

## County Code of Payette County, Idaho

(Contains ordinances up to and including ordinance 2018-4, passed March 26, 2018)

### **8-5-10: TRANSFER OF DEVELOPMENT RIGHTS; NONQUALIFYING PARCELS:**

#### **A. Definitions:**

RECEIVING PROPERTY: A parcel of land which does not qualify for a residential building right, which is not designated as meeting the criteria set out in the definition of "sending property" of this section, and which does not create more than four (4) residences on an original parcel may qualify as a receiving property subject to the following conditions:

1. Is designated as agricultural on the comprehensive plan and is at least twenty (20) acres in size.
2. Is designated as residential on the comprehensive plan, but is not located within a city area of impact, and is at least three (3) acres in size.
3. Is designated as residential on the comprehensive plan, located within a city area of impact, is at least two (2) acres in size, and is in compliance with subsection Q of this section.

SENDING PROPERTY: A parcel of land which qualifies for a residential building right and which has been designated as land which should be preserved because it is irrigated agricultural land, is in an area where open spaces need to be preserved, is a critical wildlife habitat or needs to be protected to enhance and maintain the rural character of Payette County, is contiguous with agricultural lands suitable for long range farming and ranching operations, or to avoid creation of aviation hazards as defined in section 21-501(2), Idaho Code may qualify as sending property.

TRANSFER OF DEVELOPMENT RIGHTS: The process by which development rights are transferred from one lot, parcel or tract of land in any sending area to another lot, parcel or tract of land in one or more receiving areas. A transferred development right may also be referred to herein as a TDR.

**B. Application:** In the event a person desires to move a development right for a residential building permit from one parcel of land which qualifies for a single-family residential building right to another parcel of land that does not qualify for a single-family residential building right, that person shall file an application for that purpose with the zoning administrator.

1. The application shall include, but not be limited to, the following information:
  - a. A conceptual plan.
  - b. Information and vicinity map concerning the location and physical characteristics of the receiving property.
  - c. Information relating to the irrigation of the sending and receiving properties which describes the availability of water, the nature of the irrigation delivery and application systems and any changes which will result from or be required by the transfer of a development right.
  - d. If the receiving property lies within an irrigation district and will receive water from such district, the applicant must demonstrate in writing that the applicant has met with and obtained a recommendation from the district affected by the application.

- e. The planning and zoning administrator shall have the authority to require additional specific information relevant to the consideration of any application.
- f. An application fee as prescribed by resolution of the board.

**C. Meeting Agenda:** The zoning administrator shall place the matter on the agenda for the next available regularly scheduled planning and zoning commission meeting.

**D. Analysis:** Before the board designates those properties which may be considered as receiving areas, the commission shall do an analysis to determine which areas will have the capacity to accommodate the number of development rights which potentially may be generated from the sending areas.

**E. Designation:** In the event a parcel of land has not been designated as lying in a receiving area, in the case where the commission determines that the property has the capacity to accommodate an additional residential dwelling, that parcel may be designated as a receiving parcel.

**F. Disqualification From Further Permits:** Upon the transfer of a development right, the sending parcel shall be disqualified in perpetuity from receiving any further building rights. This disqualification shall not prohibit any landowner from later applying for a rezone and subdivision approval after fifty (50) years from the approval of any application to transfer a development right.

**G. Disqualification From Subsequent Transfer:** Upon the transfer of a development right, the receiving parcel shall be disqualified from any further transfer of that development right.

**H. Sale Of Development Right:** No person may be required to sell a development right.

**I. Time Limit:** It shall be at the discretion of the persons selling and buying a transferable development right to determine whether a right will be transferred permanently or will expire if not exercised within a set period of time. In the event the seller and the buyer determine that the development right must be used within a set period of time, that agreement and the accompanying time limitations shall be set out in the application. If the development right is not used before the end of the time period provided by written contract and any extension thereof, the development right will revert to the property from which it was transferred. The buyer and seller shall be responsible for recording such documents as is necessary to put subsequent purchaser on notice of the transferred development right.

Within thirty (30) days of approval of a transfer of development right, applicant shall have the receiving property surveyed by a licensed land surveyor. Said survey shall clearly label existing boundary lines, new property boundary lines and shall follow generally accepted practices in the survey industry. Applicant shall provide and record deeds with complete legal descriptions, as defined in Idaho Code sections 63-209 and 63-210, describing the two (2) segregated properties. Upon approval and acceptance of the recorded deeds, the zoning administrator shall prepare a document entitled "Transfer Of A Development Right". The document shall include the names and addresses of the seller and buyer, the legal description of the sending and receiving properties, and any conditions imposed thereon. In the event the transfer is not a permanent transfer, the terms of reversion shall be set out in the application and included in the "Transfer Of A Development Right" document. The document shall be signed by all owners of the sending and receiving property, and the signatures shall be notarized in a manner that the document can be recorded. The buyer shall record the "Transfer Of A Development Right" document at the office of the Payette County clerk and shall deliver a copy of the recorded document to the zoning administrator. The agreement must be recorded within ninety (90) days of approval or the approval will be withdrawn and the application process will have to start over with no refund of fees. The zoning administrator shall deliver a copy of the recorded document to each title company in Payette County, Idaho.

**J. Water Rights:** A transfer of a development right does not include any water rights. Any water rights remain with the sending parcel. If irrigation water is available with the receiving parcel and a segregation from the parent lot is warranted, a pressurized irrigation system may be required. The irrigation system shall not add additional weirs or diversions from the main ditch.

**K. Signatures:** No transfer of a development right will occur without the voluntary acceptance of the landowner of the development right and any land use restrictions conditional to such acceptance and the signature of all lienholders and other parties who have an interest in the sending parcel. In the event a development right is transferred without the permission or signature of a lienholder or a party in interest, the purported transfer shall be void ab initio. To ensure that the board has the information required by this section, at the time an application for a transfer is submitted, the applicant shall provide the zoning administrator with a title report from a title insurance company, which report shall show all lienholders and all parties who have an interest in the property from which the development right is being transferred.

**L. Public Hearing:** No transfer shall occur until such time as the planning and zoning commission shall hold a public hearing and make findings which are consistent with this chapter. Notice of the hearing shall be published one time at least fifteen (15) days prior to the hearing and shall be sent to landowners who own property within three hundred feet (300') of the receiving parcel and to the manager of the local airport if the request could create an aviation hazard as defined in section 21-501 Idaho Code.

**M. Recommendation And Findings:** After holding a public hearing, the commission shall forward a recommendation to the board. The board may hold its own public hearing or may rely upon the record made by the commission. The board shall then grant or deny the request. In determining if the request is, or is not consistent with the criteria of this section, the board shall make findings as required by sections 67-6519 and 67-6535 of the Idaho Code.

**N. Precedents:** The issuance of a permit under these circumstances shall not be precedent setting.

**O. Compliance With Applicable Subdivision Requirements:** Permits issued pursuant to this section shall not exempt any parcel, lot, tract or property from complying with any applicable subdivision requirements.

**P. Justification For Transfer:** The transfer of a development right shall be discretionary with the board. The burden shall be upon an applicant to show that conditions exist which would justify a transfer.

**Q. City Impact Area:** Development rights may be transferred into a city impact area if the following conditions are met. As a condition of obtaining a transfer into a city impact area, an applicant shall show:

1. That the building site is compatible with the city's expansion plans.
2. That the building site does not interfere with any projected rights of way.

The applicant shall enter into a written agreement with the county:

1. That when the land surrounding the receiving property becomes an approved subdivision, the receiving property shall become a part of the subdivision and any improvements required to make the receiving property a part of the subdivision shall be made at the owners' expense.
2. That in the event the sending property is adjacent to or abuts the receiving property and the sending property is subdivided, the receiving property shall become a part of the subdivision and all improvements on the receiving property shall be made at the receiving property owners'

expense. All improvements shall be made to conform to then existing city subdivision requirements.

**R. Appeal:** Any person aggrieved by the granting or denial of a request for a TDR may appeal by following the procedures set out in this code.

*(Ord. 2016-2, 8-29-2016)*

Link to Code Text: [https://codelibrary.amlegal.com/codes/payettecountyid/latest/payettecounty\\_id/0-0-0-2535](https://codelibrary.amlegal.com/codes/payettecountyid/latest/payettecounty_id/0-0-0-2535)