.01 of the Town of Cottage Grove Code

Title: TRANSFER OF DEVELOPMENT RIGHTS ORDINANCE

Code Section(s) created, amended, or repealed	<u>TCG Ord §15.15</u>
Presented to Board by	<u>Town Chair and Town Attorney</u>
Committee Review by	<u>Plan Commission 02/28/2007 & 03/21/2007</u>
Date(s) Public Hearing(s) held	<u>03/05/2007 & 05/07/2007</u>
Date of adoption of first reading resolution (R-2007-03)	<u>03/05/2007</u>
Date ordinance adopted	<u>05/07/2007</u>
Vote	<u>5-0</u>
Date of posting of adoption of ordinance	<u>05/11/2007</u>

WHEREAS, revisions to Section J “Land Use Element” of the Town of Cottage Grove’s Comprehensive Plan – 2028 (often referred to as the “2007 Phase 1 Amendment”) were recommended for adoption by resolution of the Plan Commission on March 21, 2007, presented for public hearing on May 7, 2007, and adopted by ordinance of the Town Board of the Town of Cottage Grove on May 7, 2007, and

WHEREAS, following consideration of input from the public, the Plan Commission and various consultants, the Town Board of the Town of Cottage Grove decided to revise and replace its current Transfer of Development Rights Ordinance TCG Ord § 15.15 so that it accurately reflects the current land use policy of the Town of Cottage Grove and the May 7, 2007 revisions to the Town of Cottage Grove’s Comprehensive Plan – 2028 known as the 2007 Phase 1 Amendment.

NOW, THEREFORE, the Town Board of the Town of Cottage Grove does ordain as follows:

1. The current Transfer of Development Rights Ordinance TCG Ord § 15.15 is hereby replaced in its entirety by the ordinance attached hereto as Exhibit A, and incorporated by reference.
2. This ordinance shall take effect upon final approval and adoption of the 2007 Phase 1 Amendment as presented for public hearing on May 7, 2007 and adopted by the Town of Cottage Grove on May 7, 2007, and upon publication / posting as required by law.

Adopted this 7th day of May, 2007, by a vote of 5 for, 0 against, and 0 abstaining.

TOWN OF COTTAGE GROVE

Attest:

(Signed copy available in the Clerk’s Office)

Kris Hampton, Town Chair

Kim Banigan, Town Clerk

Approved as to form this
7th day of May, 2007.

ANDERSON & KENT, S.C.

Constance L. Anderson, Esq.
Cottage Grove Town Attorney

**TOWN OF COTTAGE GROVE
RESOLUTION NO. R-2007-03**

**RESOLUTION PROVIDING FOR THE PUBLICATION, FILING,
INSPECTION AND ADOPTION OF A GENERAL ORDINANCE**

WHEREAS, an ordinance entitled "TCG 15.15 Transfer of Development Rights ("TDR") Program" has been reviewed and recommended by the Plan Commission provided that recommended changes are made to Phase 1 of the Land Use Element of the Town's Comprehensive Plan, and has been further considered and tentatively recommended by the Town Board on the same basis;

NOW, THEREFORE, the Town Board of the Town of Cottage Grove resolves as follows:

1. That this ordinance entitled "TCG 15.15 Transfer of Development Rights ("TDR") Program" shall be presented for public hearing and adoption by the Town Board at the board meeting scheduled for May 7, 2007, and

2. That the Town Clerk, in accordance with the requirements of Wis. Stats. '66.0103, file a copy of the proposed ordinances in her office for public inspection no less than two (2) weeks prior to the board meeting and cause a copy of the following notice to be published as required by Wis. Stats. '60.80:

NOTICE

PLEASE TAKE NOTICE that the Cottage Grove Town Board will hold a public hearing and consider the adoption of an ordinance entitled "TCG 15.15 Transfer of Development Rights ("TDR") Program" at the Town Board meeting held on or after 7 p.m. on May 7, 2007 in the Town Hall. In accordance with Wis. Stats. '66.0103, a copy of the proposed ordinance is on file and open for public inspection in the Town Clerk's office commencing on March 6, 2007.

This resolution was duly considered and adopted by the Town Board of the Town of Cottage Grove pursuant to a vote of 4 for and 0 against on this 5th day of March, 2007.

(Signed Copy Available in the Clerk's Office)

TOWN OF COTTAGE GROVE

By: Kris Hampton, Town Chair

ATTEST:

Kim Banigan, Town Clerk

Approved as to form this
5th day of March, 2007.

ANDERSON & KENT, S.C.

By: Constance L. Anderson, Esq.
Cottage Grove Town Attorney

TOWN OF COTTAGE GROVE
ORDINANCE NO. 2007-02
MAY 7, 2007

15.15 TRANSFER OF DEVELOPMENT RIGHTS (“TDR”) PROGRAM

15.15.1 FINDINGS, AUTHORITY, AND GENERAL OPERATION.

15.15.1.1 Findings and Purpose. The Town, having implemented and evaluated a pilot Transfer of Development Rights (“TDR”) Program, having conducted public hearings and open meetings, and having sought technical advice and public comment hereby finds:

(a) A TDR program serves the following public purposes including, but not limited to: agricultural preservation; establishing a mechanism to allow farmers to have the economic benefit of the “splits” associated with their land without the burden of having a residential parcel adjacent to the farm; reducing urban sprawl; directing development to areas better suited for land divisions for residential purposes; creating conservation easements that allow agricultural preservation and open space protection; and, allowing developers to develop residential subdivisions in the Town at higher densities than allowed under current law.

(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 development rights associated with their property.

15.15.1.2 Authority. Under the Town’s planning authority in Wis. Stats. §66.1001, the Town included the TDR Program in the Town’s Smart Growth Comprehensive Plan - 2020 (“Comprehensive Plan”) and adopted a Town ordinance regarding the TDR Program in section 15.15 of the Town’s Land Division Ordinance (“TDR Ordinance”). The Comprehensive Plan and TDR Ordinance shall be approved by the Plan Commission, the Town Board and/or the Dane County Board, as required by law.

15.15.1.3. General Operation. As set forth in more detail below, the TDR Program operates as follows: Those who own property in a “Sending Area” may choose to sell the “splits” or “development rights” associated with their land to a developer for use on a specified property located in a “Receiving Area.” The developer then uses those “splits” or “development rights” to develop property in a “Receiving Area” at a higher density than otherwise provided under law. The Town will set a “ratio” or multiplier that will be used to determine the increase in density available for each “development right” transferred to a particular “Receiving Area.”

15.15.1.4 Voluntary Nature of TDR Program. NO ONE IS REQUIRED TO PARTICIPATE IN THE TDR PROGRAM.

15.15.2 INCORPORATION OF SMART GROWTH COMPREHENSIVE PLAN – 2020, AS AMENDED.

15.15.2.1. Land Use Element. The Land Use Element of the Town’s Smart Growth Comprehensive Plan -2020 (“Comprehensive Plan”), as amended from time to time, includes a complete description of the TDR Program. The portion of the Comprehensive Plan that describes the TDR Program 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 this portion of the Comprehensive Plan. This section of the Comprehensive Plan is available from the Town Clerk.

15.15.2.2. Splits and Development Rights. “Splits” or “development rights” are described and defined in the Comprehensive Plan. All persons participating in the TDR Program will need to obtain a Density Study from Dane County or otherwise verify the number of splits or development rights associated with their property.

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 development unit per 35 acres of agricultural land.

15.15.3 DETERMINATION OF RATIO OR MULTIPLIER.

15.15.3.1. Initial Ratio or Multiplier. Based on technical review and public input, the Town has determined that an economically reasonable ratio or multiplier consistent with the findings and purpose of the TDR Program is eight (8). For example, the ratio or multiplier of eight (8) means that, for each development right transferred from a Sending Area to a single family residential subdivision in a Receiving Area, the developer would be able to increase the density by eight (8) residential dwelling units, provided that the developer met all other laws. Development rights are transferred from a specific Sending Area parcel to a specific Receiving Area parcel. Any development rights transferred to a parcel in a Receiving Area, but not immediately used for the development planned in that Receiving Area parcel, remain with that Receiving Area parcel (that is, the development rights run with the land), and are subject to all other requirements related to development rights as set forth in this TDR Ordinance and the Comprehensive Plan.

15.15.3.2. Revisions to the Ratio or Multiplier. The Town may modify the ratio or multiplier by amendment of this TDR Ordinance following at least one public hearing, and consultation with the Plan Commission and other consultants that the Town Board deems appropriate. A developer may petition the Town to modify the ratio by amendment of this TDR Ordinance.

Note: As indicated in the Comprehensive Plan, development rights can only be transferred from Sending Areas to Receiving Areas. Therefore, for example, development rights could not be transferred from one owner's parcel to another owner's parcel within the Sending Area. This is also true within the Receiving Area. Different owners cannot transfer development rights from one parcel in the Receiving Area to another parcel in the Receiving Area.

15.15.4 INFORMATION OF PARTICULAR INTEREST TO PROPERTY OWNERS IN THE SENDING AREAS.

15.15.4.1 List of Property Owners Interested in Selling Development Rights. To assist in establishing the development rights market, the Town will maintain a list of all property owners in the Sending Areas who wish to be listed as "interested in selling development rights." To be included in this list, the property owner needs to provide the Town Clerk with contact information and the estimated number of development rights that the property owner may wish to sell.

Note: It is also recommended that all property owners interested in selling development rights obtain a density study from Dane County to confirm the number of "splits" or "development rights" associated with the property in the Sending Area. Although the list may facilitate the transfer of development rights, all negotiations regarding transfers of development rights shall be conducted between the individual property owners involved.

15.15.4.2 TDR Easement.

15.15.4.2.1 Form. At the time that the development rights are sold to the developer, the seller shall enter into a TDR Easement with the Town and Dane County. The TDR Easement shall be prepared by the Town and shall serve the following purposes:

- The TDR Easement shall track the conveyance of the development rights.
- The TDR Easement shall be a conservation easement that confirms that the sending property may continue to be used for agricultural, open space or recreational purposes, but may not be used for residential development purposes.

15.15.4.2.2 Recording. The TDR Easement shall be recorded in the Dane County Register of Deeds office, 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.

Note: A copy of the current TDR Easement may be obtained from the Town Clerk.

The Town recommends that participants obtain independent tax advice with respect to the tax impact, if any, that the TDR Easement may have. Neither the Town nor Dane County makes any representations with respect to the tax impacts of a TDR Easement.

15.15.5 INFORMATION OF PARTICULAR INTEREST TO PROPERTY OWNERS IN THE RECEIVING AREAS.

15.15.5.1 Forum Available to Facilitate Transfer of Development Rights. The Town wishes to provide a forum that will facilitate the transfer of development rights. Therefore, if a developer wishes to avail him or herself of such a forum, the developer

may request that the Town place on the Plan Commission agenda that the developer is interested in purchasing development rights. The developer may then make a presentation at the Plan Commission meeting, and describe his or her particular project as well as the number of development rights sought. Interested sellers may attend the meeting and ask questions of a general nature to the developer.

Note: The Town recommends that the developer, at the developer's cost, send notice of the meeting to all persons listed as interested in selling development rights. (See section headed "List of Property Owners Interested in Selling Development Rights.")

15.15.5.2 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.

15.15.5.3 Procedural Considerations.

A person seeking approval of a development shall undertake the following steps:

- (1) Present a conceptual plan to the Plan Commission for review and input;
- (2) Have Dane County complete a density study of the property to be developed;
- (3) If additional density is desired and the developer wishes to utilize the TDR Program, obtain the list of persons interested in selling development rights from the Town Clerk and/or provide notice of the desire to obtain development rights by requesting that notice be included on the Town Board agenda, as described above, and send copies of the agenda to all persons on the list maintained by the Town Clerk;
- (4) Negotiate the acquisition of development rights, obtaining written options at specified prices; and,
- (5) Simultaneously apply for needed zoning changes with Dane County and initiate the plat review and approval process.

15.15.6 SPECIAL PROVISIONS RELATED TO TDR PROGRAM WITH THE VILLAGE OF COTTAGE GROVE. [*Reserved for Future Use.*]

15.15.7 VARIANCES FROM AND INTERPRETATIONS OF TDR PROGRAM.

15.15.7.1 Availability of Variance The Town hereby expressly recognizes that there may be individual circumstances that warrant deviation from the TDR Ordinance. For example, there may be situations where the applicable ratio or multiplier presents a hardship, or circumstances may arise that are not clearly or fully addressed in the TDR Ordinance. In such cases, the affected person(s) may submit a request for a variance or interpretation to the Plan Commission.

15.15.7.2 Variance Procedure. The Plan Commission shall review the request for a variance or an interpretation on a case-by-case basis, relying on the overall findings and purpose of the TDR Program and relevant town planning issues. The Plan Commission shall then provide to the Town Board a written recommendation regarding the variance or interpretation, as well as a recommendation as to whether a formal change to the TDR Ordinance is advisable. Following consideration of the Plan Commission's recommendation, and such other information as the Town Board deems advisable, the Town Board shall either grant the variance or provide the interpretation. The Town Board shall have final authority with respect to granting the variance, conditions placed on the variance, and/or interpreting the TDR Ordinance.