

**§ 225-34. Transfer of development rights.**

**A. Policy and intent.**

- (1) The maximum levels of density of development allowed in the various zoning districts by this chapter are designed, among other purposes, to secure:

**[Amended 11-18-2000 by L.L. No. 5-2000]**

- (a) A fair balance between the public interest, through such things as the most economic and efficient possible use of municipal services and utilities, and the interests of individual landowners; and
- (b) An economically, socially and environmentally sound balance between developed and open land, both in particular zoning districts and throughout the town. In RR, SR and HR Districts, due regard to the balance between developed and open land throughout the town as well as the balance between developed and open land within the particular districts requires increased density limits. In C and A Districts, due regard to the interests of individual landowners as well as the public interest requires limitation of densities. It is in the public interest, therefore, to shift development from C and A Districts to RR, SR and HR Districts to the extent that this can be accomplished without impairing a sound balance between developed and open land in particular RR, SR and HR Districts and without undue impairment of the interests of individual landowners in C and A Districts. Accordingly, it is the policy and intent of the town to permit development in RR, SR and HR Districts at increased levels of density when a developer can provide assurance of a corresponding reduction of the density of development in a C or A District.
- (2) The transfer of the development rights system herein established shall have the following specific objectives:
- (a) To preserve the natural and scenic qualities of open land and accrue to the town and region the benefits of the use of open land and agricultural pursuits.
- (b) To allow the adequate and economic provision of streets and utilities consistent with the Comprehensive Plan of the Town of Eden.
- (c) To provide for a creative and staged development of land and an orderly transition of land from vacant to occupied uses.
- (d) To foster development in areas best suited to specific uses while providing economic return to owners of property restricted from further development.

- B. Transfer of development rights.** Transfer of development rights provides for increased density of residential development in the RR, SR and HR Districts when suitable open space land in a C or A District is permanently reserved from specified development uses. The transfer of the development rights is accomplished by execution of an open space easement, and the increased density is permitted by the issuance of an optional density permit, both as hereinafter provided.

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C. Authorization of transfer of development rights. In the manner and to the extent provided by Article [IV](#) and by the Table of Bulk Regulations referred to in Article [V](#) of this chapter, the provisions of this section and other applicable provisions of this chapter:

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- (1) Development rights in eligible land in C or A Districts may be transferred to land in RR, SR or HR Districts.
- (2) Undeveloped land in a C or A District with the area and dimensions at least equal to the minimum required for residential development shall be eligible land from which development rights may be transferred.
- (3) In cases where development rights have been previously transferred from land in a C or A District, development rights may be transferred to such land from other eligible land in a C or A District.

D. Procedure.

**[Amended 11-18-2000 by L.L. No. 5-2000]**

- (1) Development rights in land in a C or A District may be transferred to land in an RR, SR or HR District pursuant to the following procedure:
  - (a) The developer proposing to develop specified land in an RR, SR or HR District at an optional density allowed by this chapter with a transfer of development rights shall, simultaneously with his or her application for a subdivision plat or site plan, make application to the Planning Board for an optional density permit in such form as shall be provided by said Board.
  - (b) With his or her application for an optional density permit, the developer shall tender to the Planning Board a valid instrument granting to the town an open space easement in eligible land in a C or A District. The instrument shall be in the form and contain the terms and conditions provided by Subsection [E](#) of this section and shall cover an area of eligible land determined in accordance with Subsections [C\(2\)](#) and [F\(2\)](#) of this section. The developer shall furnish to the Planning Board a certificate of title by a duly licensed attorney and such other further evidence or assurance of title as may be satisfactory to the Town Attorney.
  - (c) Upon advice of the Town Attorney that the open space easement document is valid and sufficient, and if the applications cited in Subsection [D\(1\)\(a\)](#) above are otherwise valid and sufficient, the Planning Board, acting in behalf of the town, shall accept said document and transmit it to the Town Attorney for recording in the Erie County Clerk's office. Upon final approval of the subdivision plat or site plans, the Planning Board shall issue an optional density permit permitting development of the specified land at the optional density and shall transmit both a copy of the open space easement and the optional density permit to the Board of Assessors.
- (2) In cases where land in a C or A District has previously been encumbered by the grant of an open space easement, equivalent rights may be transferred to such land from other land in a C or A District pursuant to the following procedure:

- (a) Said easement shall be terminated upon the granting to the town of a similar easement covering equivalent other land in a C or A District pursuant to the provisions of this chapter.
- (b) The owner proposing to receive such development rights shall tender to the Planning Board a valid instrument granting to the town an open space easement for other eligible land in a C or A District. The instrument shall be in the form and contain the terms and conditions provided by Subsection [E](#) of this section and shall cover an area of eligible land determined in accordance with Subsections [C\(2\)](#) and [F\(2\)](#) of this section. The owner shall furnish to the Planning Board a certificate of title by a duly licensed attorney and such other or further evidence or assurance of title as may be satisfactory to the Town Attorney.
- (c) Upon advice of the Town Attorney that the grant is valid and sufficient, the Planning Board shall accept the instrument, shall execute an instrument terminating the open space easement in the land from which development rights were previously transferred and shall transmit both instruments to the Town Attorney for recording in the Erie County Clerk's office, with copies to the Board of Assessors.

**E. Form and terms of grant.** The grant of an open space easement pursuant to this section shall be on the terms and conditions and in the format set forth in Appendix I to this chapter. *Editor's Note: Appendix I is on file in the Planning Board office.*

**F. Area of land required and number of units permitted.**

- (1) The actual number of units permitted to develop at increased density limits in RR, SR and HR Districts shall be determined by reference to the use regulations found in Article [IV](#) and the bulk regulations found in Article [V](#) of this chapter.
- (2) Assignment of development rights for transfer. Land in a C or A District shall be assigned development rights for purposes of transfer as follows:

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- (a) In a C District, one development right for each three eligible acres.
- (b) In an A District, one development right for each two eligible acres.

**G. Assessment.** Land for which an open space easement has been conveyed to the town pursuant to this section shall be assessed for real property tax purposes with full regard to the restriction of the use of the land by reason of said easement. Land for which an optional density permit has been issued shall be assessed for real property tax purposes with full regard to the optional density at which it may be or has been developed.

**H. Rezoning.** In the event that property for which a development easement has been conveyed pursuant to this chapter or for which an optional density permit has assigned one or more development rights pursuant to this chapter shall have its allowable density of development altered by amendment of this chapter, the following rules shall apply:

- (1) If such amendment increases the allowable density of land in RR, SR or HR Districts, the owner shall be entitled to the full number of units allowed by the amendment plus the number of development rights previously granted by an optional density permit.

- (2) If such amendment decreases the allowable density of land in RR, SR or HR Districts, the owner may develop at the density previously allowed by an optional density permit.
- (3) If such amendment alters the number of transferable development rights of land in a C or A District, such change will not affect land already subject to an open space easement.

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- (4) If such amendment removes land from a C or A District, no development shall take place on land so removed and already subject to an open space easement unless the owner acquires sufficient development rights to replace the rights conveyed from such land in accordance with the procedure set forth in Subsection