

**ARTICLE XXVI. TRANSFER OF DEVELOPMENT RIGHTS (TDR) (Amended by Ordinance 2021-04, dated June 28, 2021)**

**SECTION 2601. PURPOSE**

Within the Township, there are certain areas that, because of their unique natural, agricultural, cultural, and scenic resources, make them worthy of special protection. The purpose of this article is to assist in permanently protecting this vital natural resource: farmlands and prime agricultural soils. In accordance with Sections 603(c)(2.2), 605(4), and 619.1 of the Municipalities Planning Code, a transferable development rights program is established in the Township, and the Township designates the Agricultural District as the sending area, and all other residential and nonresidential districts located within the designated growth area, including properties developed under planned residential development regulations, as the receiving areas. The purpose of the transfer of development rights program is to preserve the prime agricultural soils and agricultural character of the lands in the Agricultural District by shifting development from that area to the receiving areas of the Township.

**SECTION 2602. CONCEPT**

1. The transfer of development rights is a voluntary agreement under the terms of this ordinance between a willing buyer and a willing seller. The rights shall be transferred to a person, corporation, partnership or other legal entity or the Township. The development rights may be held by the purchaser for future use or sale or may be immediately attached to a specific parcel of land within the Township. The development rights shall be considered a separate estate in land and may be transferred subject to the limitations of this ordinance. Once the development rights are attached to a specific parcel of land, those rights shall run with that specific parcel in perpetuity.
2. A purchaser of development rights who attaches those rights to a tract of land in accordance with the procedures set forth in this ordinance is permitted to develop a tract within the receiving area with an increase in density, building height, building length, or lot coverage in accordance with the terms specified in Section 2606 herein. The seller of the development rights receives compensation from the sale, plus the right to retain the land for agricultural use. A deed restriction against future development is placed upon the agricultural land in the designated sending area from which the development rights have been severed. The price of the development rights will be determined by the willing buyer and willing seller. To facilitate the transfer between willing buyer and willing seller, the Township maintains a list of available transferable development rights and interested parties.
3. The deed restriction will not affect the landowner's ability to sell the land after the development rights have been severed, although such land cannot be sold for development purposes. The deed restriction on the land from which the development rights have been severed shall run in favor of the Township or an approved conservation organization.
4. The owner of the tract in the sending area from which the development rights are severed or any subsequent purchaser or purchasers of the development rights may hold the development rights or may resell the development rights. The only use which may be made

of the development rights is the ultimate transfer to a developer with a tract in the receiving area. The Township shall have no obligation to purchase the development rights which have been severed from a tract in the sending area.

### **SECTION 2603. RECOGNITION OF TRANSFERABLE DEVELOPMENT RIGHTS**

1. The Township 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.
2. The Township, in accordance with the criteria set forth in Section 2604, Apportionment of development rights, shall determine the eligibility of each tract of land within the Agricultural District for allocation 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 landowner other than by the passage of this ordinance, until such time as an application to utilize transferable development rights is made in accordance with Section 2604, Apportionment of development rights, and Section 2605, Transfer and use of transferable development rights, of this ordinance.
3. The 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 apportioned to a tract in the sending area, the manner in which development rights may be attached to land within the receiving area, the locations of the sending area and the receiving areas and the procedure by which development rights can be conveyed. The Township further expressly reserves the right to terminate its transferable development rights 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 apportionment, transfer and use of development rights or the abolition of the transferable development rights program. If the transferable development rights program is abolished by the Township, no developer may attach development rights to any tract in the receiving area after the effective date of this ordinance abolishing the transferable development rights program unless an application in conformity with the provisions of Section 2607 herein was filed prior to the effective date of such ordinance.

### **SECTION 2604. APPORTIONMENT OF DEVELOPMENT RIGHTS**

1. Development rights shall be apportioned to tracts of land within the designated sending area of the Township based on the following criteria:
  - A. The tract of land shall be located within the Agricultural District.
  - B. The tract of land shall not be less than ten (10) acres in size.
  - C. Tracts of land or portions thereof 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 shall not be eligible for transferable development rights.
  - D. Land restricted against development by covenant, easement or deed restriction shall not be eligible for transferable development rights unless and until such time as said

covenant, restriction or easement is dissolved or rescinded. In the event said covenant, restriction or easement is dissolved or rescinded, such land shall be eligible for issuance of transferable development rights.

- E. Land utilized for uses other than agriculture shall not be eligible for transferable development rights.
- F. The portion of the parcel which will not be restricted shall be usable under the use, area, dimensional, performance and other standards of this ordinance.

2. The number of transferable development rights apportioned to an eligible tract shall be established by multiplying the number of acres qualifying, as defined by the above criteria, by 0.73, and subtracting therefrom the number of dwelling units then existing on the eligible tract. When the computation to determine the number of development rights apportioned results in a fractional number, any fraction shall be equal to one (1) development right.
3. The owner of any tract of land eligible for development rights shall not be restricted from developing said tract in accordance with Article VI, Agricultural District A, of this ordinance. In the event of a residential subdivision, residential land development, farm dwelling conversion or creation of an accessory dwelling unit of any such tract eligible for development rights, the number of development rights apportioned shall be reduced by the number of residential lots and/or units subdivided or developed. One (1) transferable development right is required for any subdivision of land with the exception defined in Section 602.3.L., for the construction of a single family detached dwelling, conversion of a farm house into a two-unit dwelling or the creation of an accessory dwelling unit. The net area associated with one (1) transferable development right is the reciprocal of 0.73, defined in Section 2604.2., or 1.369 acres.
4. The determination of the precise number of development rights which shall be apportioned to a tract in the sending area shall be computed in accordance with the procedures set forth in Section 2604 through Section 2607 if the development rights shall be transferred to a developer who shall immediately attach them to land within the receiving area. If the development rights shall be held by the owner of the sending tract after they are severed or shall be transferred in gross to the Township or another person, the procedure to be followed shall be that set forth in Section 2605 and Section 2607.1 through 6.

## **SECTION 2605. TRANSFER AND USE OF TRANSFERABLE DEVELOPMENT RIGHTS**

1. Transferable development rights which have been apportioned shall be conveyed and severed by a deed of transferable development rights duly recorded in the office of the Lancaster County Recorder of Deeds. The deed of transferable development rights shall specify the tract of land within the receiving district to which the rights shall be permanently attached or that the rights shall be transferred to Manheim Township, retained by the owner of the sending tract, or another person in gross. The deed of transferable development rights which severs the development rights from the sending tract shall be accompanied by a declaration of restriction of development, which shall permanently restrict development of the sending tract and which shall be recorded in the office of the Recorder of Deeds at the same time as or prior to the deed of transferable development

rights. All deeds of transferable development rights shall be endorsed by the Township prior to recording.

- Transferable development rights which have been apportioned shall only be permitted to attach to tracts of land to be developed in accordance with the provisions of Section 2606 or to be transferred to the Township in accordance with Section 2608.

## **SECTION 2606. USE OF TRANSFERABLE DEVELOPMENT RIGHTS IN RECEIVING AREAS**

- Residential receiving areas. Transferable development rights severed from sending area tracts in the Agricultural District may be transferred and received to increase density for development on tracts in the R-1, R-2, and R-3 Residential Districts, as specified within the applicable zoning district or T-Zone Overlays, and in accordance with the following:

### A. Density increases.

- The maximum development capacity for residential development when the developer acquires additional development rights in accordance with the provisions of this ordinance shall be as follows:

<b>Residential District</b>	<b>Maximum DU/Acre</b>
<b>R-1 District</b>	
Conventional development	2.2
Conventional development with TDRs	2.9
PRD	2.9
<b>R-2 District</b>	
Conventional development	2.9
Conventional development with TDRs	4.3
Conventional development within the T-5 Neffsville Village Overlay	4.3
PRD	7.0
<b>R-3 District</b>	
Conventional development within the T-5 Neffsville Village Overlay	5.0
PRD and development within the T-5 Oregon Village Overlay Master Site Plan, as specified.	6-10

- For each additional dwelling unit or portion thereof in excess of the number permitted by the base density of the underlying Residential District R-1, R-2, or

R-3, the developer shall acquire one (1) development right in accordance with this ordinance.

- (3) If the proposed development is to be constructed in phases, no phase shall be developed at a density which, when combined with the density or densities of all the previous phases, will result in a density greater than the gross density of the entire development.
- B. Building height increases. For each apartment dwelling unit or portion thereof above a height of thirty-five (35) feet in the Residential District R-3 developed under the conventional development provisions, the developer shall acquire one (1) development right in accordance with this ordinance.
- C. Building height increases. For each apartment dwelling unit or portion thereof above the height of forty (40) feet in the Residential District R-3 developed under the Planned Residential Development provisions, the developer shall acquire one (1) development right in accordance with this ordinance.

2. Nonresidential receiving areas. Transferable development rights severed from sending area tracts in the Agricultural District may be transferred and received on tracts located within the T-4, T-5, T-6, D-R, D-A, or D-C Overlays, as specified within the applicable T-Zone Overlays, and in accordance with the following:

- A. Building height increases.
  - (1) Building height increases shall be permitted in accordance with the T-4, T-5, T-6, D-R, D-C, and D-A T-Zone Overlays.
  - (2) For each three thousand (3,000) square feet of nonresidential space or portion thereof, and/or each apartment dwelling unit or portion thereof above the permitted base height, the developer shall acquire one (1) transferable development right in accordance with this ordinance.
- B. Building length increases.
  - (1) Building length increases shall be permitted in accordance with the T-4, T-6, D-R, D-C, and D-A T-Zone Overlays.
  - (2) For every five thousand (5,000) square feet or portion thereof located beyond the permitted building length, the developer shall acquire one (1) transferable development right in accordance with this ordinance.
- C. Master site planned development (T-5 Oregon Village Overlay). For every three (3) gross acres included within a master site planned development, one (1) transferable development right shall be acquired.

## **SECTION 2607. PLAN SUBMITTAL AND REVIEW PROCESS**

1. A sketch plan prepared in accordance with the Subdivision and Land Development Ordinance, and the underlying zoning district regulations shall be submitted to the Township to determine the base permitted density, building height, building length, or lot coverage of the property to be developed.

2. A request to utilize transferable development rights on a property shall be in the form of a preliminary subdivision plan of the proposed development using the transferable development rights prepared in accordance with the Subdivision and Land Development Ordinance. The preliminary plan submitted shall indicate the base density, building height, building length, or lot coverage of the property, the proposed increase in the applicable area and bulk regulations of the development, the number of additional development rights transferred or to be transferred to the property, and whether the tract to be developed is located within an overlay district.
3. In addition to the preliminary subdivision plan, an application shall include the following:
  - A. Application for apportionment and transfer of development rights on the form provided by the Township for such application. Such application shall be signed by both the transferor and the transferee. If the development rights which shall be used by the developer have previously been apportioned to and severed from the sending tract, a copy of the deed of transferable development rights which has been recorded in the office of the Recorder of Deeds indicating the number of development rights available and a title search demonstrating that such development rights are still held by such person and setting forth all liens placed against them shall be included.
  - B. An agreement of sale for the development rights between the owner of the tract to which development rights have been requested to be apportioned or the owner of development rights which have been previously severed from a tract in the sending area as evidenced by a recorded deed of transferable development rights and the owner of the tract proposed to be developed as a residential development. The agreement may be contingent upon conditional use approval or approval of a final subdivision or land development plan for residential 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, areas of land or portions thereof subject to easements in favor of governmental agencies, utilities, and nonprofit corporations, land restricted against development by covenant, easement or deed restriction, and land utilized for nonagricultural use. If the development rights have previously been apportioned to and severed from a tract in the sending area, a copy of the recorded deed of transferable development rights shall be submitted.
  - D. If the agreement of sale of development rights would entail less than an entire parcel, the portion of the parcel involved in the proposed sale of development rights shall meet the following criteria:
    - (1) The portion to be deed restricted shall contain at least fifty (50) percent prime agricultural soils;
    - (2) The acreage to be restricted shall be contiguous and be of a general, regular configuration approved by the Board of Commissioners; and
    - (3) The portion of the parcel which will not be restricted shall be usable under the use, area, dimensional, performance and other standards of this ordinance.

- E. If the agreement of sale of development rights would entail less than an entire parcel, the portion of the parcel from which the development rights are transferred shall be clearly identified on a plan of the entire parcel, drawn to scale, the accuracy of which shall be satisfactory to the Township. 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 transferred, and the number of development rights which remain available to the remaining portion of the parcel.
- F. If the agreement of sale of development rights would entail less than the entire number of development rights represented by a recorded deed of transferable development rights, the applicant shall indicate the disposition of the remaining development rights.
- G. A copy of the proposed deed of transferable development rights and declaration of restriction of development.
- H. A title search of the tract from which the transferable development rights will be transferred sufficient to determine all owners of the tract and all lienholders. If the development rights have previously been apportioned and severed from the tract in the sending area, a title search of the rights set forth in the deed of transferable development rights sufficient to determine all of the owners of the development rights and all lienholders shall be furnished to the Township.

4. The owner of a tract in the sending area from which the development rights are to be severed shall, by a declaration of restriction of development, totally and permanently restrict the future development of the tract or designated portion thereof from which the development rights are severed. The declaration of restriction of development shall be in a form approved by the Township Solicitor. If the development rights are to be severed from less than the entire parcel, the plan prepared in accordance with Subsection 3.E. above shall be attached to and recorded with the declaration of restriction of development. All owners of the tract from which development rights are severed shall execute the declaration of restriction of development. All lienholders of the tract from which development rights are severed shall execute a joinder and/or consent to the declaration of restriction of development.

- A. The said declaration of restriction of development shall designate the Township as a third-party beneficiary of the restrictions imposed on the land from which the development rights are severed, and said restrictions shall be enforceable by the Township as such third-party beneficiary. 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 all of the residents of the Township, including generations yet to come.
- B. Land from which development rights have been severed shall be permanently restricted against development, shall continue to be owned subject to said restrictions by the landowner, his heirs, executors, administrators, successors and assigns, and

may be continued to be used for agriculture and other uses specified in Article VI, Agricultural District A, of this ordinance.

5. The Zoning Officer shall determine the number of development rights which shall be permitted to be severed 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 the plan indicating the portion of the sending tract restricted from future development if the development rights from less than the entire tract shall be transferred, the declaration of restriction of development and the deed of transferable development rights. The Zoning Officer shall inform the owner or owners of the land from which the development rights will be severed, and, if applicable, the developer, of his determination in writing. Any appeals from the determination of the Zoning Officer shall be filed in accordance with the provisions of the Municipalities Planning Code.
6. Upon receipt of a determination by the Zoning Officer, the owner or owners of the land from which the development rights will be severed, and, if applicable, the developer or other entity who will purchase the development rights, may present the Township with the deed of transferable development rights for endorsement as required by Municipalities Planning Code Section 619.1(c). 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 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.
7. If the development rights shall be immediately attached to a tract in the receiving area, no deed of transferable development rights shall be recorded before preliminary plan approval for the development utilizing the development rights has been obtained. If the development rights are to be retained by the owner of the sending tract from which they have been severed or are to be transferred in gross, the deed of transferable development rights may be recorded at any time after the recording of the declaration of restriction of development.
8. No final plan for any subdivision or land development which utilizes transferable development rights 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 Recorder of Deeds in and for 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.

## **SECTION 2608. PUBLIC ACQUISITION**

Manheim Township may purchase development rights and may accept ownership of development rights through transfer by gift. Any such purchase or gift shall be accompanied by a

declaration of restriction of development as specified in Section 2605, Transfer and use of transferable development rights. All such development rights may be resold or retired by the Township. If transferable development rights are not available under private sale, the Board of Commissioners may consider selling transferable development rights. Any such sale will be based on the average cost of the last three (3) private sales.

The Township may but shall not be required to, approve an alternate method for preserving farmland and prime agricultural soils, provided the applicant can demonstrate to the satisfaction of the Board of Commissioners that the alternative method will provide equal or better results in achieving the goal of preserving farmland and prime agricultural soils.