

9.3 TRANSFER OF DEVELOPMENT RIGHTS

(Approved by the City Council on January 17, 2006)

9.31 Purposes:

1. The purposes of this ordinance are:
 - a) to protect farmland, aquifer recharge and rural areas of Easthampton;
 - b) to protect property values and provide a fair economic return to property owners ;
 - c) to foster compact development in areas served by public services and infrastructure.
 - d) to promote the creation of traditional neighborhood developments with compact, pedestrian-friendly, predominantly residential areas on gridded streets.
 - e) to preserve the remaining rural, historic, and agricultural character of the community by directing compact new development to appropriate locations adjacent to existing urbanized centers.

9.32 Transfer of Development Rights:

- a. Transfer of Development Rights provides for increased density of residential and commercial development in the designated Receiving Area, when suitable open space land in the Sending Area, is permanently preserved from development. The transfer of development rights is accomplished by the execution of a Conservation Restriction, and the increased density is permitted by the issuance of a Special Permit, both as hereinafter provided. The Transfer of Development Rights shall conform in all respects to Section 6.10 of this ordinance, and in no event shall a Receiving Area be allowed to exceed the limitations set forth therein. (Subsection 9.32 amended by the City Council on June 17, 2015; approved by the Mayor on June 18, 2015).

9.33 Eligibility:

- a. All lots shown on a plan, or described in a deed, recorded at the Registry of Deeds in the Sending Area are eligible to apply for a Special Permit from the Planning Board to transfer all or part of the development rights on the lot to a lot in the Receiving Area.

9.34 Establishment of Sending Area and Receiving Area:

- a. The following districts are hereby established:
 - (1) Sending Area;
 - (2) Receiving Area.These districts are delineated on the Transfer of Development Rights Map of Easthampton, which is incorporated by reference as part of the Zoning Ordinance.

9.35 Special Permit Process for Transfer of Development Rights:

- a. The applicant proposing to develop specified land in the Receiving Area at a density allowed by this ordinance with transfer of development rights shall make an application to the Planning Board for a Special Permit. The application shall clearly illustrate a land parcel or parcels in the Sending Area and a parcel or parcels in the Receiving Area proposed for transfer of development rights, and the number of development rights proposed for transfer.
- b. As part of the Special Permit application, the applicant shall determine the number of lots eligible for transfer from the parcel in the Sending Area, using the following process:
 - (1) After conferring with the Conservation Commission, subtracting all acreage which are identified as wetlands, 100-year floodplain, or riverfront area under the Mass Rivers Protection Act. The Conservation Commission may require the applicant to complete a wetland delineation;
 - (2) Subtracting 5% of the total remaining parcel acreage, to account for land which would be used for roads if the parcel had been developed.

- (3) After determining the remaining land area, determining the number of lots allowable in the Sending Area based on a conceptual development plan;
- c. The Planning Board shall review the applicant's assessment of acreage eligible for transfer, and shall make a final determination of such acreage eligible for transfer.
 - d. The applicant shall also file with the Planning Board a preliminary development plan for the parcel in the Receiving Area, illustrating lots created using the transferred development rights, and illustrating all wetland and floodplain areas.
 - e. Approval of a Special Permit, shall require the applicant to tender to the Planning Board a valid instrument granting to the City a permanent Conservation Restriction for eligible land in the Sending Area. The Conservation Restriction may be held by either the Easthampton Conservation Commission or a designated non-profit land trust. The applicant shall furnish to the Planning Board a certificate of title by a duly licensed attorney and such other evidence or assurance of title as may be satisfactory to the City Council.
 - f. Upon final approval of site plans, the Planning Board shall make a decision to grant, deny, or grant with conditions, the Special Permit to increase in number and density of units in the Receiving Area, based on the table in Section 9.37, as per the process indicated in Section 12.7 of the Easthampton Zoning Ordinance.
 - g. Upon the advice of City Counsel that the Conservation Restriction document is valid and sufficient, there must be a vote by the City Council authorizing acceptance of the Conservation Restriction by either the Conservation Commission or a designated non-profit land trust. If the Special Permit application is valid and sufficient, the Conservation Commission, acting on behalf of the City, shall accept the Conservation Restriction for recording in the County Registry of Deeds.

9.36 Receiving Area Regulations:

1. The Planning Board shall not approve a Special Permit for Transfer of Development Rights for a project which is not served by public sewer and water lines in the Receiving Area.

9.37 Dimensional and Density Regulations Allowed By the Transfer of Development Rights:

- a. Each residential building lot within the Sending Area is equivalent to one of the development rights in the Receiving Area shown in the Table of Exchange Standards for Transfer of Development Rights, found below in this section.

Table 1. EXCHANGE STANDARDS FOR TRANSFER OF DEVELOPMENT RIGHTS

Sending Area	Receiving Area	Notes
1 residential building lot equals	2000 s.f. of additional commercial or industrial floor area, plus a 5% increase in building coverage for a single commercial or industrial lot, or	1) “Additional commercial or industrial floor area” shall be defined as floor area above that which would normally be permitted in the underlying district, under Table 6-2 the Easthampton Zoning Ordinance. The Planning Board may allow an increase in building coverage from the maximum building coverage required in Table 6-2, up to a maximum 75% building coverage for commercial or industrial uses.
	1.2 residential building units, plus a 5% increase in building coverage, or	2) An additional 10% increase in the number of units may be allowed if the development provides for affordable home ownership. Affordable housing shall be as defined in Section 8.69 and controlled by deed.
	1 neighborhood commercial building lot	3) See Section 9.42 for commercial uses allowed on a neighborhood building lot within a Traditional Neighborhood Development. Only one “neighborhood commercial building lot” may be approved per ten residential building lots within a TND.

- b. For development rights purchased for every one (1) lot meeting minimum dimensional requirements for the underlying Rural Residential District within the Sending Area, the developer can add 1.2 residential lots or one neighborhood commercial lot in a Traditional Neighborhood Development in the Receiving Area above what could normally be built under Residential A standards, provided the dimensional requirements indicated in Section 9.37, Table 2, of this Ordinance and other requirements of the ordinance are met. Fractions of building lots cannot be rounded up to the next whole number.

For example, if a developer buys the development rights to 14 buildable lots in the Sending Area, the developer is entitled to:

$$14 \text{ lots} \times 1.2 = 16.8 \text{ lots}$$

in addition to the underlying density in the Receiving Area. However, since fractional lots cannot be built on, the developer can construct only 16 units (above what could normally be built under Residential A standards).

- c. When a landowner wishes to sell less than the total number of development rights available to a tax parcel, the landowner may do so provided that the tax parcel is subdivided.
- d. The maximum limits on density, building coverage, and parking reductions permitted to be developed by Special Permit in the Receiving Area shall be determined by reference to the Table of TDR Dimensional Standards for Receiving Areas found below in this section.

Table 2. TDR Dimensional Standards for Receiving Areas

Underlying Zoning District	Dimensional Requirements in Underlying Zone	Dimensional Requirements in Receiving Area (with TDR)
R-10	Lot Size: 10,000 s.f. Frontage: 100 ft. Front Setback: 20 ft. Side Setback: 10 ft. Rear Setback: 30ft. Building coverage: 25% Height: 2 ½ stories Maximum multi-family units in building: 6	Lot Size: 10,000 s.f. Frontage: 60 ft. Front Setback: 15 ft. Side Setback: 10 ft. Rear Setback: 20 ft. Building coverage: 60% Height: 2 ½ stories Maximum multi-family units in building: 9
R-15	Lot Size: 15,000 s.f. Frontage: 100 ft. Front Setback: 30 ft. Side Setback: 15 ft. Rear Setback: 30 ft. Building coverage: 20% Height: 2 ½ stories	Lot Size: 15,000 s.f. Frontage: 60 ft. Front Setback: 15 ft. Side Setback: 10 ft. Rear Setback: 20 ft. Building coverage: 50% Height: 2 ½ stories
R-35	Lot Size: 35,000 s.f. Frontage: 120 ft. Front Setback: 50 ft. Side Setback: 20 ft. Rear Setback: 50 ft. Building coverage: 10% Height: 2 ½ stories	Lot Size: 15,000 s.f. Frontage: 75 ft. Front Setback: 50 ft. Side Setback: 20 ft. Rear Setback: 30 ft. Building coverage: 50% Height: 2 ½ stories
Highway Business	Lot Size: 25,000 s.f. Frontage: 120 ft. Front Setback: 30 ft. Side Setback: 25 ft. Rear Setback: 30 ft. Building coverage: 40% Height: 2 ½ stories	Lot Size: 15,000 s.f. Frontage: 80 ft. Front Setback: 15 ft. Side Setback: 10 ft. Rear Setback: 20 ft. Building coverage: 75% Height: 2 ½ stories
Industrial	Lot Size: 40,000 s.f. Frontage: 140 ft. Front Setback: 50 ft. Side Setback: 25 ft. Rear Setback: 30 ft. Building coverage: 40% Height: 2 ½ stories	Lot Size: 15,000 s.f. Frontage: 100 ft. Front Setback: 15 ft. Side Setback: 10 ft. Rear Setback: 20 ft. Building coverage: 75% Height: 2 ½ stories

9.39 Special Permit Criteria:

a. In addition to the Special Permit criteria in Section 12.7, the Planning Board shall grant a special permit for transfer of development rights if it finds the following criteria are met:

- (1) The proposed use is in harmony with the purposes of this Ordinance;
- (2) The proposed use meets all of the procedural, dimensional and density requirements, and design standards of this Ordinance.

9.395 Reporting of TDR Transactions:

(1) Buyers and sellers must report all TDR transactions (options, sales, gifts, donations) to the Planning Board within ten business days.

9.396 Release of Agricultural Preservation Restriction:

a. No Agricultural Preservation Restriction, which has been conveyed under this Ordinance, may be released unless the provisions for release of Agricultural Preservation Restrictions in M.G.L. Chapter 184, Section 32 have been met, which include:

- (1) The restriction must be repurchased from the City by the land owner at its then fair market value, and funds returned to the City bank for development rights;
- (2) The restriction shall only be released by its holder only if the land is no longer deemed suitable for agricultural or horticultural purposes and unless approved by a two-thirds vote of both branches of the Massachusetts general court.

9.397 Alternate Method for TDR Transactions:

- a. In lieu of transferring development rights using the process described Sections 9.35-9.37 above, an applicant for a Special Permit in Section 9.35 may make a cash contribution to the City of Easthampton Farmland and Open Space Fund to be used for the purpose of purchasing agricultural preservation restrictions, conservation restrictions or open space in the Sending Area. The Easthampton Conservation Commission shall oversee all expenditures from this fund. The contribution shall be of a value equal to the value of raw developable land set by this ordinance at the time of adoption at \$35,000.00 per lot. This value shall be reviewed and adjusted every two years by the City Council.
- b. The maximum number of development rights which may be purchased through a cash contribution to the City of Easthampton shall be up to 100 development rights in any calendar year.

9.398 Registry of Willing Sellers:

- a. The City shall maintain a registry of landowners in the Sending Area that have expressed interest in selling development rights under this bylaw. Applicants for TDR must seek development rights from this registry first, before considering making a cash payment in lieu of transferring development rights, as permitted under Section 9.397.