

## **Article XV. Transferable Development Rights**

### **§ 122-72. Purposes.**

By providing landowners in the agricultural holding area the option of transferring some or all of the development rights associated with the land which they own and by providing certain other landowners in areas of the Township considered suitable for development with the option of increasing the density of development of their land with the acquisition of such development rights, it is the purpose of the Township to:

- A.** Provide an equitable way to compensate landowners in the agricultural holding area who voluntarily forbear from developing land considered critical for maintaining the environmental and agricultural values which mark the present land use pattern in the Township.
- B.** Provide an incentive for owners of land within the areas of the Township considered suitable for development to provide a variety of housing types and densities and, in return for covenanting land within the agricultural holding area against future development, to increase the density of development in suitable areas consistent with the overall development capacity of the Township.
- C.** Preserve thereby the agricultural, rural and scenic character of the Township as a regional resource, while at the same time providing housing opportunities consistent with regional projection and demands and the concept of fair share.

### **§ 122-73. Recognition.**

- A.** The Township of Birmingham hereby recognizes the severability and transferability of development rights from certain lands within the Township to be transferred and used in accordance with the provisions hereof.
- B.** The Township, in accordance with the criteria set forth in § [122-74](#) hereof, determines the eligibility of each tract of land within the Township for recognition of transferable development rights. The Township has no obligation, however, to determine the specific number of such rights apportioned to each tract nor to give any formal notice to the owner thereof other than by the passage of this chapter, until such time as an application for distribution and transfer is made in accordance with § [122-75](#) hereof.
- C.** Any owner of a tract not having eligibility for development rights shall have the right to develop the tract in accordance with otherwise applicable portions of this chapter and other applicable ordinances. The owner of a tract which is eligible for transferable development rights shall have the option of developing the tract in accordance with otherwise applicable provisions of this chapter or of transferring all or some of the apportioned development rights in accordance with the provisions hereof.

### **§ 122-74. Apportionment.**

Transferable development rights are recognized and apportioned to tracts of land within the Township upon the following criteria:

- A.** The tract of land shall be not less than 10 acres in size.
- B.** The land shall be within the R-A Zoning District.
- C.** The following land classifications, type or uses shall not be eligible for transferable development rights, notwithstanding their inclusion within the R-A Zoning District: tracts of land or portions thereof subject to easement (including by way of illustration easements of roads, railroads, electrical transmission lines,

pipelines and conservation easements) or other deed restriction or covenant (other than a covenant with Chester County pursuant to Act 515 or Act 319) against residential development which would otherwise be permitted by the applicable Township ordinances.

- D.** The number of transferable development rights apportioned to an eligible tract of land is established by subtracting from the number of acres qualifying therefor in accordance with the above criteria four acres for each existing dwelling unit and multiplying the difference by 0.5 or by 0.125 if the land is within that portion of the FH Overlay lying west of Route 100.

**§ 122-75. Transfer and use.**

- A.** In conjunction with PRD application or conditional use retirement community.

- (1)** Any owner of a tract of land to which has been apportioned transferable development rights may sell or transfer all or a portion of said development rights to the owner of any tract of land located within the planned residential development districts of the Township for the purpose of enabling the PRD tract to be developed in accordance with the increased density provisions of § [122-67B\(2\)](#) or to the owner of any tract of land within the Eleemosynary — Institutional (E-I) District of the Township for the purpose of enabling the E-I zoned tract to be developed in accordance with the increased intensity of use provisions of Section § [122-38C\(4\)\(b\)](#) hereof.
- (2)** In such event, the apportionment of the landowner's transferable development rights and transfer of the requested number thereof shall be made upon submission of the following:
- (a)** Application for apportionment and transfer of development rights on the form provided or approved by the Township for such application, signed by both the transferor and the transferee owners.
- (b)** An agreement of sale for said development rights between the owner of the tract to which development rights have been apportioned and the owner of the tract proposed to be developed as a PRD or retirement community. The agreement may be contingent upon approval of a tentative or final development plan for PRD development or upon approval of a preliminary or final plan for retirement community development of the tract to which the development rights are to be transferred.
- (c)** A metes and bounds description of the property of the owner of the land from which the rights will be transferred and a plot plan or survey thereof, showing total acreage of the selling owner's property and the portion, if less than the entirety, of the total tract to be restricted as provided in Subsection [A\(2\)\(g\)](#). In addition, the plot or survey shall show all existing structures, perennial streams and pertinent flood hazard areas, historic sites, the name and address of the owner, the county tax parcel number and deed book reference to the deed by which the owner obtained title to the property.
- (d)** A metes and bounds description of the property of the owner of the land to which the rights will be transferred and a plot plan or survey thereof, showing the total acreage of the tract, the name and address of the owner, the county tax parcel number and the deed book reference to the deed by which the owner obtained title.
- (e)** A title search or certificate for the tract from which the development rights will be transferred, prepared by a title insurance company having offices in Chester County or an attorney admitted to practice before the courts of Chester County, showing all liens, mortgages, easements, restrictions or other encumbrances against the premises.

**(f)** The written consent in recordable form of all lien creditors, mortgagees or other persons having property rights in the premises from which the development rights are to be transferred; provided, however, that consent shall not be required of any easement holder or person having the right to enforce a building restriction or other covenant running with the land so long as such person has no right, present or contingent, to take possession of the premises for the purpose of developing the same.

**(g)** A copy of the proposed deed of easement by which the development rights shall be transferred and restricting the tract from which the rights are transferred from development in accordance with the provisions of this section and on the form to be provided by the Township.

**(3)** Upon approval of the application for distribution and transfer, the owner of the tract to which development rights have been transferred shall be entitled to proceed with application for development of a retirement community at the increased density authorized by § [122-38C\(4\)\(b\)](#) or for PRD development of the tract at the increased densities authorized by § [122-67B\(2\)](#), in accordance with the following table of PRD density increases permitted by acquisition of transferable development rights.

**(4)** For each additional dwelling unit to be constructed within the overall density ranges set forth below, the applicant shall acquire additional transferable development rights as set forth adjacent thereto.

<b>Overall Density Range</b>	<b>TDR's per Additional Unit</b>
PRD-1	
0.6 to 1.5	0.8
1.5 to 2.25	0.7
PRD-2	
2.5 to 3.5	0.6
3.5 to 4.25	0.55
4.25 to 5.0	0.5

**(5)** Once the development rights are transferred to any property, they shall thereafter attach to the land and run in favor of the owner of the land and the owner's heirs, executors, administrators and assigns.

**(6)** All sales shall be in favor of the owner purchasing the rights, the owner's heirs and assigns, and all restrictions and covenants imposed on the seller's land shall run in favor of the purchaser and the purchaser's heirs, executors, administrators and assigns and in favor of the Township as a third-party donee beneficiary. The rights, when transferred, shall become an easement appurtenant to the designated land of the purchasing owner, burdening the seller's land, and shall no longer be severable from the land with the exception of transfers in accordance with Subsection [B](#).

**B.** No transfers of development rights shall be permitted, other than to the owners of land eligible for development as a PRD or owners of land eligible for development as a retirement community in accordance with the procedures set forth in Subsection [A](#); provided, however, that Birmingham Township may acquire

transferable development rights by purchase or gift, following the procedures set forth in Subsection [A\(2\)\(a\)](#), [\(b\)](#), [\(c\)](#), [\(e\)](#), [\(f\)](#) and [\(g\)](#). In such event, the rights so acquired may be canceled by the Township as transferee or may be held independent of any designated transferee parcel of land for any length of time in anticipation of ultimate transfer to the owner of a tract of land located within the planned residential development areas of the Township.

**§ 122-76. Distribution and transfer for less than entire tax parcel.**

When a landowner wishes to transfer less than the total number of development rights available to a tract identified by a single tax parcel number, the landowner may do so, provided that:

- A.** The tax parcel shall be subdivided into at least two parcels in proportion to the percentage of development rights to be transferred against those to be retained. Parcel(s) from which development rights are to be transferred shall be so designated.
- B.** No residual parcel, except those from which development rights have been transferred, not in compliance with the applicable minimum lot size and dimensional requirements of this chapter shall be created.
- C.** The subdivision plan shall provide all data required in § [122-75A\(2\)\(c\)](#) hereof.
- D.** The landowner, in determining which portions of the tract shall be restricted upon transfer, in accordance with § [122-77](#), shall generally adhere to the following priorities, in order of importance, for effecting restrictions:
  - (1)** Land devoted to agricultural uses within any of the three previous years.
  - (2)** Land not so devoted to agricultural uses having a slope of 8% or less, including flood hazard areas.
  - (3)** Historic and scenic sites.
  - (4)** Woodland.
  - (5)** Other land.

**§ 122-77. Restriction of land after transfer.**

- A.** The owner selling development rights shall, by the deed of easement, totally and permanently restrict the future development of the tract or designated portion thereof from which the rights are sold or transferred.
- B.** No transfer of development rights shall be effective until the deed of easement has been approved by the Township Board of Supervisors. Said deed of easement shall designate Birmingham Township as third-party donee beneficiary of the restrictions imposed on the seller, and the seller's land, and said restrictions shall be enforceable by the Township as third-party beneficiary, by the owner of the land to which they are transferred or by any subsequent owner of such land or any part thereof.
- C.** The Township shall maintain at all times an appropriate indexing system and map for permanently recording transfers of development rights and property which is restricted from development pursuant thereto. This shall be in addition to recording of appropriate plans and legal instruments in the county office for recording of deeds.

**D.** Land from which development rights have been transferred shall be permanently restricted against development, shall continue to be owned subject to said restrictions by the landowner, the landowner's heirs, executors, administrators and assigns and may continue to be used for agricultural or other uses, excluding topsoil stripping, compatible with its preservation as open space, provided that appropriate soil and water conservation measures are applied. In addition, the land shall be subject to all restrictions imposed on said land by virtue of the deed of easement, whether or not such restrictions or restrictive covenants are specifically enumerated in this chapter.

**§ 122-78. Subdivision of land eligible for development rights which have not been transferred.**

This Article shall not restrict the owner of any tract of land eligible for development rights from developing said tract in accordance with otherwise applicable ordinances of this Township. In the event of subdivision or land development of any such tract, the following principles shall apply:

**A.** In any case where land is subdivided into parcels of 10 acres or more, the landowner shall retain eligibility for all development rights apportionable to the tract, and upon the transfer of any such parcel, the appurtenant development rights shall be conveyed with the land.

**B.** In any case where a landowner subdivides a tract which is eligible for transferable development rights into lots, all or some of which shall be less than 10 acres in size, all parcels less than 10 acres in size shall be thereafter ineligible (as provided in § [122-74A](#) hereof), and all parcels of 10 acres or more in size shall remain eligible, as set forth in Subsection [A](#) hereof.

**§ 122-79. Taxation.**

Transferable development rights, both before and after transfer to a specific parcel of land within the PRD District shall be considered as real property. Upon distribution and transfer, the instrument conveying the development rights and accompanying deed of easement shall be recorded in the Chester County Recorder of Deeds office and notification given by the Township to the Chester County Board of Assessors so that proper reassessment may be effected.