

[Amended 12-17-1997 by Ord. No. 179; 4-4-2001 by Ord. No. 199]

A. Purpose. In accordance with §§ 603(b)(5), 603(c)(2.2), 605(4) and 619.1 of the Act, this section establishes procedures by which transferable development rights are granted, conveyed, applied and recorded to preserve the Township's valuable farmland and agricultural landscape and economy.

B. Granting of transferable development rights within the sending tract.

(1) Except as noted below, every lot within the Agricultural Zone (A) which on the effective date of this chapter (August 30, 1993) contains a farm (as defined herein), is granted one transferable development right for each two gross acres contained therein. Should a lot containing a farm (as defined herein) which was not classified as part of the Agricultural Zone (A) on the effective date of this chapter, be subsequently rezoned to the Agricultural Zone (A), that farm will be granted one transferable development right for each two gross acres contained therein on the effective date of the rezoning.

(2) TDRs are not granted to:

(a) Portions of lots owned by or subject to easements (including, but not limited to, easements of roads, railroads, electrical transmission lines and water, gas or petroleum pipelines) in favor of governmental agencies, utilities and nonprofit corporations.

(b) Land restricted from development by covenant, easement or deed restriction) with the exception of preferential tax assessments), unless and until such time as said covenant, easement or restriction is dissolved or rescinded. In the event said covenant, easement or restriction is dissolved or rescinded, such land shall be eligible for issuance of transferable development rights.

C. Obligation of landowner to convey transferable development rights. The conveyance of TDRs is accomplished solely on a voluntary basis. Landowners are in no way compelled to convey their TDRs. If conveyances occur, they shall be accomplished according to § [340-45E](#) of this article. Unconveyed TDRs may be transferred with land sold, donated or devised.

D. Value of transferable development rights. The monetary value of TDRs is completely determined between the seller and buyer.

E. Process of conveyance of a transferable development right from the sending tract. transferable development rights granted § [340-45B](#) of this article may be sold and/or donated to any party, subject to the following:

(1) Application materials. Application shall be made on a form developed for and by the Township which shall be signed by the transferor and the transferee. Along with said application form, the following shall be submitted:

(a) A metes and bounds description of the sending tract from which the TDRs will be transferred and a plot plan or survey thereof, showing total acreage of the sending tract; areas of the sending tract subject to easements in favor of governmental agencies, utilities and nonprofit corporations; areas of the sending tract restricted against development by covenant, easement or deed restriction; and any area of the sending tract devoted to nonfarm use.

(b) If the proposed conveyance entails less than all of the TDRs attributable to the sending tract, the portion of the sending tract from which the TDRs are transferred shall be clearly identified on a plan of the entire sending tract, drawn to scale, the accuracy of which shall be satisfactory to the Township. Such plan shall also include a notation of (1) the number of TDRs attributable to the entire sending tract, (2) the number of TDRs

attributable to the identified portion of the sending tract from which the TDRs are to be transferred, and (3) the number of TDRs which remain available to the remaining portion of the sending tract.

(c) A title search of the sending tract from which the TDRs will be conveyed sufficient to determine all owners of the sending tract and all lienholders.

(d) A copy of the proposed deed of transferable development rights and a copy of the proposed declaration of restriction of development, as regulated by § [340-45F](#) of this chapter.

(2) Review, endorsement and recording of conveyance.

(a) Upon receipt of a complete submission as required above, the Zoning Officer shall determine the number of TDRs which shall be permitted to be conveyed from the sending tract. The Zoning Officer shall also determine, with the advice of the Township Solicitor and/or the Township Engineer, the sufficiency of (1) the plan indicating the portion of the sending tract restricted from future development if the TDRs from less than the entire sending tract shall be conveyed, (2) the declaration of restriction of development, and (3) the deed of transferable development rights. The Zoning Officer shall inform the transferor and transferee of the development rights of his/her determination in writing. Any appeals from the determination of the Zoning Officer shall be made in accordance with the provisions of § [340-121E](#) of this chapter.

(b) Upon receipt of written approval by the Zoning Officer, as provided in § [340-45E\(2\)\(a\)](#), the transferor and transferee may present the Township with the deed of transferable development rights for endorsement as required by § 619(1)(c) of the Act. No deed of transferable development rights shall be so endorsed until the Township is presented with evidence that the declaration of restriction of development has been approved by the Township and has been recorded with the Lancaster County Recorder of Deeds. In lieu of presentation of proof of recording the declaration of restriction of development, the fully executed declaration of transferable development may be presented to the Township when the deed of transferable development rights is presented for endorsement and the Township, at the applicant's expense, shall record both documents.

F. Use of property after conveyance of transferable development rights is approved. The owner conveying TDRs from the sending tract shall, by the declaration of restriction of development, perpetually restrict the use of the sending tract or the portion thereof from which TDRs are conveyed. Such declaration of restriction of development shall be in a form approved by the Township Solicitor and shall restrict future use of the sending tract or the applicable portion thereof to agriculture as the principal use and any accessory agricultural uses as permitted by this chapter.

(1) All declarations of restriction of development shall designate the Township as a beneficiary of the restrictions imposed upon the sending tract. Such restrictions shall be enforceable by the Township. 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.

(2) 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.

(3) If the TDRs are to be conveyed from less than the entire sending tract, the plan prepared in accordance with § [340-45E\(1\)\(b\)](#) above shall be attached to and recorded with the declaration of

restriction of development. All owners of the sending tract from which TDRs are conveyed shall execute the declaration of restriction of development. All lienholders of the sending tract shall execute a joinder and/or consent to the declaration of restriction of development.

G. Application of transferable development rights. TDRs may only be used in the following Township's receiving areas: in the Campus Industrial Zone (I-2) to increase permitted lot coverage and in a housing for older persons development within the R-3 Residential Zone (R-3) to increase maximum density for multiple-family dwellings. When TDRs have been acquired by the transferee for the purpose of assignment to lands within a receiving area, the following shall apply:

[Amended 2-18-2009 by Ord. No. 237]

(1) Effect of assignment of transferable development rights.

(a) For each TDR that is approved for conveyance according to § [340-45G\(2\)](#) and [\(3\)](#) and § [340-45E\(2\)](#) to increase permitted lot coverage in the Campus Industrial Zone (I-2), the transferee is entitled to an increase in permitted lot coverage of 4,000 square feet, up to a maximum lot coverage of 70% as regulated by § [340-19G](#) of this chapter.

(b) For each TDR that is approved for conveyance according to § 340-450(2) and (3) and § [340-45E\(2\)](#) to increase density of multiple-family dwellings in a housing for older persons development within the R-3 Residential Zone (R-3), the transferee is entitled to an increase in the maximum permitted density of multiple-family dwellings in a housing for older persons development of one multiple-family dwelling unit per acre, up to a maximum of 14 dwelling units per acre as regulated by § [340-108.1F](#) of this chapter.

(2) Application materials. Along with those materials required by § [340-45E](#), the transferee shall submit:

(a) A preliminary subdivision and/or land development plan, prepared in accordance with the latest version of Chapter [285](#), Subdivision and Land Development, of the Code of the Township of Warwick. The preliminary plan must indicate (1) that TDRs are to be used; (2) the base permitted lot coverage allowed for the site with respect to the Campus Industrial Zone (I-2) or the maximum density of multiple-family dwellings per acre allowed for the site with respect to a housing for older persons development in the R-3 Residential Zone (R-3); (3) the proposed lot coverage of the site or the proposed density of multiple-family dwellings, as applicable; and (4) the number of TDRs to be applied to the site.

(b) An agreement of sale for the TDRs between (1) the owner of the sending tract to which TDRs have been granted, or the owner of TDRs which have been previously severed from a sending tract, as evidenced by a recorded deed of transferable development rights, and (2) the owner of the tract proposed to be developed with the TDRs. The agreement may be contingent upon approval of a final subdivision or land development plan for the tract to which the TDRs are to be conveyed.

(c) If the use of TDRs which were previously severed from a sending tract is proposed, a title search of such previously severed TDRs.

(3) Review, approval and recording of transferable development rights applied to lands within a receiving area. In addition to those procedures set forth in Subsection [E\(2\)](#), the following shall apply to proposed developments that rely upon TDRs:

(a) 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 Lancaster 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.

H. Public acquisition of transferable development rights. The Township may purchase TDRs and may accept ownership of TDRs through transfer by gift or devise. All such TDRs may be resold or retired by the Township. Any such purchase, gift or devise shall be accompanied by a declaration of restriction of development as specified in § [340-45F](#) of this chapter.

I. Transfers of TDRs in gross. TDRs may be transferred in gross by the owner of a sending tract to an organization which possesses a tax exempt status under § 501(c)(3) of the Internal Revenue Code [26 U.S.C. § 501(c)(3)] and which has as its primary purpose the preservation of land for historic, scenic, agricultural or open space purposes or to the Lancaster County Agricultural Preserve Board. If such an organization or the Preserve Board purchases or acquires TDRs by gift or otherwise, the organization or the Preserve Board shall be entitled to resell such TDRs only if the proceeds from the sale of the TDRs are used to purchase TDRs from other lands within Warwick Township.

J. Reservation of Township rights. The Township reserves the right to amend this chapter in the future, and the Township expressly reserves the right to change the manner in which the number of TDRs shall be apportioned to a sending tract, the manner in which TDRs may be attached to land within the receiving area, the locations of the sending tracts and the receiving areas, and the procedure by which TDRs can be conveyed. The Township further expressly reserves the right to terminate its TDR program at any time. No landowner or owner of TDRs shall have any claim against the Township for damages resulting from a change in this chapter relating to the regulations governing the apportionment, transfer and use of TDRs or the abolition of the TDR program. If the TDR program is abolished by the Township, no developer may attach TDRs to any tract in the receiving area after the effective date of the ordinance abolishing the TDR program unless an application in conformity with the provisions of this chapter was filed prior to the effective date of such ordinance.