

**BOARD OF SUPERVISORS
WORCESTER TOWNSHIP**

MONTGOMERY COUNTY, PENNSYLVANIA

ORDINANCE NO. 2012-234

"Transferable Development Rights Ordinance"

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF WORCESTER, CHAPTER 150 (ZONING) TO ADD A NEW ARTICLE XXIX ENTITLED "TRANSFERABLE DEVELOPMENT RIGHTS" TO PROVIDE A MECHANISM FOR LANDOWNERS TO SEVER AND CONVEY THEIR RIGHT TO DEVELOP LAND SEPARATELY FROM THE UNDERLYING LAND AND SETTING FORTH THE PURPOSE AND AUTHORITY FOR SUCH SEVERANCE AND CONVEYANCE AS WELL AS DEFINITIONS AND REGULATIONS RELATED TO THE SENDING DISTRICT; THE RIGHT TO TRANSFER DEVELOPMENT RIGHTS; THE CALCULATION OF DEVELOPMENT RIGHTS; APPLICATION FOR A TRANSFERABLE DEVELOPMENT RIGHTS CERTIFICATE; THE SUBDIVISION OF SENDING PARCELS; THE CONVEYANCE OF TRANSFERABLE DEVELOPMENT RIGHTS; DEEDS OF TRANSFERABLE DEVELOPMENT RIGHTS; DECLARATIONS OF RESTRICTIVE COVENANTS; APPLICATION OF TRANSFERABLE DEVELOPMENT RIGHTS; PUBLIC ACQUISITION OF TRANSFERABLE DEVELOPMENT RIGHTS; AND AMENDMENT AND/OR EXTINGUISHMENT.

The Board of Supervisors of Worcester Township does hereby **ENACT** and **ORDAIN**:

SECTION I. – Amendment to Code

The Code of the Township of Worcester, Chapter 150 (Zoning) is hereby amended to add the following new Article XXIX entitled "Transferable Development Rights":

**ARTICLE XXIX
Transferable Development Rights**

§150-236. Purposes and authority.

A. The purposes of this ordinance are to:

- (1) 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 rural character of Worcester Township.
- (2) Preserve open space, scenic views, critical habitat, and sensitive resources areas, and conserve agriculture and forestry uses of land;
- (3) Retain open areas in which healthful outdoor recreation can occur;
- (4) Ensure that landowners may make reasonable use of their property rights by providing a mechanism for landowners to sever and convey their right to develop the land separately from the underlying land;
- (5) Provide a mechanism whereby Development Rights may be reliably transferred; and
- (6) Effectively achieve the land use planning goals identified in Worcester Township's Comprehensive Plan while preserving existing property rights.

B. 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 the underlying Sending Parcel. Compliance with the provisions of this chapter shall be a prerequisite to the use of the transfer of Development Rights option.

§150-237. Definitions.

Development Rights -- The rights of the owner of a parcel of land, under land development regulations, to use that parcel at a particular density for residential uses.

Receiving District -- A district in which the Development Rights of parcels in the Sending District may be used pursuant to the regulations of Worcester's Zoning Ordinance. 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 pursuant to the regulations of this Chapter.

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 all or a portion of 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 nonprofit organizations and municipalities or their agencies), including a person or legal entity that owns property in a Receiving District, which acquires transferable Development Rights in any manner permitted by this Ordinance.

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

§150-238. Sending District.

- A. The AGR and LPD zoning districts shall constitute the Sending District. Parcels or portions of parcels 30 acres or more 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.
- B. Adjacent parcels (including parcels separated by a road) under 30 acres in size which are held in the same ownership and which would otherwise qualify as Sending Parcels may be aggregated in size in order to qualify.
- C. Parcels owned by federal, state, county, or municipal governments or agencies shall not be eligible for a transfer of Development Rights.
- D. Parcels owned by a public utility and used for transmission or generation purposes shall not be eligible for a transfer of Development Rights.

§150-239. Right to Transfer Development Rights.

- A. A Transferor shall have the right to sever Development Rights from a parcel in a Sending District and to retain, retire, sell, trade, grant, devise, bequeath, or barter all or a portion of those rights, consistent with the purposes of Section 150-236.A above and pursuant to the requirements of this Chapter.
- B. 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 density or intensity allowed with Transferable Development Rights (TDRs) as permitted by any ordinance that shall establish a Receiving District.

- C. TDRs may be transferred from a Sending Parcel to a Receiving Parcel as provided by any ordinance establishing a Receiving District. TDRs may be used only on a parcel in a designated Receiving District, up to the maximum density or intensity allowed with TDRs as permitted by an ordinance that shall establish a Receiving District.
- D. Any application of TDRs pursuant to this ordinance is authorized only to utilize the option(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, unless specifically set forth in the ordinances governing the Receiving District, 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.
- E. 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 the requirements of this Chapter. Unconveyed TDRs may be transferred with the underlying land or separately, subject only to the limitations of Pennsylvania law.

§150-240. Calculation of Development Rights.

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

- A. Determine the Lot Area of the Sending Parcel as defined in §150-9, “Lot Area Calculation.” The most accurate data available, in the opinion of the Township Engineer, shall be used to calculate Lot Area. For purposes of this Section, the calculation of Lot Area shall not require a field survey to delineate wetlands, steep slopes, and other natural features, subject to review and approval by the Municipal Engineer.
 - (1) Land previously restricted from development by covenant, easement (whether of record or visible upon the ground), deed restriction, or other legal agreement or operation of law shall not be included in any calculation of TDRs.
 - (2) Preferential tax assessment shall have no effect on the calculation of TDRs.
- B. Divide the Lot Area by the minimum lot size according to the parcel’s zoning. Round down to the nearest whole number.

- C. Subtract one Development Right for each existing dwelling unit on the Sending Parcel(s). For each separate parcel that has no existing dwelling unit, subtract one Development Right to be retained for future use as a Dwelling Unit, except in the case of the transfer of 100% of the underlying fee interest to a government entity or 501(c)(3) organization for use as passive open space.
- D. 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.
- E. The resulting number equals the number of TDRs that shall be certified for the Sending Parcel.

§150-241. Application for Transferable Development Rights Certificate.

- A. An application for a Transferable Development Rights (TDR) certificate shall include 10 copies of:
 - (1) A certificate of title for the Sending Parcel prepared by an attorney licensed to practice law in Pennsylvania, which shall include a title search of the Sending Parcel sufficient to determine all owners of the Sending Parcel and all lienholders, and all easements and other encumbrances;
 - (2) An accurate legal description of the Sending Parcel;
 - (3) A plan of the Sending Parcel showing:
 - (a) The property boundaries, as established by a boundary survey;
 - (b) All buildings and utility structures on the property, whether above-ground or underground, the footprints of all nonresidential and nonagricultural buildings, and all easements visible on the ground;
 - (c) The locations and areas of features required to calculate the Lot Area and the number of TDRs available on the Sending Parcel; and
 - (d) A table showing the number of TDRs available on the Sending Parcel and the calculations supporting their determination, in accordance with section 150-240 above;
 - (4) Such additional information required by the Zoning Officer as may be necessary to determine the number of Development Rights that qualify for certification; and

- (5) Applicable fees.

- B. 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 the plan of the Sending Parcel showing the number of TDRs available on the Sending Parcel and the calculations supporting their determination. The Zoning Officer may request such additional information as may be necessary to accurately determine the number of Development Rights attributable to the Sending Parcel. The Zoning Officer shall inform the Transferor and Transferee (if applicable) of such determination in writing. Any appeals from the determination of the Zoning Officer shall be made in accordance with the provisions of § 150-217 of this Chapter.

- C. Upon approval of the Transferor's application, the Zoning Officer shall issue a TDR 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.

- D. A TDR certificate shall include the following information:
 - (1) The name of the Transferor;
 - (2) A legal description of the Sending Parcel to which the calculation of Development Rights is applicable;
 - (3) A statement of the number of Development Rights eligible for transfer;
 - (4) The date of issuance;
 - (5) The signature of the Zoning Officer; and
 - (6) The serial number(s) assigned by the Zoning Officer.

- E. A TDR certificate shall remain valid regardless of transfer of ownership of the Sending Parcel.

§150-242. Subdivision of Sending Parcel.

- A. A TDR certificate shall automatically become null and void upon recording of a fully approved subdivision or land development plan for all or part of the Sending Parcel, except for a simple 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.
 - (1) If a Sending Parcel is split zoned such that less than 100 percent of the parcel is located in the Sending District, a subdivision or land development plan that involves only the portion of the Sending Parcel which is not located in the Sending District will not void a TDR certificate, provided that no portion of the Sending Parcel that is located in the Sending District is used for any purpose in the subdivision or land development plan, including buffering, open space, and setback requirements.
- B. If the Sending Parcel retains 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.

§150-243. Conveyance of TDRs.

- A. Upon receipt of a TDR certificate from the Zoning Officer, the Transferor and the Transferee may present the Township with the Deed of Transferable Development Rights for endorsement as required by section 619.1(c) of the Pennsylvania Municipalities Code.
- B. No Deed of Transferable Development Rights shall be so endorsed until the Township is presented with evidence that a Declaration of Restrictive Covenants 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 Covenants, the fully executed Declaration of Restrictive Covenants 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.
- C. If less than the total number of TDRs certified on the Sending Parcel are to be conveyed, the portion of the Sending Parcel from which the TDRs are to be transferred shall be clearly identified on a plan of the entire parcel, drawn to scale, the accuracy and sufficiency of which shall be satisfactory to the Township staff, Engineer, and Solicitor. Such plan shall include a notation of:
 - (1) The number of TDRs applicable to the entire parcel;

- (2) The number of TDRs applicable to the identified portion of the parcel from which the TDRs are to be severed; and
- (3) The number of TDRs that remain available on the remaining portion of the Sending Parcel.

The acreage to be restricted because of the severance of TDRs shall be contiguous and shall not extend less than 75 (seventy-five) 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, in the reasonable opinion of the Township, its Solicitor, and its Engineer, under the use, area, dimensional, performance and other standards of the applicable zoning ordinance, and shall be one contiguous area.

§150-244. Deed of Transferable Development Rights.

All Deeds of Transferable Development Rights shall be endorsed by the Township prior to recording, as required by section 619.1 of the Municipalities Planning Code. All Deeds shall conform to the requirements of this Section.

- A. An instrument of original transfer is required when Development Rights are initially separated from a Sending Parcel. It shall contain the following information:
 - (1) A legal description of the Sending Parcel prepared by a licensed surveyor or engineer named in the instrument;
 - (2) The serial numbers of the TDRs to be conveyed, as assigned on the TDR certificate described in §150-241 above; 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;
 - (3) A covenant indicating the number of Development Rights, if any, remaining on the Sending Parcel.
 - (4) 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 any other party given a right of private action under this Chapter; and
 - (5) Any additional information required by the Recorder of Deeds.
- B. A deed of Transferable Development Rights, other than an instrument of original transfer, need not contain a legal description of the Sending Parcel.

- C. Any Deed of Transferable Development Rights shall contain:
- (1) The names of the Transferor and the Transferee;
 - (2) 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;
 - (3) 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;
 - (4) The serial numbers of the TDRs, as assigned in the Transfer of Development Rights certificate described in §150-241 above, which are being transferred in this transaction; and
 - (5) Any additional information required by Worcester Township or the Recorder of Deeds.
- D. All Deeds submitted to the Township for endorsement shall be accompanied by:
- (1) As to a deed of original transfer, a title search of the Sending Parcel sufficient to determine all owners of the Sending Parcel and all lienholders, all easements and other encumbrances, and any other claims against the property; and a legal opinion of title, which shall meet the reasonable approval of the Township Solicitor, affirming that the Development Rights being transferred by the Deed have not previously been severed from the Sending Parcel.
 - (2) As to a deed other than a deed of original transfer, a title search of the Development Rights sufficient to establish the Transferor's legal right and ability to transfer the Development Rights that are the subject of the transaction.
 - (3) Every title report shall be prepared within 10 (ten) days of submission of the Deed to the Township and shall be updated by the applicant immediately prior to endorsement of the Deed by the Township.

§150-245. Declaration of Restrictive Covenants.

- A. The owner conveying TDRs from the Sending Parcel shall, by a Declaration of Restrictive Covenants, 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.

- B. Every Declaration of Restrictive Covenants 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 the nonprofit conservation organization, if so designated in the Declaration. The Township shall hold the rights granted by the Declaration of Restrictive Covenants 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.
- C. 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.
- D. Where Development Rights are to be conveyed from less than the entire Sending Parcel, the plan prepared in accordance with § 150-243.C above shall be attached to and recorded with the Declaration of Restrictive Covenants. 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.
- E. 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 Subordination to the Declaration of Restriction of Development.
- F. 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 Zoning Ordinance requirement for any Development Rights that are to be retained or for any other development anywhere in the Township.

- G. Should any governmental unit or agency, or a nonprofit organization whose mission is to preserve land and/or habitat, acquire ownership of a 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.

§150-246. Application of Transferable Development Rights.

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

- A. Application materials. In addition to any material required by the ordinance establishing the Receiving District and the SALDO and Zoning Ordinance of Worcester Township, the applicant shall submit 10 copies of:
- (1) A preliminary subdivision and/or land development plan, prepared in accordance with the Subdivision and Land Development Ordinances of Worcester Township. In addition to all other required information, 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 under the Subdivision and Land Development and Zoning Ordinances and the maximum permitted density or intensity of use permitted with TDRs under the Zoning Ordinance; and (3) the number of TDRs to be applied to the project.
 - (2) The deed or 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.
 - (3) A copy of the TDR certificate.
 - (4) If the Transferor is not the owner of the Sending Parcel, a title search on the TDRs.
- B. Review, approval and recording of TDRs 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 Restrictive Covenants 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 Restrictive Covenants and the Deed of Transferable Development Rights, the fully executed Declaration of Restrictive Covenants may be presented to the Township with the Deed of Transferable Development Rights for approval and endorsement, and the Township shall execute and, if applicant so desires, at applicant's expense, shall record all documents.

§150-247. 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 the deed of transfer or gift. Any such sale, gift, or devise shall be accompanied by the applicable, approved and recorded Declaration of Restriction of Development as specified in § 150-245 of this chapter.

§150-248. 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 shall have the right to 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 is thereafter 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.

SECTION II. - Severability

The provisions of this Ordinance are intended to be severable, and if any section, sentence, clause, part or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby

declared to be the intent of the Board that this Ordinance would have been adopted even if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

SECTION III. - Failure to Enforce not a Waiver

The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

SECTION IV. - Effective Date

This Ordinance shall take effect and be in force from and after its approval as required by the law.

SECTION V. - Repealer

All other ordinances and resolutions or parts thereof insofar as they are inconsistent with this Ordinance are hereby repealed.

ORDAINED AND ENACTED by the Board of Supervisors of Worcester Township, Montgomery County, Pennsylvania, this 15th day of February, 2012.

WORCESTER TOWNSHIP

By: Arthur C. Bustard
Arthur C. Bustard, Chairman,
Board of Supervisors

Attest: F. Lee Mangan
F. Lee Mangan, Secretary

NOTICE

NOTICE is hereby given that the Board of Supervisors of Worcester, at its public meeting on February 15, 2012, at 7:30 p.m. at the Worcester Township Community Hall, 1031 Valley Forge Road, Fairview Village, Worcester, Pennsylvania, will hold a public hearing on and could vote to adopt an ordinance entitled "Transferable Development Rights Ordinance" amending the Code of the Township of Worcester, Chapter 150 (Zoning) to add a new Article XXIX entitled "Transferable Development Rights" to provide a mechanism for landowners to sever and convey their right to develop land separately from the underlying land and setting forth the purpose and authority for such severance and conveyance as well as definitions and regulations related to the sending district; the right to transfer development rights; the calculation of development rights; application for a transferable development rights certificate; the subdivision of sending parcels; the conveyance of transferable development rights; deeds of transferable development rights; declarations of restrictive covenants; application of transferable development rights; public acquisition of transferable development rights; and amendment and/or extinguishment.

Copies of the proposed Ordinance are available for examination during normal business hours at the offices of *Times Herald*, 410 Markley Street, Norristown, Pennsylvania 19404; the Montgomery County Law Library, Court House, Norristown, Pennsylvania 19401; and the Worcester Township Building, 1421 Valley Forge Road, Worcester, Pennsylvania 19490 where a copy of the proposed Ordinance and Map Amendment may be obtained for a charge not greater than the cost thereof.

**JAMES J. GARRITY, ESQUIRE
WISLER PEARLSTINE, LLP**

Solicitors for Worcester Township