

TOWN OF LIBERTY GROVE  
OPEN SPACE PRESERVATION PROGRAM ORDINANCE

ORDINANCE NO. 2-99

AN ORDINANCE relating to the acquisition of voluntarily offered interest in Farmland and Open Space Land in the Town of Liberty Grove: calling an election by the votes of the Town on \_\_\_\_\_, to authorize the cash purchase and/or installment purchase contracts pursuant to the laws of the State of Wisconsin, specifically including Sections 60.10(2)(c) and (e), 60.10(3), 60.22(3), 61.34(1), 61.34 (3m) and 700.40 of Wisconsin Statutes, and for the purpose of providing funds for such acquisition. The principal and interest on such contracts shall be payable out of annual tax levies to be made upon all of the taxable property within the Town in excess of the constitutional and statutory limits and from any other money which may become legally available and used for such purposes.

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BE IT ORDAINED BY THE LIBERTY GROVE TOWN BOARD:

**SECTION 1: Findings and Declaration of Purpose**

The Town Board finds that:

(1) Liberty Grove Town is a highly desirable place to live and visit because of its outstanding physical qualities: immediate and dramatic proximity to Green Bay and Lake Michigan; 45 miles of shoreline that create a variety of opportunities for lake related recreation; near vertical bluffs that overlook the bay; tree bordered open fields in the interior of the town; extensive wooded areas of northern hardwoods and boreal forest conifers; extensive wetlands, both inland and coastal; natural areas of the highest ecological significance; a diversity of habitats for resident and migratory wildlife; scenic glacial topography, unique in Door County; scenic rustic roads throughout the interior region; and panoramic views in all directions. These qualities, combined with a favorable climate and nearness to heavily populated midwestern

areas, make it a prime target for tourism, retirement homes and related development. Land development has become a dominant force and much of our open space is not platted or speculatively reserved for future residential building.

(2) Despite the pace of these developmental activities, most of the Town's 35,000 acres is still in farm landscapes and open space lands, representing over 90 percent of the land area of Liberty Grove. Recent surveys and town meetings show that land use planning and natural resource preservation are issues of utmost concern in Liberty Grove. It is prudent, therefore that the Town Board take preemptive action in an effort to help mitigate the effects of development trends.

(3) Permanent acquisition by the Town of Liberty Grove of voluntarily offered interests in farmland and open space lands within the Town, as provided in this Ordinance and as authorized by the statutes of the State of Wisconsin, will permit these land to remain substantially undeveloped and will provide permanent protection for the public interest in such lands.

(4) Properties in which the Town acquires development rights or full ownership, as provided in this Ordinance, should remain substantially undeveloped as specified in the particular terms and conditions of such purchases.

(5) The acquisition of development rights or full ownership in lands as provided in this Ordinance is a public purpose of Liberty Grove Town, and financing such acquisition requires the Town to enter into purchases or installment purchases not to exceed statutory limits.

## **SECTION 2 Definitions**

**Agricultural Use:** Land devoted to the production of plants and animals useful to humans.

**Agricultural Rights:** An interest in land and the right to use and possess land for agricultural purposes.

**Development:** An activity that materially alters or affects the existing condition or use of any land, including construction, relocation, clearing, grading, mining, filling, paving, excavation and deposition of materials.

**Development Rights:** An interest in and the right to use and subdivide land for any and all residential, commercial and industrial purposes and activities which are not incident to open space.

**Conservation Easement:** A holder's nonpossessory interest in real property imposing any limitation or affirmative obligation the purpose of which may include: protecting land to maintain the rural character of the Town; permanently preserving scenic vistas and environmentally significant areas; creating and preserving "buffer zone" around significant environmental areas; protecting the Town from encroachment of neighboring villages; restricting land divisions; retaining or protecting natural, scenic or open space characteristics of the Town; assuring availability of land for agricultural forest, recreational or open-space use; protecting

natural resources; maintaining or enhancing air or water quality; preserving the historical, architectural, archaeological and cultural characteristics of the Town.

**Conservation Interest:** A holder's interest in a conservation easement, a third-party right-of-enforcement interest in a conservation easement, or a fee-title interest in real property.

**Nonprofit Conservation Organization:** A nonprofit corporation, a charitable trust or other nonprofit association whose purposes include the acquisition of property for conservation purposes and that meets the conditions of Section 501(c)(3) of the Internal Revenue Code and is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code.

**Eligible Land:** Land that qualifies for consideration for either purchase of development rights or outright purchase under this Ordinance.

**Full Ownership for Fee-Title Ownership:** Ownership in which the owner holds title to and has the right to control, use and transfer the property at will.

**Natural Area:** An area that exists substantially in a state of nature, where natural conditions prevail largely free of human intrusions.

**Open Space Land:** Undeveloped land, not in agricultural use, including woodlands, viewsheds, natural areas and wetlands. Such land also is substantially free of man-made impervious surfaces.

**Owner:** The party or parties that have a fee simple interest, or a real estate contract vendor's or vendee's interest, or a mortgagor's or mortgagee's interest in a property.

**Parcel:** Continuous property under one ownership.

**Permitted Use:** Any use designated in a conservation easement as permitted or that does not significantly alter the open space character of the land.

**Preserved Land:** Land permanently protected from development by state, county or town government, or by private, non-profit organizations such as The Nature Conservancy or the Door County Land Trust.

**Selection Committee:** The committee formed under Section 6 of this Ordinance to advise the Town board in the selection of Eligible Land for purchase of development rights or for outright purchase.

**Value of Development Rights:** The difference between the fair market value of full ownership of the land and the fair market value of the land without the development rights.

**Viewshed:** An area that contains a scenic or aesthetically attractive central focus or object in the landscape, and which "frames" or directs the observer's vision.

**Working Farm:** A farm that currently is operated as an economically productive agricultural enterprise.

### **SECTION 3 Authorization**

(1) The Town Board is hereby authorized to expend tax revenues to acquire property interests in Eligible lands described and prioritized in Section 5 of this Ordinance. The property interest acquired may be either the development rights, fee title, or any lesser interest, easement, covenant or other contractual rights. Such acquisition may be accomplished by purchase, gift, grant, bequest, devise, covenant or contract by only at a price which is equal to or less than the appraised value determined as provided in this Ordinance. Tax revenues authorized and collected under this ordinance shall be used to acquire such property interests only upon application of the owner of such property and in a strictly voluntary manner.

(2) The Town is authorized to enter into cash purchase and/or installment purchase contracts consistent with applicable law. When installment purchase contracts are made, the Town is authorized to pay interest on the declining unpaid principal balance at a legal rate of interest consistent with prevailing market conditions at the time of execution of the installment contract and adjusted for the tax-exempt status of such interest.

(3) The Town board is further authorized to contract with nonprofit conservation organizations, such as The Nature Conservancy, to participate jointly in the acquisition of interests in Eligible Lands.

(4) The Town may contract with a recognized and legally established non-profit land conservancy, such as the Door County Land Trust, or other experienced and qualified organization(s) and individual(s) to share in the process of negotiating easements and establishing both the baseline studies and the procedures for monitoring conservation easements acquired under this Ordinance.

(5) Interest which the Town owns in property other than Eligible Lands may be exchanged for property interests in Eligible Lands on an equivalent appraised-value basis. If the property interest exchanged is not exactly equal in appraised value, cash payments may be made to provide net equivalent value in the exchange.

(6) The Town shall budget on an annual basis for monitoring of all conservation easements and fee title purchases under the authority of this Ordinance.

### **SECTION 4 Retained Residential Development Rights**

(1) To accomplish the purposes of the Town of Liberty Grove Open Space Preservation Program, properties in the program should remain substantially undeveloped.

(2) Applications for the sale of development rights may include a request to retain the right to build or retain a limited number of residential dwellings (retained residential development rights), so long as the land remains substantially undeveloped.

(3) The building locations for retained residential development rights may be restricted in the negotiated conservation easement.

## **SECTION 5 Eligible Lands and Priority of Acquisition**

**To be eligible for acquisition under this ordinance**, all properties must both be offered voluntarily by their owners for acquisition and be included in the Open Space Preservation Area Map to be adopted by the Liberty Grove Town Board as it may from time to time be amended.

**To determine recommended priority among property interests** eligible for purchase and for which valid applications have been received by the Town in any given Selection Round, the following criteria and point values shall be used by the Selection Committee:

- (1) Is the property a working farm or orchard? Is there a history of an economical farm enterprise (animal/crop/vegetable/fruit production and marketing) on this land? Points (0 – 10)
- (2) Does the property contain significant natural features or open space, such as wetlands, meadows or forest? Points (0 – 10)
- (3) Does the property offer scenic views? Describe. Points (0 – 10)
- (4) Is the property adjacent to preserved land? Will protection of the property expand or buffer an existing system or parcel of protected or recreational land? Points (0 – 10)
- (5) Is the owner willing to sell the property or the development rights below their fair market value? Points (0 – 10)
- (6) Does the property have significant historical, cultural or archaeological features? Describe. Points (0 – 5)
- (7) What is the size of the parcel in acres? (Larger size parcels rate higher priority.) Points (0 – 5)
- (8) Can the property be split under the current land use zoning plan or regulations? If so, how many splits are possible? (Higher potential density rates higher priority.) Points (0 – 5)
- (9) Is the property along one of the Town's borders or under annexation pressure from another municipality? Points (0 – 5)

Within a selection round, the total score of points will guide the consideration of lands volunteered for purchase of development rights or outright purchase

It is anticipated that, in most cases, cost of development rights will be substantially less than the cost of outright purchase. In any event, after each site receives a priority ranking within a selection round, and after the property has been appraised, the Selection Committee shall recommend to the Town board the preferred mode of land preservation.

## **SECTION 6 Selection Committee**

(1) A Selection Committee shall be appointed by the Town Board within 30 days following the approval of the program by the voters. The Selection Committee shall have seven voting members and shall advise the Town Board in the selection of Eligible Lands on which development rights or fee title rights are offered by their owners for acquisition. Selection Committee recommendations for the selection of Eligible Lands shall be made by a majority of its members.

(2) The Selection Committee shall consist of residents and/or property owners of the Town of Liberty Grove chosen to provide broad representation of the interests of the Town's population. The Town Board also may appoint non-voting ex-officio members to the Selection Committee.

(3) The Selection Committee may consult experts as it may desire and the Town Board may but is not required to appropriate funds for that purpose.

(4) Members of the Selection Committee shall serve three-year terms, except that the initial terms of two members shall be one year and the initial terms of two other members shall be for two years. Members may be removed by the Town Board for good cause as determined by the Town Board. Members shall not be compensated for their services but shall be reimbursed for expenses incurred in the performance of their duties. Members may be reappointed to successive terms.

(5) No member of the Selection Committee shall vote on the selection of any parcel(s) in which they have an interest or on any parcel(s) adjacent to a property in which they have an interest.

## **SECTION 7 Selection**

Beginning in the first year following the program's approval and continuing at least once a year until all proceeds of the program has been expended, the Town Board shall conduct a voluntary property selection process (herein after called "Selection Round") generally as follows:

(1) In each selection round the development right or fee title on all Eligible Land properties offered shall be eligible for purchase. In all Selection Rounds the Selection Committee shall negotiate contracts for properties of higher priority before properties of lower priority, provided:

a. If the average appraised value per acre of development rights on a given parcel deviates by 30% or more above the median appraised value of all appraised properties, then the Town Board may renegotiate for a lower price and/or seek outside funding for the purchase of fee title or development rights on that parcel.

b. In the event that points are assigned to properties based on a viewshed and the whole scenic view is not protected because either some of the properties in the viewshed are not offered or an easement that protects the scenic view cannot be successfully negotiated, then the Selection Committee shall determine and remove

those scenic view points from all parcels tht might be obstructed by development on the non-protected parcel.

c. The Selection Committee shall remove points that were given because the property was adjacent to properties with offered fee title or development rights and those adjacent properties are no longer offered.

d. The Selection Committee may receive and act on appeals of any factual nature by affected property owners, and any appeal may be reviewed by the Town Board.

(2) The Town Board shall begin each selection round by giving legal public notice describing both the types of properties eligible for purchase in that selection round and the general procedure to be followed in the selection process, and shall invite the owners of such types of properties to make application for purchase of development rights or fee title ownership by the Town and to describe the property interest which the Owner is willing to sell. Such application shall include specification of any residential development rights desired to be retained by the owner.

(3) Upon closing of the application period, the Selection Committee shall review each application that has been received to determine the eligibility and priority classification of each property interest and to verify ownership by title search.

(4) For those applications which meet the requirements of Section 5 of this ordinance, the Selection Committee shall cause an appraisal of the applicant's property interest to be made. In cases where development rights are offered for purchase, both a "before" and an "after" appraisal shall be made of each property to determine the value of the development rights. The "before" appraisal shall determine the fair market value of the property including all development rights; the "after" appraisal shall determine the fair market value of the property without the development rights, plus the value of ay specifically retained residential development rights.

(5) Appraisals shall be made by State Certified Appraisers selected by the Selection Committee. No selected appraiser shall have a property interest, personal interest or financial interest in Eligible Lands. In all cases, the same appraiser shall conduct the both the "before" and "after" appraisals for any given easement.

(6) Appraisals shall be in writing and shall be furnished to the Selection Committee and to the respective owners for review. Errors of fact in any appraisal may be called to the attention of the appraiser by the Town or by owners of the property appraised but corrections of the appraisal may be made only by the appraiser. If any owner of property believes it has not been adequately appraised, such owner may, within the time allowed on the selection schedule, have a review appraisal made at the owner's expense by a State Certified Appraiser. The appraisal shall then be filed with the Selection Committee. The Selection Committee shall use both appraisals to reach an agreement as to the appropriate value of the development rights.

(7) Terms and conditions of sale and information on the effect of the sale may be reviewed by the Town Administrator, or by the Town Administrator's designee, with owners prior to the submission of written applications.

(8) Written applications by owners who desire to have their development rights purchased by the Town shall be submitted on forms provided by the Town. These written offers shall include complete specification of any development rights desired to be retained by the owners.

(9) Upon receiving the recommendations of the Selection Committee, the Town Board shall take final action on all proposed purchase(s) of development rights or land under this ordinance; in doing so, the Town Board shall be guided by not bound by the recommendations of the Selection Committee and can accept, reject, or renegotiate any specific proposed purchase.

### **SECTION 8 Duration of Acquired Interests**

All development rights or fee title acquired under this Ordinance shall be held in trust by the Town for the benefit of its citizens in perpetuity, provided that: If the Town board shall find that development rights or land acquired under this Ordinance can no longer reasonably be utilized as specified here (due to changes surrounding the subject property) as to any interest in land acquired with the tax-levy proceeds, the Town Board shall submit to the voters of the Town a proposition to approve of the disposition of such interest. Only upon a majority vote approving such proposition can such interest be disposed of by the Town and the proceeds of such disposition shall only be used for the acquisition of interests in "Eligible Lands" as provided in this Ordinance. "Before" and "after" appraisals shall be made to determine the value of development rights, and the Town shall not sell the development rights for an amount less than the appraised value of the development rights determined as follows: The "before" appraisal shall determine the fair market value of the property including all development rights, plus the value of any specifically retained residential development rights. For fee title sales only an appraisal of the fair market value of full ownership would be required. All such appraisals shall be made by State Certified Appraisers selected by the Selection Committee. No selected appraiser shall have a property interest, personal interest or financial interest in any Eligible Lands. The same appraiser shall conduct both the "before" and "after" appraisals.

### **SECTION 9 Related Costs**

The costs of initial appraisal, engineering, surveying, planning, financial, legal and other services lawfully incurred incident to the acquisition of interests in Eligible Lands by the Town shall be paid from the proceeds of the tax levy; however, the Town shall not be responsible for expenses incurred by any owner incident to such transactions.

### **SECTION 10 Supplemental Funds**

Supplemental or matching funds from other governmental agencies or private sources may become available to pay a portion of the cost of acquiring fee title, development rights, or some lesser interest in Eligible Lands or to supplement or enlarge such acquisition. The Town Board is hereby authorized to utilize such funds to purchase interests in Eligible Lands or to otherwise



supplement the proceeds of the tax levy in the manner provided by this Ordinance an in accordance with the applicable laws or terms governing such grants.

**SECTION 11 Town Purpose**

The Town Board finds and declares that Town Funds may be used for the purpose of paying in whole or in part the cost of: (a) acquisition of interest in Eligible Lands as set forth herein, including any costs necessarily incident to such acquisition; and (b) the monitoring and enforcement of conservations easements.

**SECTION 12 Open Space Preservation Acquisition Fund**

The revenues from the tax levy and other gifts and grants shall be deposited in a Open Space Preservation Acquisition Fund to be hereafter created in the office of Treasurer of Liberty Grove Town (here and after “acquisition Fund”). Money in such Acquisition Fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Town money. The revenues from the tax levy and other gifts and grants, plus any interest received from the deposit or investment of such revenues shall be applied and used solely for the purposes set forth in this Ordinance.

**SECTION 13 Open Space Preservation Enforcement Fund**

The Town Board shall establish an Open Space Preservation Enforcement Fund (hereinafter “Enforcement Fund”) from the proceeds of the program fund to be used for enforcement expenses, including follow-up with the landowner, review and inspection of remedial measures, and legal, engineering and other professional services. Monday in such Enforcement Fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Town Monday. The interest received from the deposit or investment of Town money. The interest received from the deposit or investment of such revenues shall be applied and used solely for the purposes set forth in this Section.

This Ordinance shall take effect immediately upon passage by the electorate by a majority vote and posting or publication as provided by law.

Dated this 18<sup>th</sup> day of February, 1999  
TOWN OF LIBERTY GROVE

By: \_\_\_\_\_  
Robert Weisser, Chairman

Attest: \_\_\_\_\_  
Walter Kalms, Clerk