

§150-xxx Transferable Development Rights

A. Purposes and authority

1. The purposes of this ordinance are to:
 - (a) Accomplish two important goals in Worcester's Open Space and Comprehensive Plans: (1) the preservation of farmland and open space, and (2) the preservation and enhancement of the character and economic viability of Worcester's villages.
 - (b) Preserve open space, scenic views, critical habitat, and sensitive resources areas, and conserve agriculture and forestry uses of land;
 - (c) Protect lands and structures of aesthetic, architectural, and historic significance;
 - (d) Retain open areas in which healthful outdoor recreation can occur;
 - (e) Ensure that landowners may make reasonable use of their property rights by transferring their right to develop to eligible zones;
 - (f) Provide a mechanism whereby Development Rights may be reliably transferred;
 - (g) Ensure that Development Rights are transferred to properties in areas or districts that are appropriate for additional development; and
 - (h) Effectively achieve the land use planning goals identified in Worcester Township's Comprehensive Plan while preserving existing property rights.
2. This ordinance is enacted pursuant to the authority granted by § 603(c)(2.2) and 619.1 of the Pennsylvania Municipalities Planning Code, under the terms of which Development Rights are acknowledged to be severable and separately conveyable from a Sending District to a Receiving District. Compliance with the provisions of this chapter shall be a prerequisite to the use of the transfer of Development Rights option.

B. Definitions

Development Rights -- The rights of the owner of a parcel of land, under land development regulations, to configure that parcel and the structures thereon to a particular density for residential uses, or gross building area for nonresidential uses.

Receiving District -- A district in which the Development Rights of parcels in the Sending District may be used. One or more Receiving Districts may be established by separate ordinance.

Receiving Parcel -- A parcel of land in a Receiving District on which a specified increased density and/or intensity of use is allowed by reason of an ordinance permitting the transfer of Development Rights to that parcel.

Sending District -- One or more districts from which the Development Rights of eligible parcels may be severed.

Sending Parcel -- A parcel of land in the Sending District which is eligible for and is the subject of a transfer of Development Rights whereby the owner of the parcel severs the

right to develop residential lots on the parcel, and on which those rights, once severed and conveyed, are extinguished and may not be used on that parcel by reason of the transfer of Development Rights.

Transfer of Development Rights -- The procedure prescribed by this ordinance whereby the owner of a parcel in the Sending District severs and conveys Development Rights such that the Development Rights so conveyed are extinguished on the Sending Parcel and are held by a Transferee and, subject to applicable approvals, may be used on a Receiving Parcel.

Transferee -- The person or legal entity, including a person or legal entity that owns property in a Receiving District, which purchases transferable Development Rights.

Transferor -- The owner of a Sending Parcel, or the subsequent seller/grantor of transferable Development Rights.

C. Sending District

1. The AGR and LPD zoning districts shall constitute the Sending District. Parcels or portions of parcels over 30 acres in size which are located in the Sending District and are not part of an overlay district shall be eligible for a transfer of Development Rights.

2. Adjacent parcels (including parcels separated by a road) which are held in the same ownership and which would otherwise qualify as Sending Parcels may be aggregated in size in order to qualify.

3. Parcels owned by federal, state, county, or municipal governments or agencies shall not be eligible for a transfer of Development Rights.

4. Parcels owned by a public utility and used for transmission or generation purposes shall not be eligible for a transfer of Development Rights.

D. Right to Transfer Development Rights

(1) A Transferor shall have the right to sever Development Rights from a parcel in a Sending District and to sell, trade, grant, devise, bequeath, or barter all or a portion of those rights, consistent with the purposes of Section 150-xxxA above.

(2) A Transferee may retire Development Rights, resell them, or apply them to property in a Receiving District in order to obtain approval for development at an intensity of use greater than would otherwise be allowed, up to the maximum allowed with TDRs as permitted by any ordinance that shall establish a Receiving District.

- (3) Transferable Development Rights (TDRs) may be transferred from a Sending Parcel to a Receiving Parcel as provided by any ordinance establishing a Receiving District. Transferable Development Rights may be applied only in a designated Receiving District, up to the maximum allowed with TDRs as permitted by an ordinance that shall establish a Receiving District.
- (4) Any transfer of Development Rights pursuant to this ordinance authorizes only the increase(s) specified in the ordinance establishing the Receiving District and shall not alter or waive the development standards of the Receiving District, including standards for floodplains, wetlands, and other environmentally sensitive areas, nor shall it allow a use otherwise prohibited in a Receiving District. Approval of a transfer of Development Rights shall not constitute approval of the proposed use.
- (5) The certification and conveyance of TDRs are accomplished solely on a voluntary basis. Landowners are in no way compelled to sever or convey their Development Rights. If conveyances occur, they shall be accomplished according to §150-xxx(G) of this article. Unconveyed TDRs may be transferred with the underlying land or separately, subject only to the limitations of Pennsylvania law.

E. Calculation of Development Rights

Transferable Development Rights shall be calculated on a Sending Parcel as follows:

1. Determine the Lot Area of the Sending Parcel as defined in §150-9, "Lot Area Calculation." The most accurate data available shall be used to calculate Lot Area. For purposes of this Section, Lot Area may be calculated on the basis of available generalized mapping and shall not require a field survey, subject to review and approval by the Municipal Engineer.
 - a. Land restricted by covenant, easement, deed restriction, or other legal agreement shall not be included in any calculation of Transferable Development Rights.
 - b. Preferential tax assessment shall have no effect on the calculation of Transferable Development Rights.
2. Divide the Lot Area by the minimum lot size according to the parcel's zoning. Round down to the nearest whole number.
3. Subtract one Development Right for each existing dwelling unit on the Sending Parcel. For each separate parcel that has no existing dwelling unit, subtract one Development Right to be retained for future use as a Dwelling Unit.
4. Subtract one Development Right for each 1000 square feet or less of building footprint for all nonresidential or nonagricultural buildings on the property, whether permitted or nonconforming.
5. This number equals the number of transferable Development Rights that shall be certified for the Sending Parcel.

F. Application for Transfer of Development Rights Certificate

1. An application for a transfer of Development Rights certificate shall include [xx copies of]:

(a) A certificate of title for the Sending Parcel prepared by an attorney licensed to practice law in Pennsylvania, including a title search of the Sending Parcel sufficient to determine all owners of the Sending Parcel and all lienholders and easement holders;

(b) A legal description of the Sending Parcel prepared by a licensed or registered land surveyor;

(c) A plot plan of the Sending Parcel showing the number of TDRs available on the Sending Parcel, including calculations showing their determination, in accordance with section 150-xxx(E) above;

(d) A copy of the proposed Deed of Transferable Development Rights and a copy of the proposed Declaration of Restriction of Development, as specified herein;

(e) Applicable fees; and

(f) Such additional information required by the Zoning Officer as may be necessary to determine the number of Development Rights that qualify for certification.

2. Upon receipt of a complete application as required above, the Zoning Officer shall determine the number of Development Rights attributable to the Sending Parcel. The Zoning Officer shall also determine, with the advice of the Township Solicitor and/or the Township Engineer, the sufficiency of (1) the plot plan of the Sending Parcel showing the number of TDRs available on the Sending Parcel and the calculations showing their determination, (2) the Declaration of Restriction of Development, and (3) the Deed of Transferable Development Rights. The Zoning Officer may request such additional information as may be necessary to determine the number of Development Rights attributable to the Sending Parcel. The Zoning Officer shall inform the Transferor and Transferee (if applicable) of the Development Rights of such determination in writing. Any appeals from the determination of the Zoning Officer shall be made in accordance with the provisions of § 150-xxx of this chapter.

Upon approval of the Transferor's application, the Zoning Officer shall issue a transfer of Development Rights certificate to the Transferor. The Zoning Officer shall maintain permanent records of all certificates issued, deeds of transfer and restrictive covenants recorded, and Development Rights retired, transferred to a Receiving District, or otherwise extinguished.

3. A Transfer of Development Rights certificate shall include the following information:

- (a) The name of the Transferor;
 - (b) A legal description of the Sending Parcel to which the calculation of Development Rights is applicable;
 - (c) A statement of the number of Development Rights eligible for transfer;
 - (d) The date of issuance;
 - (e) The signature of the Zoning Officer; and
 - (f) The serial number assigned by the Zoning Officer.
4. A TDR certificate shall remain valid regardless of transfer of ownership of the parcel.
5. A TDR certificate shall automatically become null and void if the parcel is subdivided, except for a simple lot line change that does not change the calculation of the number of TDRs, in the opinion of the Zoning Officer.

G. Conveyance of Transferable Development Rights

1. Transferable Development Rights certified under section 150-xxx(F) of this article may be sold, donated, and/or devised to any party, subject to the following:

A. If the owner of a Sending Parcel on which TDRs have been certified shall subsequently apply for subdivision, land development, or a building permit for a dwelling unit,

1. Upon filing the application for subdivision, land development, or building permit, the TDR certificate shall become null and void, and the owner shall surrender said TDR certificate to the Zoning Officer. If the Sending Parcel retained one Development Right for the construction of a dwelling unit, the application for a building permit for that dwelling unit shall not void the TDR certificate.

2. Upon the termination (by approval, disapproval, or withdrawal) of the application for subdivision, land development or building permit, the owner may reapply for a TDR certificate by filing a new application according to the requirements of section 150-xxx(E) above.

3. The provisions of this subsection shall not apply in the case of an application for subdivision consisting only of a lot line change or reverse subdivision which does not, in the opinion of the Zoning Officer, after consultation if necessary with the Township Engineer, result in a decrease in the number of TDRs already certified on the Sending Parcel.

2. Upon receipt of a TDR certificate from the Zoning Officer, the Transferor and the Transferee may present the Township with the deed of transfer of Development Rights for endorsement as required by § 619(1)(c) of the Pennsylvania Municipalities Code. No deed of transfer of Development Rights shall be so endorsed until the Township is presented with evidence that the declaration of restrictive covenant for the same number of Development Rights on the Sending Parcel has been approved by the Township and recorded with the Montgomery County Recorder of Deeds. In lieu of presentation of proof of recording the declaration of restrictive covenant, the fully executed declaration of restriction covenant may be presented to the Township when the deed of transfer of Development Rights is presented for endorsement, and the Township, at the applicant's expense, shall record both documents.

H. Deed of Transfer of Development Rights

1. A deed of transfer of Development Rights shall conform to the requirements of this Section. A deed of transfer, other than an instrument of original transfer, need not contain a legal description or plat of the Sending Parcel.

2. Any deed of transfer of Development Rights shall contain:

- (a) The names of the Transferor and the Transferee;
- (b) A certificate of title for the Development Rights to be transferred, prepared by an attorney licensed to practice law in the Commonwealth of Pennsylvania;
- (c) A covenant that the Transferor grants and assigns to the Transferee and the Transferee's heirs, successors, and assigns a specific number of Development Rights from the Sending Parcel;
- (d) A covenant by which the Transferor acknowledges that s/he has no further use or right of use with respect to the Development Rights being transferred;
- (e) The parcel number(s) from which the Development Rights are being severed, and the parcel number(s) to which the Development Rights are being transferred, if applicable;
- (f) The serial numbers of the TDRs, as assigned in the Transfer of Development Rights certificate described in §150-xxx above, which are being transferred in this transaction; and
- (g) [*any other relevant information or covenants*].

3. An instrument of original transfer is required when Development Rights are initially separated from a Sending Parcel. It shall contain the information set forth in paragraph (2) above and the following additional information:

- (a) A legal description and plat of the Sending Parcel prepared by a licensed surveyor named in the instrument;
- (b) The serial numbers of the TDRs as assigned in the Transfer of Development Rights certificate described in §150-xxx above.
- (c) A covenant indicating the number of Development Rights remaining on the Sending Parcel and stating that the Sending Parcel may not be subdivided or

developed to a greater density or intensity than permitted by the remaining Development Rights;

(d) A covenant that all provisions of the instrument of original transfer shall run with and bind the Sending Parcel and may be enforced by Worcester Township and [*list other parties, such as nonprofit conservation organizations; if a private right of action is established in favor of landowners in the Sending and/or Receiving Districts, include that here*]; and

(e) [*indicate topics of other covenants, as appropriate*].

I. Declaration of Restrictive Covenant.

1. The owner conveying TDRs from the Sending Parcel shall, by a Declaration of Restriction of Development, perpetually restrict the Sending Parcel or the portion thereof from which TDRs are conveyed from future development. Such Declaration shall be in a form approved by the Township Solicitor and shall restrict future use of the Sending Parcel or the applicable portion thereof to passive open space or Agriculture as the principal use.

2. All Declarations of Restriction of Development shall designate the Township, and/or a bona fide nonprofit conservation organization acceptable to the Township at its sole discretion, as a beneficiary of the restrictions imposed upon the Sending Parcel. Such restrictions shall be enforceable by the Township and a nonprofit conservation organization, if so designated in the Declaration. The Township shall hold the rights granted by the Declaration of Restriction of Development as trustee for all of the residents of the Township, in recognition of the right of the people to the preservation of the natural, scenic, historic and aesthetic values of the Township and in further recognition of the fact that these resources are the common property of the residents of the Township, including generations yet to come. The Declaration shall also designate any owner of real property in Worcester Township as having separate and independent enforcement rights with respect to the restrictive covenant.

3. Land from which TDRs have been conveyed shall continue to be owned, subject to said restrictions, by the landowner, his/her/its heirs, executors, administrators, successors, and/or assigns.

4. Where Development Rights are to be conveyed from less than the entire Sending Parcel, the plan prepared in accordance with § 150-xxx(F)(1)(c) above shall be attached to and recorded with the Declaration of Restriction of Development. The portion of the parcel from which the Development Rights are transferred shall be clearly identified on the plan. Such plan shall also include a notation of the number of Development Rights applicable to the entire parcel, the number of Development Rights applicable to the identified portion of the parcel from which the Development Rights are to be severed, and the number of Development Rights which remain available to the remaining portion of the parcel. The acreage to be restricted shall be contiguous and shall not extend less than seventy-five (75) feet in the narrowest dimension at any point, except for such lands specifically serving as trail links. The portion of the parcel which will not be restricted

shall be usable under the use, area, dimensional, performance and other standards of the applicable zoning ordinance, and shall be one contiguous area.

5. All owners of the Sending Parcel from which TDRs are conveyed shall execute the Declaration of Restriction of Development. All lienholders of the Sending Parcel shall execute a joinder and/or consent to the Declaration of Restriction of Development.

6. The Declaration of Restriction of Development shall provide that no portion of the Sending Parcel used to calculate the number of Development Rights to be transferred shall be used to satisfy minimum yard setbacks, lot area requirements, open space requirements, parkland set-aside requirements, or any other SALDO or ZO requirement for any development rights that are to be retained or for any other development anywhere in the Township.

7. Should the Township acquire ownership of the Sending Parcel, the land may be used for passive recreational purposes that are compatible with the conservation of open space and preservation of natural habitat and viewsheds.

J. Application of Transferable Development Rights.

When TDRs have been or are proposed to be acquired by a Transferee to be used in a Receiving District, the following shall apply:

1. Application materials. In addition to any material required by the ordinance establishing the Receiving District and the SALDO and ZO of Worcester Township, the applicant shall submit [*xx copies of*]:

(a) A preliminary subdivision and/or land development plan, prepared in accordance with the Subdivision and Land Development ordinances of Worcester Township. The preliminary plan must indicate (1) that TDRs are to be used; (2) the base permitted density or intensity of use allowed for the property and the maximum permitted density or intensity of use permitted with TDRs; (3) the proposed building floor area, building coverage, and/or impervious coverage, as applicable; and (4) the number of TDRs to be applied to the project.

(b) An agreement of sale for TDRs between (1) the owner of the Sending Parcel on which TDRs have been certified, or the owner of TDRs that have been previously severed from a Sending Parcel, as evidenced by a recorded deed of transfer of Development Rights, and (2) the owner or equitable owner of the Receiving Parcel proposed to be developed with the TDRs. The agreement may be contingent upon approval of a final subdivision or land development plan for the Receiving Parcel.

(c) A copy of the transfer of Development Rights certificate

(d) If the Transferor is not the owner of the Sending Parcel, a title search on the TDRs.

2. Review, approval and recording of Transferable Development Rights applied to lands within a Receiving District. No final plan for any subdivision or land development which utilizes TDRs shall be executed on behalf of the Township until the Township has been presented with a copy of the recorded deed of transferable Development Rights and the recorded Declaration of Restriction of Development with the customary recording information of the Office of the Recorder of Deeds of Montgomery County clearly endorsed thereon. In lieu of presentation of proof of recording the Declaration of Restriction of Development and the deed of Transferable Development Rights, the fully executed Declaration of Restriction of Development may be presented to the Township with the deed of transferable Development Rights for endorsement, and the Township, at the applicant's expense, shall record both documents and then shall execute and, if applicant so desires, at applicant's expense, shall record the final plan.

K. Public acquisition of Transferable Development Rights

The Township may purchase Development Rights and may accept ownership of Development Rights through transfer by gift or devise. All such Development Rights may be held, resold, or retired by the Township, subject to any restrictions in a deed of transfer or gift. Any such sale, gift, or devise shall be accompanied by a Declaration of Restriction of Development as specified in § 150-xxx(I) of this chapter.

L. Transfers of TDRs in Gross

TDRs may be transferred in gross by the owner of a Sending Parcel to an organization that possesses tax-exempt status under Section 501(c)(3) of the Internal Revenue Code [26 U.S.C. Section 501(c)(3)] and which has as its primary purpose the preservation of land for historic, scenic, agricultural, or open space purposes. If such organization purchases or acquires TDRs by gift, devise, or otherwise, the organization shall be entitled to resell such TDRs (subject to any restriction in the purchase, gift, or devise) only if the proceeds from the sale of the TDRs are used to purchase TDRs from other lands in Worcester Township.

M. Amendment and/or Extinguishment

Worcester Township reserves the right to amend this Ordinance in the future, and the Township expressly reserves the right to change the manner in which the number of Development Rights shall be calculated for a tract in any Sending District and the manner in which Development Rights can be conveyed. The Township further expressly reserves the right to terminate its TDR program at any time. No owner of land or owner of Development Rights shall have any claim against the Township for damages resulting from a change in this Ordinance relating to the regulations governing the calculation, transfer, or use of Development Rights or the abolition of the TDR program. If the TDR program is abolished by the Township, no party may attach Development Rights to any

tract in any Receiving District after the effective date of the ordinance abolishing the TDR program unless an application in conformity with the provisions of this Article was filed prior to the effective date of such ordinance and thereafter is continuously processed to approval, and, following such approval, a complete subdivision and/or land development application complying with such rights is thereafter filed within six (6) months from the date of such approval.

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