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State:	New Jersey
Jurisdiction Type:	Municipal
Municipality:	Township of Chesterfield
Year (adopted, written, etc.):	1997
Community Type - applicable to:	Suburban; Rural
Title:	Township of Chesterfield Transfer of Development Rights Ordinance
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Abstract

The transfer of development rights program allows for the shifting of development pressure from agricultural, environmentally sensitive, or open space areas of the township to villages designated for limited growth. The program allows the township to maintain its rural character while encouraging planned development. Land is preserved by transferring development rights from “sending areas” in rural parts of the township to three existing villages and one new village that have been designated as “receiving areas” within community development boundaries.ⁱ

Resource

ARTICLE XVII Voluntary TDR Program Procedural Requirements

§§ 130-128. Allocation and transfer of developments rights.

A. Generally. This section sets forth the eligibility standards and credit allocations made of development potential to various parcels of land within the Township of Chesterfield and is authorized pursuant to N.J.S.A. 40:55D-113 et seq. and the Master Plan of Chesterfield Township.

B. Program eligibility. A parcel's eligibility for inclusion under the TDR program is described in the allocation plan which is attached to this chapter and made a part of it by reference. (Chart 1 and 2.)

C. Minimum eligibility criteria. The minimum eligibility criteria for participation in the TDR program are:

1. Sending area. A primary purpose of the Chesterfield TDR program is to conserve the rural, predominantly agricultural resources of the township. Accordingly, the program criteria for participating in the sending area are as follows:

a. The parcel is located within the AG Agricultural District outside of the receiving area as amended and as identified on the Land Use Plan of the Chesterfield Township Master Plan, adopted October 28, 1997. (See Plan A.)

b. The parcel must be at least 10 acres in size on the date that the ordinance is adopted.

c. The parcel must not be deed restricted from further subdivision or further development, except nothing set forth above shall affect the credits created by the County of Burlington under its Farm Land Preservation Program and the right to use these credits in the receiving area. [Amended 7-26- 2001 by Ord. No. 2001-17]

d. The property which shall become the subject of the deed of easement, restriction and enrollment shall contain general reservation language for future rights-of- way and easement areas that may be needed for county and municipal infrastructure improvements, such as future road and drainage improvements, which areas shall be exempted from the restriction against future development required under this chapter.

2. Receiving area. The only criteria for participating in the receiving area is that the parcel is located within the boundaries of the receiving area as amended and as identified on the Land Use Plan of the Chesterfield Township Master Plan, adopted October 28, 1997. (See Plan B.) Should the Approving Authority grant a use variance increasing the development potential of a parcel not in the receiving zone by more than 5%, that parcel shall constitute a receiving zone and the provisions of this chapter for parcels in the receiving zone shall apply with respect to the development potential required to implement that variance.

3. Plans. The locations within the township of the sending and receiving areas are set forth on Plans A and B which are attached to this chapter and made a part of it by reference (Plans A and B).

§§ 130-129. Credit allocation.

A. General principals.

1. Pursuant to N.J.S.A. 40:55D-114, a TDR program must seek to transfer the development potential from areas where preservation is most appropriate to areas where growth can be better accommodated and maximized.

2. Pursuant to N.J.S.A. 40:55D-115, "development potential" is defined as "the maximum number of dwelling units or square feet of nonresidential floor area that could be constructed on a specified lot or in a specified zone under the Master Plan and land use regulations in effect on the date of the adoption of the development transfer ordinance and in accordance with recognized environmental constraints." Therefore, the Chesterfield

Township TDR credit allocation formula seeks to closely estimate the number of dwelling units which could have been built on each eligible parcel given the base zoning density as set forth for the AG Agricultural District, Section 301 of the Chesterfield Township Zoning Ordinance, which zoning is replaced by the adoption of this chapter and the environmental constraints present.

3. The underlying AG Agricultural District zoning requires the use of individual septic tanks for sewage disposal. Accordingly, it has been determined that it is the suitability of soil for septic tank permitting which most directly indicates the development potential of the land and therefore, will act as the basis upon which transferable development rights (TDR's) or credits are allocated.

4. The standard source of information related to the septic suitability of soils located in Burlington County is the USDA Soil Conservation Service (SCS) soil survey (survey). The SCS survey characterizes soil based on numerous factors, one of which is the disposal of septic effluent. The combination of the soils' characteristics result in a septic suitability rating of slight, moderate or severe.

5. The data source utilized for the allocation of development rights is the integrated terrain unit (ITU) data generated by the New Jersey Department of Environmental Protection (NJDEP), of which a primary base layer of information is the SCS soil survey data.

6. In order to allocate credits in a manner consistent with the preexisting zoning but within the context of environmental constraints, the formula set forth in §§ 130-129B below was developed and applied to the computerized soils data generated for each parcel.

B. [Amended 7-26-2001 by Ord. No. 2001-17] Credit allocation formula:

$$\text{TDR Credits} = ((\text{No. of Acres of Slight Soils}/2.7) + (\text{No. of Acres of Moderate Soils}) + (\text{No. of Acres of Severe Soils}/50)) * 1.1$$

C. The product of the above formula is then rounded down to the nearest one-fourth credit to equal the TDR credit allocation.

D. The TDR credit allocation incorporates a ten-percent bonus factor as an incentive for landowners in the sending area to transfer their units rather than construct units on- the site.

E. Allocation plan. AR parcels eligible for participation in the Chesterfield TDR program as set forth in the Master Plan have been identified and a computation of the TDR credits allocated pursuant to the credit allocation formula has been completed. The information is contained in the allocation plan, which is incorporated within this chapter by reference.

F. Procedure. Upon the adoption of this chapter, the Township Clerk shall file with the

County Recording Office a copy of the allocation plan and Zoning Map showing graphically the location of the township's sending and receiving zones. A change in the credit allocation made by the allocation plan by appeal, assignment or transfer to be effective must similarly be recorded in the County Recording Office.

§§ 130-130. Credit allocation appeal process.

A. Purpose. Any landowner eligible for participation in a TDR program who is dissatisfied with their credit allocation may appeal their allocation in accordance with the procedures set forth below.

B. Timing. Any appeal of a credit allocation must occur prior to the recording of a TDR easement. Once a property is restricted through the recording of the TDR easement, the opportunity for an allocation appeal is lost and the parcel's owner shall be irrefutably presumed to have elected to accept the allocation given as an appropriate measure of the development potential of the parcel.

C. Procedure. There are two methods which can be used to appeal the allocation. One relies on the submission of a soils decryption of the subject property prepared by the Natural Resource Conservation Service (NRCS). The second requires the submission of a conceptual plan of development accompanied with representative soil borings. Each is designed to establish a parcel's development potential. The parcel's owner may determine which method to utilize.

1. Soil descriptions. in order to appeal a credit allocation based on soil descriptions, a landowner must procure a revised soil description of the subject property from a licensed soil scientist. Such a soil description shall be verified by the Burlington County Natural Resource Conservation Service (NRCS). The description must include the following information:

a. Landowner's name(s) and address(es).

b. Parcel block and lot number(s).

c. Total parcel acreage (sources may include a Tax Map or property survey).

d. Delineation of the subject parcel on the Tax Map and appropriate map from the Burlington County Soil Conservation Service (SCS) soil survey.

e. A description of the soils present on the property listed by soil name and total acreage of each soil type.

f. A classification of each soil type by acreage into the SCS categories of slight, moderate and severe septic limitations.

g. A recalculation of credit allocations pursuant to the credit allocation formula set forth in §§ 130-129B of this section.

h. The name and signature of the soil scientist who prepared the soils description, the date the soil description was prepared and the date, name and signature of the NRCS soil scientist who verified the findings of the soils described.

2. Conceptual subdivision plan. In order to appeal a credit allocation utilizing a development plan, a landowner may prepare a conceptual subdivision plan for the subject parcel. The subdivision plan is prepared to demonstrate that the number of residential units which could have been constructed on the subject parcel exceeds the number of TDR credits allocated to the property. Such a conceptual plan shall consist of the following information.

a. A map of the property at a scale of no less than one inch equals 100 feet which includes:

i. Property acreage.

ii. Tax lot boundaries.

iii. Stream corridors.

iv. Vegetation (other than agricultural crops).

v. Roads.

vi. High-tension line easements.

vii. Underground easements.

b. A copy of the map described in §§ 130-130C(2)(a) above, upon which the following information has been added:

i. A layout of a hypothetical subdivision, which subdivision meets the bulk and area requirements of the underlying zone.

ii. The acreage of each subdivided parcel.

iii. The location for soil boring performed.

iv. The dimension (width and length) of internal roads.

c. Soil borings. Representative soil borings must be submitted to demonstrate the viability of using septic tanks for the hypothetical development. Prior to performing any soil borings, a plan shall be submitted and approved by the Board Engineer. Soil borings performed to meet this standard shall comply with the following criteria:

- i. Soil borings must be performed on a minimum of 30% of the subdivided lots created by the hypothetical development spaced evenly apart within the subdivision or one per every five acres, whichever results in a smaller number of borings.
- ii. The soil boring must reach a minimum depth of five feet.
- iii. The soil borings must be performed by a New Jersey licensed soils scientist or a professional engineer.
- iv. A report summarizing the findings of the soil borings must be prepared.
- v. A certification signed by the person performing the tests and writing the report which certifies to the accuracy of the soil borings and other data contained in the report shall accompany the report.

§§ 130-131. Steps in credit allocation appeal process.

A. Notice of appeal. The parcel owner shall submit a properly completed notice of appeal and required application and review fees to the Planning Board Secretary. The notice on forms approved by the Township Planning Board shall include the following information:

1. Date of appeal.
2. Name(s) and mailing address(es) of all property owners.
3. Copy of the latest deed to the property.
4. Block and lot number(s) of parcel(s).
5. Acreage of parcel(s) pursuant to Tax Map or property survey.
6. Number of TDR credits allocated to the parcel(s) pursuant to the allocation plan.
7. Number of TDR credits the landowner is requesting as yielded under the appeal provided.
8. Supporting documentation which fulfills the requirements of the selected appeal methodology set forth in §§ 130-130C above.
9. Signature of all property owners.

B. Review by Planning Board engineers. The Planning Board Secretary shall forward the notice of appeal and all related information to the Planning Board Engineer. The Engineer shall review the submission for accuracy and compliance with the requirements set forth herein. The Engineer will advise the Planning Board of his findings.

C. Planning board action.

1. The Planning Board at a regular or special meeting shall, after giving due consideration to the Engineer's report and any additional information which the parcel owner or others wish to submit, grant the appeal if the parcel owner's proof demonstrates that the parcel on the date of this section's adoption had a development potential stated in credits greater than that originally allocated. Otherwise the application should be denied. Public notice of the meeting shall not be required.
2. The Planning Board shall take action on the appeal if all required documents are submitted within 120 days of receipt of the notice of appeal by the Planning Board Secretary, unless this time period is extended by the applicant.
3. Should the Planning Board approve the appeal, it will so direct the Secretary to amend the allocation plan to reflect the number of credits approved.

§§ 130-132. TDR creation, transfer and use.

A. Declaration of enrollment. A landowner seeking to enroll his land within the TDR program and thus create credits which may thereafter be transferred shall follow the following procedures:

1. The landowner, on forms authorized by the Board and obtained from the Township Clerk, shall submit to the administrative officer:
 - a. The original and two copies of a fully completed enrollment application.
 - b. Review fees.
 - c. The original and two copies of the TDR easement.
 - d. Clear proof of tide.
2. The administrative officer shall, within 95 days of receipt, determine that the application:
 - a. Accurately specifies the number of TDR credits available to the parcel.
 - b. Covers a parcel of land eligible for inclusion within the TDR program.
 - c. Accurately sets forth the block and lot description of the parcel seeking enrollment.
 - d. Reserves sufficient credits for the existing and proposed uses on the site.
 - e. Contains all other information required by the enrollment form.

3. The administrative officer, upon receipt, shall forward to the Board Solicitor for review:

a. One copy of the enrollment application

b. The original and one copy of the TDR easement.

c. Clear proof of title.

d. A copy of each of the foregoing documents shall also be sent by the administrative officer to the Burlington County Planning Board so that the Board can determine the nature and extent of any areas which should be withheld from the easement for future infrastructure purposes. The County Planning Board shall have 14 days from receipt of the same to advise the administrative officer and Board Solicitor of its concerns and comments.

4. The Board Solicitor shall determine within 14 days of receipt that:

a. The TDR easement is in a proper legal form for recording in the County Clerk's office.

b. The applicant for enrollment holds legal title clear of any encumbrances to the parcel or that the holder of any lien, mortgage or other interest has agreed in writing to subordinate their interest in the parcel to the public interests set forth in the TDR easement.

5. Upon determining the facts set forth in §§ 130-132A(4) above, the Board Solicitor shall certify to these facts by:

a. Signing the TDR easement at a space provided.

b. Returning the original TDR easement to the administrative officer for processing.

6. Upon return of the original TDR easement signed by the Board Solicitor, the administrative officer shall:

a. Assign serial numbers to each TDR credit sought to be created.

b. Sign the TDR easement form, certifying that the application procedures required by this chapter have been followed and that, upon proper recording of the TDR easement, the parcel will contain the number of transferable credits specified within the certification, provided that the TDR easement is recorded within 90 days from the date that the certification is signed. If unrecorded, the enrollment shall be null and void and the landowner must reapply.

c. Return the original and signed TDR easement to the Board Solicitor for recording. The township will record the easement.

7. If the administrative officer or Board Solicitor shall fail to act within the time periods specified, unless these time periods are extended by the applicant, the application shall be deemed denied.

8. After the TDR easement has been recorded, the landowner shall file proof of the recording with the administrative officer prior to the approval of any transfer of any transfer of any credit created under the easement.

9. Upon receipt of proof that a TDR easement has been recorded, the administrative officer shall:

a. Record the fact of recordation upon the records of the township. This record shall include the Clerk's assigned book and page of recording, if known.

b. Forward a copy of the recorded TDR easement to the Planning Board for its information.

10. A landowner shall be responsible for all costs associated with the review of the enrollment application, including professional fees authorized by the ordinance.

11. The administrative officer shall act on all applications submitted in order in which they are submitted.

B. TDR credit assignment. A landowner against whose land a TDR easement has been recorded may assign any of the credits created through the use of the following procedures:

1. The landowner, on forms authorized by the Planning Board and obtained from the

Township Clerk, shall submit to the administrative officer for review:

a. An original and two copies of the application for assignment.

b. An original and two copies of the proposed assignment.

c. Appropriate review fees.

2. The administrative officer, within 95 days, shall determine that the application:

a. Contains all of the information required by the form.

b. Seeks to assign no more than the maximum number of credits available and not already assigned or extinguished.

c. Provides the recording information about the TDR easement.

d. Accurately reflects the information contained in it.

e. Reflects no material change in the title of the parcel has occurred since the TDR easement was recorded.

3. If the administrative officer determines that the application and supporting documentation establishes the criteria set forth in §§ 130-132B(2) above, the administrative officer shall sign the assignment, certifying that upon recording the assignment will transfer the number of credits contained within it to the party named, provided that if the assignment is not recorded within 90 days of the date that the certification is signed, unless this time period is extended by the applicant, the assignment shall be null and void.

4. If the administrative officer shall fail to act within the time period provided, the application shall be deemed denied.

5. Upon signing, the assignment shall be returned to the landowner for recording.

6. The assignee of the credits shall, upon filing of the assignment, file proof of recording with the administrative officer prior to the approval of any credit use.

7. Upon receipt of proof that the assignment has been recorded, the administrative officer shall:

a. Record the fact of recordation upon the records of the township. The record shall include the Clerk's assigned book and page of recording, if known.

b. Forward a copy of the recorded assignment to the Planning Board for its information.

8. A landowner shall be responsible for all costs associated with the review of the assignment application, including professional fees authorized by the ordinance.

9. The administrative officer shall act on all applications in the order in which they are received.

C. TDR residual credits on lands within the receiving area. At the time a final plan for the first section of an approved subdivision plan is signed by representatives of the township or the signing of an approved plan by the Municipal Engineer of a final site plan which utilized or effects, in the opinion of the Board solicitor, the operation of the TDR program in the receiving area, the person or entity submitting the application for development cited shall record against the land to be developed a deed of dedication on forms approved by the Township of Chesterfield which dedicate the entire site for use in the TDR program. The residual credits existing on the land covered by the development shall be deemed created only upon the filing of the deed of dedication cited. Filing the deed of dedication shall entitle the land owner to use the credits created on the land effected by the application of development at the density or for the uses permitted by the TDR provisions of this chapter. Until the deed of dedication is recorded, the land is subject to the density and use restrictions otherwise controlling within the district.

D. TDR credit use; extinguishment. An owner or developer of land located within the receiving zone may utilize credits held by a landowner of land located within a sending zone or his assigns to increase the number of units that may be developed by utilizing the following procedures:

1. The owner/developer of land within the receiving zone must first obtain final approval for the development of a project within the receiving zone contingent and conditioned on the acquisition and extinguishment of TDR credits.

2. To meet the condition of approval, the owner/developer, at or prior to the signing of a subdivision plat or the issuance of the first building permit, whichever occurs first, on forms approved by the Planning Board and obtained from the Township Clerk, shall submit to the administrative officer.

a. An original and two copies of completed application for TDR credit use which indicates the source of credit to be used within the development.

b. An original and two copies of a deed of credit transfer.

c. An appropriate fees for review.

3. The administrative officer shall, within 95 days of receipt, determine that the application:

a. Accurately specifies the number of TDR credits need for the development of the parcel sought to be developed.

b. Demonstrates that the developer owns, by assignment or otherwise, all, credits needed for the proposed development.

c. Accurately specifies by reference to assigned serial numbers or otherwise which credits are being used by the development.

d. Accurately provided such other information required by the application.

e. Demonstrates that the parcel from which the credits arise are subject to a recorded TDR easement.

4. If the administrative officer determines that the application and supporting documentation establishes the criteria set forth in §§ 130-132D(3) above, the administrative officer shall sign the deed of credit transfer, certifying that upon recording the deed of credit transfer will permanently transfer the number of credits contained within it to the parcel of land cited, provided that if the deed of credit transfer is not recorded within 90 days of the date that the certification is signed, unless this time period is extended by the applicant, the deed of credit transfer shall be null and void.

5. If the administrative officer shall fail to act within the time periods provided, the application shall be deemed denied.

6. Upon signing, the deed of credit transfer shall be returned to the Board Solicitor for recording.

7. The owner or developer of the, land using the credits shall, upon filing of the deed of credit transfer, file proof of recording with the administrative officer prior to the issuance of any building permit for development of the land upon which the credit is to be used.

8. Recording the deed of credit transfer shall extinguish the ability to use any credit transferred except upon the parcel to which the TDR credit has been transferred.

9. Upon receipt of proof that the deed of credit transfer has been recorded, the administrative officer shall:

a. Record the fact of recordation upon the records of the township. The record shall include the Clerk's assigned book and page of recording, if known.

b. Forward a copy of the recorded deed of credit transfer to the Planning

Board for its information.

10. A landowner shall be responsible for all costs associated with the review of the assignment application, including professional fees later authorized by the ordinance.

11. The administrative officer shall act on all applications in the order in which they are received.

12. Any person, firm or entity who purchases or otherwise acquires, encumbers or utilizes any development potential under this chapter shall record that fact with the State Transfer of Development Rights Bank Board of Directors and shall do so within 10 business days thereof, pursuant to N.J.S.A. 4:1C-53, Subdivision b.

Source of code: Delaware Valley Regional Planning Commission (www.dvrpc.org)

ⁱ New Jersey Conservation Foundation, *Buying Time for Farm Land Preservation*, available at www.njconservation.org/html/state/041900.html (last visited April 29, 2003).