ORDINANCE OF THE TOWN OF DUNKIRK, WISCONSIN
Adopted pursuant to Sec. 1.15-1.16 of the Town of Dunkirk Code

Title: Chapter 18: Rural Preservation Program

Ordinance Identification Number	01-2020
Code Section(s) created, amended or repealed	Chapter 18
Presented to Board by	Melanie Huchthausen, Clerk
Date(s) Public Hearing(s) held (if required)	July 6, 2020
Date adopted	July 6, 2020
Vote	3-0
Date of posting of adoption of ordinance	July 7, 2020

RELATING TO THE TOWN OF DUNKIRK
RURAL RESERVATION PROGRAM

The Town Board of Supervisors of the Town of Dunkirk, Dane County, Wisconsin, DO ORDAIN as follows:

Section I. An Ordinance ("Ordinance") to create the Town of Dunkirk Rural Preservation Commission ("Commission") and to establish the Town of Dunkirk Rural Preservation Program ("Program") pursuant to the laws of the State of Wisconsin, specifically including Sections 60.10(2)(c) and (e), 60.10(3)(a), 60.22(3), 61.34(1). 61.34(3m), and 700.40 of the Wisconsin Statutes is hereby created to read as follows:

I. DECLARATION OF PURPOSE

A. *Purpose of the Program.* The purpose of the Dunkirk Rural Preservation Program is to protect and preserve agricultural lands, natural areas and the rural character of the Town of Dunkirk by the acquisition of development rights and agricultural and natural area conservation easements.
B. *Mechanism to achieve purpose.* The purchase of development rights and the placement of conservation easements on farmland and natural areas is a public purpose of the Town of Dunkirk. Participation in the Program by landowners will be voluntary only. The Program will work with willing, eligible landowners to permanently acquire such rights and easements through written agreements with said landowners.

II. DEFINITIONS

A. *Town Board* means the Town of Dunkirk Board of Supervisors.
B. *Conservation Easement* means a holder's nonpossessory interest in real property within the Town of Dunkirk imposing any limitation or affirmative obligation the purpose of which includes protecting farmland to maintain the character of the Town of Dunkirk, permanently preserving scenic vistas and natural areas, including wetlands, lakes, streams and woodlots, creating and preserving "buffer zones" around significant environmental areas and agricultural areas, 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 uses, protecting natural resources, maintaining or enhancing air or water quality.

C. *Commission* means the Town of Dunkirk Rural Preservation Commission.
D. *Conservation interest* means a holder's interest in a conservation easement, a third-party right of enforcement in a conservation easement or fee title interest in real property.
E. *Nonprofit conservation organization* means a nonprofit corporation, a charitable trust or other nonprofit association whose purposes include the acquisition of property for conservation purposes and that is described in Section 501(c)(3) of the Internal Revenue Code as is exempt from federal income tax under Section 501(a) of the Internal Revenue Code.

III. RURAL PRESERVATION COMMISSION

A. *Creation.* There is hereby created the Town of Dunkirk Rural Preservation Commission (hereinafter the "Commission").

B. *Duties.* The Commission shall report to the Town Board.
   1. The Commission shall be responsible for the general supervision of the Program as set forth in this Ordinance including, but not limited to, those duties stated in paragraph 2 below.
   2. The duties of the Commission shall include, but not be limited to, the following:
      a.) Maintaining contact with public and private agencies to maximize the resources and coordinate efforts to preserve agricultural lands, natural areas and the rural character of the Town of Dunkirk.
      b.) Establishing selection criteria for ranking and prioritizing of applications to the Program. Subject to Town Board approval required in section V(C).
      c.) Reviewing, scoring and ranking all applications according to the adopted selection criteria and determining whether to recommend that development rights be acquired.
      e.) Establishing and approving the restrictions and permitted uses under the conservation easement. Subject to Town Board approval required in section V(E)
      f.) Arranging for, reviewing, and accepting appraisals for determining the value of the conservation easements. Subject to section V(D).
      g.) Negotiating the terms, including the price, for the purchase of development rights and conservation easements. Subject to section V(E) and section V(F).
      h.) Establishing monitoring procedures and overseeing subsequent monitoring to insure compliance with the conservation easement.

C. *Membership.* The Commission shall consist of at least seven (7) members and no more than nine (9) members. The members shall be appointed by the Town Chairman subject to confirmation by the Town Board. At least four (4) members or a simple majority of members of the Commission shall be property owners of the Town at all times and the remaining members may be property owners or non-property owners. In addition, a representative of a non-profit conservation organization shall serve as a member. Only electors of the Town shall be eligible to serve as Chair of the Commission. In addition to the representative of a non-profit conservation organization, the members shall be chosen, to the extent possible, to include the following persons:
   1. A person with background and experience in agriculture.
   2. A person with background and experience in conservation or planning.
   3. A person with background in real estate, law, or finance.

D. *Officers.* The Commission shall have the following officers:
   1. A Chair. The Commission shall designate by majority vote a member who is an elector of the Town to act as Chair of the Commission. The Chair shall preside at all meetings of the Commission. In his or her absence, the Commission shall designate by majority vote a member to serve as presiding officer of its meeting. The Chair shall serve only while he or she is a member of the Commission. His or term may be terminated at any time by majority vote of the Commission with or without cause for termination. If the Chair is terminated or vacates the position by death or resignation, a new Chair shall be designated in the same manner.
   2. A Secretary. The Secretary shall be selected from the Commission members by a majority vote of the Commission at the first meeting of the Commission to serve until May 31 of the following year. Thereafter, the Secretary shall be elected in the same manner at the first meeting of the Commission held in the month of May to serve from June 1 of that year to May 31 of the following year. The Secretary shall maintain records of the Commission's work, including minutes of all meetings of the Commission. If approved by the Town Board, the Commission may elect to hire a Secretary who is not a member of the Commission. In that case, the Secretary shall be entitled to participate in discussions, but shall not have voting authority.
   3. Additional Officers. The Commission may establish additional officers as it determines necessary or convenient to the operation of the Commission and shall establish the means of selecting such officers and their duties by majority vote of the Commission.

E. *Terms.* The representative of a nonprofit conservation organization shall serve a three-year term expiring on the third anniversary after appointment. To assist with continuity and historical memory, the remaining members of the Commission shall serve staggered terms. Two of the initial members shall be designated to serve for terms expiring on the first anniversary of their appointment, two other initial members shall be designated to serve for terms expiring on the second anniversary of their appointment, and the remaining two initial members shall be designated to serve for terms expiring on the third anniversary of their appointment. After their initial terms, members shall be appointed for three year terms each to remain on a staggered term schedule.

F. *Rules of Procedure.* The Commission may adopt rules of procedure governing its deliberations. In the absence of any other such rules, the Commission shall conduct its proceedings in accordance with *Robert's Rules of Order,* latest revised edition.

IV. RURAL PRESERVATION PROGRAM EXPENDITURES. The Town Board is authorized to acquire conservation interests in real property or to make payments to nonprofit conservation organizations for the purpose of rural preservation as provided herein.

A. *Conservation Easement Purchases.* The Town Board may, subject to subsection D, expend funds for the costs associated with the purchase or acceptance of donated holders' interests or third party rights of enforcement in conservation easements as defined, respectively, in Secs. 700.40(1)(b) and 700.40(1)(c) of the Wisconsin Statutes.

B. *Land Purchases.* The Town Board may, subject to subsection D, expend funds for the purchase of land for the purpose of rural preservation.

C. *Payments to Nonprofit Organizations.* The Town Board may, subject to subsection D, appropriate money for payment to a nonprofit conservation organization for the

conservation of natural resources within the Town or beneficial to the Town through the acquisition of conservation interests, provided that the recipient organization submits and the Town Board approves a detailed plan for the work to be done as provided for in Section 60.23(6) of the Wisconsin Statutes. The Town Board may attach such conditions and restrictions on the appropriation as the Town Board considers necessary and appropriate to protect the Town's interests in rural preservation.

D. The Commission may recommend to the Town Board, the expenditure of funds under subsections A, B, or C.

E. Indirect Program Costs. In addition to the purchase price there for, the Town Board may expend funds for the payment of indirect costs associated with the conduct of the Program, including costs of administration, and acquisition of conservation interests, including but not limited to survey costs, title evidence, baseline data documentation, attorneys' fees, appraisers' fees, environmental assessments, transfer taxes, monitoring/endowment fees, recording fees and conservation easement enforcement.

F. Rural Preservation Fund. Funding for the Rural Preservation Program shall be deposited in a special or segregated Rural Preservation Fund. Money in such Fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Town of Dunkirk money. Revenues from the deposit and/or investment of the Rural Preservation Fund shall be applied and used solely for the purpose of acquiring conservation easements under this Ordinance on land within the Town of Dunkirk and for indirect Program costs. Funds may be use for making payments obligated under installment purchase contracts or bonds.

V. PROCEDURE FOR ACQUISITION OF CONSERVATION INTERESTS

A. The Town Board may acquire conservation interests only from willing owners and may not exercise its power of eminent domain to acquire such interests.

B. The Town Board may conduct public meetings or public hearings as it determines necessary or convenient to the consideration of Rural Preservation Program expenditures.

C. The Program selection criteria for ranking and prioritizing of applications must be approved by the Town Board, after giving due consideration to the recommendations of the Commission in such regard.

D. Prior to purchasing any conservation interest, the Town Board shall cause an appraisal to be prepared by a state certified appraiser setting forth the fair market value of the interest proposed to be purchased.

E. The Town Board shall make the final decision regarding the terms of the conservation easement, after giving due consideration to the recommendations of the Commission in such regard.

F. All conservation easement purchases must be approved by the Town Board and approved by a majority of the electors of the Town voting on the measure at a Special Town Meeting or Annual Town Meeting.

VI. ALIENATION OF ACQUIRED INTERESTS. Except where the intention to reconvey a conservation easement is expressly provided for in the Town Board's authorization to acquire such interest, no conservation interests acquired by the Town under the provisions

of this Ordinance shall thereafter be alienated, unless all the following conditions have been met:

A. The Town Board or the Commission has conducted a public hearing for the purposes of considering the proposed alienation;
B. The Town Board has referred this issue to the Commission, for its consideration and recommendation before final action is taken by the Town Board on the proposed alienation. Unless such recommendation is made within 30 days, or such longer period as may be stipulated by the Town Board, the Town Board may take final action without it;
C. A resolution in support of the proposed alienation is adopted by an affirmative vote of two-thirds of the members of the Town Board; and
D. Affirmative action by the majority of the electors of the Town voting on the measure at a Special Town meeting or Annual Meeting;
E. A resolution in support of the proposed alienation is adopted by a majority of the members of the governing body of any public agency or nonprofit conservation organization which jointly undertook the acquisition of the conservation interest proposed to be alienated.
F. Town conservation easements shall include a provision that, if an easement is terminated and the property is subsequently sold, exchanged, or taken in condemnation then, the Town shall be entitled to a portion of the proceeds for such sale, exchange or condemnation. The Town shall use the proceeds from any sale, exchange, or involuntary conversion of all or any portion of the property subsequent to such termination or extinguishment in a manner consistent with the conservation purposes of this ordinance.

VII. CONFLICT OF INTEREST. Commissioners and Town Board members shall disclose any conflict of interest or potential conflict of interest and may not deliberate or vote when a conflict exists. Conflict of interests include, but are not confined to, situations where (1) the board member is the applicant; (2) the member is a close relative of the applicant; (3) the board member has a close business association or ties with the applicant; (4) the board member, a relative, or a business associate could receive financial gain or benefit from the acceptance or denial of the application. These qualifications are in addition to, but not in lieu of, any other statutory or common law provisions relating to conflict of interest or incompatibility of office provisions.

VIII. AMENDMENT OR REPEAL. This Ordinance may be amended or repealed only by affirmative vote of the Town Board following a public hearing.

IX. SEVERABILITY. Should any provision of this Ordinance be adjudged invalid by a court of competent jurisdiction, such adjudication shall not affect the validity of any other provision of this Ordinance.

The Town Board DO FURTHER ORDAIN that this Ordinance shall be effective upon its adoption and publication.

Dated this 6th day of July, 2020.

TOWN OF DUNKIRK **ATTEST:**

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Norman Monsen, Town Chair Melanie Huchthausen, Town Clerk