

TOWN OF COTTAGE GROVE, DANE COUNTY, WISCONSIN

Adopted pursuant to Sec. 25.01 of the Town of Cottage Grove Code

ORDINANCE NO. 2008-01

**Title: AN ORDINANCE MAKING MINOR CHANGES TO THE
TRANSFER OF DEVELOPMENT RIGHTS ORDINANCE
(TCG ORD § 15.15, ADOPTED AS ORDINANCE NO. 2007-02 ON MAY 7, 2007)**

Ordinance Identification Number	<u>2008-01</u>
Code Section(s) created, amended, or repealed	<u>15.15.1.3, 15.15.3.2 and 15.15.7.2</u>
Presented to Board by	<u>Town Chair Kris Hampton</u>
Committee Review by	<u>Plan Commission</u>
Public Hearing	<u>January 7, 2008</u>
Date adopted	<u>January 7, 2008</u>
Vote	<u>5-0</u>
Date of posting of adoption of ordinance	<u>January 11, 2008</u>

WHEREAS, the Town Board has considered recommendations from the Town Plan Commission as well as input from the public, Town consultants, Dane County and other interested persons; and,

WHEREAS, the Town Board wishes to modify certain aspects of its Transfer of Development Rights Ordinance which is currently codified in Town of Cottage Grove Ordinances § 15.15 (“TDR Ordinance”) to reflect this input and the 2007 Phase 1 Amendment To The Comprehensive Plan As Recommended By The Plan Commission, Incorporating Same Into The Current Comprehensive Plan, And Adopting The Amended Comprehensive Plan As “Town Of Cottage Grove Smart Growth Comprehensive Plan – 2028,” as approved in May 2007 and amended on December 17, 2007 (“Phase 1 Amendment”); and,

WHEREAS, the changes to the TDR Ordinance include updating TDR Ordinance §15.15.1.2 to reference the Phase 1 Amendment, adding a Note at the end of TDR Ordinance §15.15.1 to direct readers to the section on transfer ratios, changing the section on revisions to the transfer ratio (in TDR Ordinance §15.15.3.2), and clarifying the section on variances and interpretations (in TDR Ordinance §15.15.7.2), all as set forth in detail below.

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

SECTION 1. TDR Ordinance §15.15.1.2 shall be amended to read as follows:

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-2020”) and the 2007 Phase 1 Amendment To The Comprehensive Plan As Recommended By The Plan Commission, Incorporating Same Into The Current Comprehensive Plan, And Adopting The Amended Comprehensive Plan As “Town Of Cottage Grove Smart Growth Comprehensive Plan – 2028,” as approved in May 2007 and amended on December 17, 2007 (“Phase 1 Amendment”) (collectively, “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.

And the following note shall be added at the end of TDR Ordinance §15.15.1:

Note: For additional information on the transfer ratio, see section headed "Determination of Ratio or Multiplier".

SECTION 2. TDR Ordinance §15.15.3.2 shall be amended to read as follows:

15.15.3.2. Revisions to the Ratio or Multiplier. The transfer ratio may be amended by ordinance of the Town Board, provided that a concurring resolution is also obtained from the Dane County Board. Prior to adopting an ordinance amending the transfer ratio, the Town shall hold at least one public hearing, and consult with the Plan Commission and other consultants that the Town Board deems appropriate.

A developer may petition the Town to modify the transfer ratio by submitting a written request for an amendment along with documentation indicating why the developer believes an amendment is prudent and necessary. If the Town does not act on the petition within 120 days after receipt of same by the Town Clerk, the petition shall be deemed denied.

SECTION 3. TDR Ordinance §15.15.7.2 shall be amended to add the following sentence as the final sentence:

Other governmental entities with approving or recommending authority on land use decisions shall give consideration and due deference to the Town's grant of a variance and/or interpretation, and shall retain the approving and recommending authority granted to such governmental entity by law.

SECTION 4. For convenience in reference, the entire TDR Ordinance, with the above changes incorporated, is set forth in the attached Exhibit A and incorporated herein by reference.

Adopted this 7th day of January, 2008, following consideration of the recommendations of the Plan Commission, by the Town Board of the Town of Cottage Grove.

(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
_____ day of January, 2008.

ANDERSON & KENT, S.C.

Constance L. Anderson
Cottage Grove Town Attorney

EXHIBIT A TO ORDINANCE NO. 2008-01

TOWN OF COTTAGE GROVE TDR ORDINANCE

ADOPTED AS ORDINANCE NO. 2007-02 on MAY 7, 2007,
AND AMENDED BY ORDINANCE NO. 2008-01 on JANUARY 7, 2008

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-2020”) and the 2007 Phase 1 Amendment To The Comprehensive Plan As Recommended By The Plan Commission, Incorporating Same Into The Current Comprehensive Plan, And Adopting The Amended Comprehensive Plan As “Town Of Cottage Grove Smart Growth Comprehensive Plan – 2028,” as approved in May 2007 and amended on December 17, 2007 (“Phase 1 Amendment”) (collectively, “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.

EXHIBIT A TO ORDINANCE NO. 2008-01

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.”

Note: For additional information on the transfer ratio, see section headed “Determination of Ratio or Multiplier.”

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

EXHIBIT A TO ORDINANCE NO. 2008-01

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 transfer ratio may be amended by ordinance of the Town Board, provided that a concurring resolution is also obtained from the Dane County Board. Prior to adopting an ordinance amending the transfer ratio, the Town shall hold at least one public hearing, and consult with the Plan Commission and other consultants that the Town Board deems appropriate.

A developer may petition the Town to modify the transfer ratio by submitting a written request for an amendment along with documentation indicating why the developer believes an amendment is prudent and necessary. If the Town does not act on the petition within 120 days after receipt of same by the Town Clerk, the petition shall be deemed denied.

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.

EXHIBIT A TO ORDINANCE NO. 2008-01

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

EXHIBIT A TO ORDINANCE NO. 2008-01

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. Other governmental entities with approving or recommending authority on land use decisions shall give consideration and due deference to the Town's grant of a variance and/or interpretation, and shall retain the approving and recommending authority granted to such governmental entity by law.