

## Chapter 52

### FARMLAND AND OPEN SPACE PRESERVATION

[HISTORY: Adopted by the Town Board of the Town of Troy 10-11-1999 by Ord. No. 99-2. Amendments noted where applicable.]

#### GENERAL REFERENCES

Building construction — See Ch. 27.

Subdivision of land — See Ch. 135.

Zoning — See Ch. 170.

#### § 52-1. Intent and findings.

A. The intent of the Town of Troy in enacting this chapter is to preserve the rural character of the Town for the health, safety, welfare and benefit of its current and future citizens. The farmland, woods, hills and scenic vistas in it are part of what makes the Town a safe, healthy and beneficial place in which to live, yet these characteristics are threatened by development if it results in the excessive loss of open space, much of which is productive farmland or area available for farming. The Town has a significant base of existing farms that provide economic and social benefits to the Town. The Town contains areas of highly productive farmland that must be preserved and kept available for farming purposes as the Town's proximity to growing urban markets creates new opportunities for high-value, diversified farming in the future and as an adjunct to the present farm cropping and dairy production in the Town.

B. Accordingly, preservation of farmland and open spaces through a voluntary program that purchases and holds conservation easements from prime farmland is declared to be desirable public policy for the Town of Troy. It advances the goals of the Town's Growth Management Plan/Comprehensive Plan for its agricultural resources, including preservation of productive farmland as a resource for future generations, maintaining agriculture as a major economic activity in the Town, limiting development on prime farmland and encouraging compact residential development. These policies are compatible with those of the State of Wisconsin's Farmland Preservation Program as set forth in Ch. 91, Wis. Stats., where both seek the protection and preservation of land zoned exclusively for agricultural purposes.

C. The Town finds that preserving farmland and open space, as by acquiring strategically selected conservation easements in a voluntary program, provides significant savings to taxpayers in the Town. The cost to the Town of providing government services to new residential development is higher than the costs of providing government services to farmland. Property taxpayers of the Town can foreseeably benefit from a balanced approach to development that seeks to maintain significant amounts of farmland in or available for agricultural uses. A farmland protection program that employs the device of conservation easements to secure the permanent protection of agricultural resources can provide security for farmers in the Town and their families and allow citizens and Town officials to plan for the

future with increased confidence about the nature of future land uses and providing the public services associated with them.

§ 52-2. Authority.

This chapter is enacted pursuant to the powers conferred and inferable under Chs. 60 and 91 and § 700.40, Wis. Stats., and all other applicable statutory or common law now in force or as may be enacted in the future.

§ 52-3. Definitions.

As used in this chapter, the following terms have the following meanings:

**AGRICULTURAL PURPOSE/USE** — General farming, including beekeeping, egg production, floriculture, fish or fur farms, dairy, licensed game management farms, forest management, livestock, poultry raising, sod farming, roadside stands selling only produce from the farm operation on the premises by members of the farm family, nurseries, greenhouses, vegetable raising, raising of grain, grass, mint, seed and ginseng crops, raising of fruit, nuts and berries, and other similar uses, including placing land in federal programs for payment in kind or enrolling land in the conservation reserve program under 16 U.S.C. §§ 3831 to 3836 but excluding farms operated for the disposal or reduction of garbage, sewage, rubbish or offal.

**CONSERVATION EASEMENT** — An enforceable interest in real property imposing any limitation or affirmative obligation, the purpose of which includes protecting viable farm operations and farmland so as to better preserve the rural character of the Town of Troy; permanently preserving scenic vistas and environmentally significant areas, including wetlands, lakes, streams and wood lots; creating and preserving open areas around significant environmental areas and agricultural areas; protecting the Town of Troy from the encroachment of neighboring cities; restricting land divisions; retaining or protecting natural, scenic or open space values of real property; assuring the availability of real property for agricultural, forest, recreational or open space use; protecting natural resources, maintaining or enhancing air or water quality; and/or preserving the historical, architectural, archaeological or cultural aspects of real property.

**DEVELOPMENT RIGHTS** — Those rights associated with fee absolute ownership of land that allow the landowner to further develop land by converting from agricultural uses to uses that diminish or eliminate the availability of the land for agricultural use, such as residential, industrial or commercial uses, and that can be separately conveyed by using conservation easements from landowner(s) to third parties, who can hold and enforce said easement rights.

**FARMLAND** — Open, undeveloped land being used for agricultural purposes.

**OPEN SPACE** — Open, undeveloped land.

**TOWN OF TROY FARMLAND PRESERVATION COMMISSION** — The body created in § 52-6 of this chapter (hereinafter referred to as the “Commission”).

§ 52-4. Purchase of development rights by acquisition of conservation easements.

A. The Town shall work with interested landowners in the Town to secure the acquisition by and transfer to the Town of conservation easements, by purchase or donation, to protect farmland and open spaces in the Town for agricultural uses, in perpetuity. Where mutually beneficial and advantageous to the Town and the landowner, the Town may work or contract with other public agencies, nonprofit organizations or land trusts to participate in the acquisition and holding of such easements and to monitor and enforce easement compliance. The Town may enter into installment purchase agreements with landowners to acquire said easements.

B. To pay for the acquisition of said conservation easements, the Town may use such revenues as may become available to it from outside sources or from revenues raised pursuant to duly authorized fees or tax revenue. Given Town Meeting approval, the Town Board may levy a tax, the proceeds of which shall be used for acquiring, monitoring, defending and enforcing rights transferred to it under a conservation easement and otherwise administering the program created herein to prioritize and acquire development rights

C. The Town Board and such staff members, professionals or volunteers as may be of assistance with such matters may use a variety of incentives and methods to negotiate agreements for the acquisition of development rights from Town landowners so as to treat said landowners fairly, and that use creativity in working with individual families to acquire all involved.

D. Municipal condemnation power shall not be used in furtherance of the objectives of this chapter.

#### § 52-5. Lands eligible for transfer of development rights; priorities for acquisition.

A. Town funds may be used to purchase development rights on lands located within designated protection areas, with priorities within said areas based on a ranking system. Priority and areas designated for protection shall be established by resolution of the Town Board, designating priority areas within which conservation easement purchases should be pursued. Priority areas should be located where a substantial amount of land is in or available for agricultural production, where soil conditions and classifications provide for productive agricultural use, and where protection of farmable land or open space is consistent with the Growth Management Plan/Comprehensive Plan of the Town.

B. An acquisition ranking system shall be used to set and refine priorities for the Town's acquisition of specific conservation easements. The principal objective shall be to protect high-quality farmland, in parcels of substantial size, in situations where the greatest benefit to the Town can be obtained by applying the principles set out in the categories created for the ranking system. The four main categories for the ranking system shall be:

(1) Overall quality of the farm, i.e., size of area available for conservation easement and soil quality therein;

(2) Development pressure/suitability for farm/residential cluster program, i.e., whether and how well the land qualifies for the farm/residential development programs of Chapter 135, Article I, Subdivision Regulations, of this Code and the parcel's proximity to a municipality that could annex the property;

(3) Prospects for continued agricultural use, i.e., whether the applicant has and provides a formal estate or business plan for transferring the farm to a new or a successor farmer, proximity to other

farms and proximity to other protected farms; and

(4) Financial considerations, i.e., willingness of landowner to accept the payment plan offered by the Town, ability to obtain funds from other federal, state, or county organization sources, age and retirement needs of landowner and whether landowner is one of several farmers with contiguous land, all of whom are willing to transfer development rights.

C. Reasoned and specific criteria based on the four main categories and the weights for ranking purposes to be assigned to each shall be determined by the Commission and presented in resolution form to the Town Board for approval. Those criteria may be revised periodically but shall be considered a part of this chapter by reference and shall be attached hereto.

#### § 52-6. Farmland Preservation Commission.

A. Creation. There is hereby created the Town of Troy Farmland Preservation Commission (hereinafter the "Commission").

B. Duties. The Commission shall be responsible for the general supervision of the program to purchase development rights as created in this chapter, including the following duties:

(1) Maintain contact with public and private agencies to maximize the resources and coordinate the efforts to preserve the rural character of the Town.

(2) At least annually, locate and identify those owners of land in the Town willing to donate or sell conservation easements affecting real property.

(3) Recommend selection criteria and rankings and recommend the acquisition of conservation easements affecting specific parcels of real estate to be acquired by the Town.

(4) Recommend changes to the program created in this chapter for the acquisition of development rights and conservation easements and make suggestions as to how said acquisition program can be integrated further with the Town of Troy's Growth Management Plan/Comprehensive Plan, Chapter 135, Article I, Subdivision Regulations, of this Code and other local and regional land use plans.

(5) Conduct public meetings, hearings or workshops as it determines necessary and convenient.

(6) Consult and contract with professional experts as it deems appropriate, subject to prior approval from the Town Board, which shall then appropriate funds for that purpose.

C. Membership.

(1) The Town of Troy Farmland Preservation Commission shall consist of seven members, appointed by the Town Chairperson and confirmed by the Town Board, consisting of:

(a) The Chairperson of the Town Plan Commission.

(b) Five additional residents and/or property owners in the Town, chosen so as to provide equitable representation of the geographic and landowner interest involved.

(c) A representative of a local nonprofit conservation organization, to be designated by the Town Board with the advice and consent of said nonprofit conservation organization, to serve a three-year term, expiring on the third anniversary after the appointment. Representatives of any number of area nonprofit conservation organizations may be recruited to fill this position on the Commission.

(2) All members of the Commission shall initially be appointed to staggered terms, so that no more than three vacancies shall be created on the Commission in any given year due to the expiration of a term, and so that all terms, once staggered, shall last for three years. Members may serve for two terms in succession, subject to renomination and reconfirmation, and may be reappointed after a year's absence from the Commission.

(3) The Commission Chairperson and at least five members shall be electors of the Town. To the extent practical, Commission members shall include persons with backgrounds and experience in agriculture, finance, conservation or planning, with preference toward members of the agricultural community.

D. Officers.

(1) The Commission shall have the following officers:

(a) A Chairperson who shall preside at all meetings of the Commission. In the absence of the Chairperson, the remainder of the Commission shall designate a member to serve as presiding officer of that meeting.

(b) A Secretary, who shall be an ex officio, nonvoting member appointed by the Chairperson. The Secretary shall maintain the records of the Commission's work, including minutes of all meetings of the Commission. Compensation shall be as determined by the Town Board.

(2) The Commission may establish any additional officers it determines necessary or convenient to the operation of the Commission.

E. Rules of procedure. The Commission may adopt rules of procedure governing its deliberations. In the absence of such rules, the Commission shall conduct its proceedings in accordance with Roberts' Rules of Order, latest revised edition.

F. Conflict of interest. No Commission member shall vote on the selection or ranking of any individual parcel in which that member (or any member of the member's family) has an ownership interest, or on the selection or ranking of parcels adjacent to property in which a member (or any member of the member's family) has an ownership interest, or on the selection or ranking of property in which a financial organization with which the person is affiliated has an ownership or financial interest.

§ 52-7. Selection process.

The Commission shall annually conduct a voluntary property selection process, which will include the following steps:

- A. Interested landowners complete a preapplication form.
- B. Initial information meetings occur between Commission and landowner to explore options and learn about the land proposed for selection.
- C. Based on information obtained and using criteria based on those set forth in § 52-5B herein, the Commission establishes a weighted ranking for all applications in the current year's cycle.
- D. Professional appraiser determines the fair market value of the development rights proposed for transfer and identified as desirable and potentially affordable.
- E. After ranking applications in terms of weighted criteria and affordability, the Commission meets with selected landowners to discuss specific terms and conditions under which development rights could be conveyed to the Town.

§ 52-8. Duration of development rights acquired.

- A. Conservation easements or other conveyance of development rights acquired pursuant to this chapter shall not be alienated and shall be held by the Town and/or by other public agencies, nonprofit organizations or land trusts, in whole or in part, as the Town and landowner may agree, but always in perpetuity and in trust for the benefit of Town citizens and subject to alienation only after the conclusion of judicial action, as authorized in § 700.40(3)(b), Wis. Stats. No conservation easement shall be ordered by the court to be reconveyed to the underlying landowner unless the court concludes, upon clear and convincing evidence, that the use of the property protected by the conservation easement for agricultural purposes or as open space has become permanently impossible or impractical. Adjoining landowners shall be considered to be real parties in interest for purposes of such a suit and shall be joined as such, due to their interest in and economic and lifestyle reliance on the adjoining land being protected by the conservation easement.
- B. Upon such a finding by the court, the conservation easement rights shall be conveyed back to the landowner of the property affected by the easement rights in accordance with a court-approved price, established by a qualified appraiser as being the difference in value between the land with and without the rights contained in the conservation easement.
- C. Any funds received by the Town upon the alienation of a conservation easement in the manner set forth in this chapter shall not go into the general fund but shall be used to purchase additional conservation easements.

§ 52-9. Amendments.

This chapter shall be amended only upon an eighty-percent vote of the Town Board, followed by a three-fourths vote of the electors present at a Special Town Meeting called to consider ratification of amendments as proposed by the Town Board.

§ 52-10. Responsibility for costs.

The cost of obtaining appraisals, engineering, surveying, planning, financial, legal or other assistance reasonably necessary for the operation of the program to acquire development rights shall be paid from

the proceeds of any outside revenue received, local tax levy or special fee that may be properly established by the Town for the support of this program. The Town shall not be responsible for nor shall it reimburse expenses incurred by the landowner that have not been approved by the Farmland Preservation Commission in advance of being incurred or which are otherwise incidental to the transaction.