

Transferable Development Rights

101. Purpose and definitions

- A. Purpose. The purpose of this Ordinance is to encourage the preservation of natural resources; protect the scenic, recreational and agricultural qualities of open lands; and facilitate orderly growth and development in Berkeley County by allowing the transfer of development potential from a site in an area outside the growth boundary (sending area) to one inside the growth area (receiving area). The transfer of development rights will further the community interest by providing long-term protection of land in the Rural-Residential (R-R) District and portions of the R-1 District that are not served by public water and public sewer.
- B. Definitions. As used in this ordinance, the following words shall have the meanings indicated:

DEVELOPMENT RIGHT: The right to erect a dwelling unit on property

ELIGIBLE PARCEL: A parcel of land that does not contain any encumbrance on development.

INSTRUMENT OF TRANSFER: An instrument, in the form required by this ordinance, by which one or more development rights are transferred.

ORIGINAL INSTRUMENT OF TRANSFER: An instrument of transfer by which development rights are initially transferred from a sending parcel by the original transferor.

ORIGINAL TRANSFEROR (SENDER):

- (1) A transferor who is the owner of the sending parcel from which the rights are transferred; and
- (2) All persons who have any mortgage, deed of trust or other lien or encumbrance on the sending parcel.

PERSON: A person shall mean and include one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees in bankruptcy or receivers.

RECEIVING PARCEL: A parcel that is eligible to receive rights from a sending parcel.

SENDING PARCEL: A parcel of land located in a Berkeley County Rural-Residential District or those portions of the R-1 District that are not served by

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public water and public sewer, within Berkeley County that qualifies for development rights..

TRANSFER: A transfer of development rights from a sending parcel to a receiving parcel by an instrument of transfer. "Transfer" includes all subsequent transfers to or among transferees.

TRANSFEREE (RECIEVER): A person to whom development rights are transferred; and all persons who have any lien, security of interest, or other interest with respect to development rights held by a transferee.

TRANSFEROR (SENDER): A person who transfers development rights; and all persons who have any lien, security of interest, or other interest with respect to development rights held by a transferor.

102. Sending areas and allocations

- A. Sending areas. Sending areas are all those properties located in the R-R Zoning District and those portions of the R-1 District that are not served by public water and public sewer within Berkeley County, that are eligible parcels. Every parcel of land located in a sending area shall have a specific number of transferable development rights based on the allocation standards set forth in this ordinance. These development rights may be used to obtain approval for development on lands located in a receiving area, as identified in Section 104, at a density greater than would otherwise be allowed on those lands.
- B. Allocation formula
- (1) The number of transferable development rights attached to a particular parcel located in the R-R District or the R-1 District that is not served by public water and public sewer shall be equal to one development right per three (3) acres.
 - (2) One development right shall be subtracted for each dwelling located on the parcel which exists prior to the effective date of this ordinance.
 - (3) No development rights shall be granted on land which is subject to restrictive development regulations, covenants or indentures which preclude the subdivision and/or development of the land. An examples of such a restriction would include, but not be limited to, agriculture land preservation programs.
 - (4) The owner of any parcel located in a sending area may apply to the Berkeley County Planning Director for a certificate verifying the number of transferable development rights which are allocated to that parcel.

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- (5) Where application of the allocation formula results in the creation of a fraction of a development right, such fraction (to the nearest whole number) may be sold, conveyed, or transferred.

103. Transfer of development rights

- A. Right to transfer. The owner of any parcel of land located in a sending area may transfer the development rights allocated to that parcel to any person at any time, to the same extent and in the same manner as any other interest in real property is transferred. A development right may be used to increase density on a receiving parcel in accordance with the provisions of the Berkeley County Zoning Ordinance.
- B. Limitations.
 - (1) A development right may not be used in any manner inconsistent with the provisions set forth in this ordinance.
 - (2) A development right may not be used to increase density for receiving parcels beyond the bonus density allowed within the parcel's zoning district.
 - (3) Development rights from a sending parcel, which are the subject of an executed Instrument of Transfer, shall renew ten (10) years from the date of said Instrument of Transfer.
 - (4) Development rights from a sending parcel, which have not ~~been used~~ **become vested per the Berkeley County Subdivision Regulations** within ~~36~~ **48 months from the date of recording of the Instrument of Transfer**, shall revert back to the sending parcel.
- C. Subsequent transfer. A development right may be transferred to a transferee prior to the time when its use for a specific receiving parcel has been finally approved in accordance with this ordinance.
- D. Instruments of transfer. An instrument of transfer shall conform to the requirements of this ordinance.
 - (1) An instrument of transfer shall follow the format of Appendix A and contain:
 - (a) The names of the transferor and the transferee;
 - (b) A covenant that the transferor grants and assigns to the transferee and the transferee's heirs, personal representatives, successors and

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assigns a specified number of development rights from the sending parcel;

- (c) A covenant by which the transferor acknowledges that he has no further use or right of use with respect to the development rights being transferred for a period of ten years;
 - (d) A statement of the rights of the transferee prior to final approval of the use of those development rights on a specific receiving parcel, as set forth in Subsection (e), below except when development rights are being transferred to Berkeley County in accordance with this ordinance; and,
 - (e) If the instrument is not an instrument of original transfer, a statement shall appear that the transfer is a subsequent transfer of rights derived from a sending parcel described in an original instrument of transfer which original instrument shall be identified by its date, the names of the original transferor and transferee, and the book and page where it is recorded among the land records of Berkeley County.
- (2) An instrument of original transfer, which is required when a development right is initially separated from the subject property, shall also contain:
- (a) A metes and bounds description of the sending parcel, prepared by a licensed surveyor named in the instrument, or a deed or deeds that describe in detail the acreage contained in said property along with a title certificate for the sending parcel. A metes and bounds survey for certification shall only be required to be submitted by the owner when:
 - [1] The deed/deeds for the property in the designated sending area requesting to have their development rights certified fail to specifically indicate numerically the number of acres contained in the sending parcel; or
 - [2] During the initial title search there is some conflict between said acreage in the deed/deeds and the Tax Assessor's office and the owner wants to claim the larger of the two figures; or
 - (b) A covenant that the entire sending parcel may not be subdivided, unless the subdivision is for agricultural or conservation purposes;

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- (c) A covenant by which use of the sending parcel is restricted to and may be used only for conservation or agricultural uses, other than farm dwellings;
 - (d) A covenant that all provisions of the instrument of transfer shall run with and bind the sending parcel and may be enforced by the Berkeley County Planning Commission; and
 - (e) The certificate of the Planning Director required by this ordinance.
- (3) An instrument of transfer, other than an original instrument of transfer, need not contain a metes and bounds description or plat of the sending parcel.

E. Certificate of development rights.

- (1) Requirement. No transfer shall be recognized under this ordinance unless the original instrument of transfer contains a certificate of development rights issued by the Planning Director indicating that the number of development rights represents the number of development rights applicable to the sending parcel and is recorded in the land records of Berkeley County by the Planning Director.
- (2) Responsibility. The transferor and the transferee named in an original instrument of transfer shall have sole responsibility to supply all information required by this ordinance; to provide a proper original instrument of transfer; and, to pay, in addition to any other fees required by this ordinance, all costs of its recordation among the land records of Berkeley County.
- (3) Application for certificate. An application for a certificate shall:
 - (a) Contain such information, prescribed by the Planning Director, as may be necessary to:
 - [1] Determine the number of development rights involved in the proposed transfer; and
 - [2] Verify parcel size as a basis for certifying the number of development rights and,
 - [3] At a minimum, contain the information specified in Section 103.D(2) above.

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- (b) Be accompanied by such review fee as may be ~~prescribed~~ **established** by the Berkeley County **Commission upon the recommendation of the Berkeley County** Planning Commission.
 - (4) Issuance of certificate. On the basis of the information submitted, the Planning Director shall affix a certificate of findings to the original instrument of transfer. The certificate shall contain a specific statement of the number of development rights which are derived from the sending parcel.
 - (5) Effect of determination. The determination of the Planning Director shall not be construed to enlarge or otherwise affect in any manner the nature, character and effect of a transfer not otherwise permitted by this ordinance.
- F. Effect of transfer.
- (1) After development rights have been transferred by an original instrument of transfer:
 - (a) The sending parcel from which development rights are transferred shall not be subdivided ~~and shall be used only~~ **except** for conservation or agricultural uses ~~as , other than farm dwellings, as defined and~~ **as** permitted in this ordinance.
 - (b) The sending parcel from which rights are transferred shall not be used in connection with any determination of site area or site capacity of a future development.
 - (c) All development rights which are the subject of the transfer, and the value of such rights, shall be deemed for all other purposes, including assessment and taxation, to be appurtenant to the sending parcel, until such rights have been finally approved for use on a specific receiving parcel. ~~and transferred to the County Commission.~~
 - (2) Rights of transferees. Between the time of the transfer of a development right by an original transferor and the time when its use on a specific receiving parcel is final in accordance with the provisions of this ordinance, a transferee has only the right to use the development right to the extent authorized by all applicable provisions of this ordinance.
 - (3) No transfer shall be construed to limit or affect the power of the County Commission to amend, supplement, or repeal any or all of the provisions of this section or any other provisions of this ordinance at any time or to

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entitle any transferor or transferee to damages or compensation of any kind as the result of any such amendment, supplementation, or repeal.

- G. Recordation of transfers. After it is properly executed, an instrument of transfer and a title certificate shall be recorded with the Berkeley County Clerk. A receipt of the recording shall be delivered by the transferor or transferee to the Berkeley County Planning Director

104. Receiving area and use of transferable development rights.

- A. Creation and purpose of receiving area; ability to use transferable development rights.

- (1) Receiving areas for transferable development rights shall be as follows:

(a) Those growth areas shown in the Berkeley County Comprehensive Plan on the Growth Management Map and designated areas of the R-1 District that are served by public water and public sewer, as well as the R-2, R-3, Village and Neighborhood-Commercial Zoning Districts.

- (2) A transferable development right in the above designated areas shall only be used when the development conforms to standards established for their use in the Berkeley County Zoning Ordinance.

- (3) The owner of any property located in a receiving area may use transferable development rights, in addition to that density allowed on the property as a matter of right, to build up to the maximum density of development allowed on the property or increase the size of a commercial structure in the Village and Neighborhood-Commercial Zoning Districts. Transferable development rights may be aggregated from different parcels and owners for use in securing additional development in a receiving area.

- B. Development permitted with use of development rights. Each development right may be used to secure approval from the County for additional development above the number of dwelling units otherwise allowed to be developed on the property, as follows:

- (1) If the receiving area is within the growth areas as defined in Section 104.A(1)(a) above, a development right shall permit one additional dwelling unit on the receiving parcel. **A development right shall also permit 2,000 additional square feet of commercial space in the Village and Neighborhood-Commercial Zoning Districts.**

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- (2) Development of the property within the receiving area must be in accordance with all standards set forth in the Berkeley County Zoning Ordinance.

105. Approval of development using transferable development rights.

- A. Development approval procedure. The request to use transferable development rights on a property shall be in the form of a sketch plat, preliminary subdivision plat, site plan or other application submitted in accordance with the requirements of this Ordinance. In addition to any other information required by this Ordinance, the application shall be accompanied by an affidavit of intent to transfer development rights indicating the number of development rights to be transferred to the property.

106. Amendments

Whenever public necessity or the public health, safety, and general welfare require, the County Commission may, after receipt of a favorable recommendation from the Berkeley County Planning Commission, amend, supplement, change, or repeal this Ordinance.

107. Effective date

- A. **This Ordinance shall become effective immediately after its adoption by a referendum vote by the citizens of Berkeley County, West Virginia.**
- B. **This Ordinance is only valid with an enacted Zoning Ordinance.**

APPROVED THIS day of , 200

Steven C. Teufel, President

Attest:

Ronald K. Collins, Commissioner

John W. Small, Jr.
County Clerk

Date _____

William L. Stubblefield, Commissioner

RECORDED:

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Appendix A

DEED OF TRANSFERABLE DEVELOPMENT RIGHTS (TDR)

THIS DEED OF TRANSFERABLE DEVELOPMENT RIGHT made this _____ day of _____, 20__, by and between _____, herein referred to as GRANTOR and _____ herein referred to as GRANTEE.

WHEREAS, pursuant to §7-1-3mm, *Code of West Virginia, 1931*, as amended, Berkeley County, West Virginia has established a transferable real property rights program and this instrument is the original instrument of transfer in that program.

THEREFORE, WITNESSETH, that for and in consideration of the sum of _____ (\$____), cash in hand paid, and/or other good and valuable consideration, the receipt and sufficiency of all which are hereby acknowledged, the said Grantor does hereby grant, bargain, sell and convey, with covenants as listed below, unto the Grantee, his/her/their heirs, personal representatives, successors and assigns those certain development rights, numbered _____ and certified as set forth in Exhibit A, Certificate of Development Rights, for attachment to uses and in conjunction with the development of Grantee's property situate in (name of receiving tax district), Berkeley County, West Virginia. The development rights are originally attached to property situate in the (name of sending tax district), Berkeley County, West Virginia, described as:

METES and BOUNDS DESCRIPTION

AND being all of the real estate which was conveyed to _____ by deed dated _____ from _____ and recorded in the Office of the Clerk of the County Commission of Berkeley County, WV in Deedbook _____ Page _____.

The Grantor hereby acknowledges and covenants that upon this transfer, the Grantor's property (sending parcel) is subject to the following covenants:

1. Grantor has no further use or right of use with respect to the development rights hereby transferred **for a period of 10 years**;
2. No further subdivisions of the sending parcel are permitted unless the subdivision is for agricultural or conservation purposes;
3. The sending parcel is restricted to and may be used only for conservation or agricultural uses, other than farm dwellings;
4. All provisions of the instrument of transfer shall run with and bind the sending parcel and may be enforced by the Berkeley County Planning Commission.

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Appendix A

DECLARATION OF CONSIDERATION OF VALUE

Under the penalties of fine and imprisonment as provided by law, the undersigned Grantor hereby declares the total consideration for the development rights transferred by the document to which this declaration is appended is \$_____.

Witness the following signatures

STATE OF WEST VIRGINIA
COUNTY OF BERKELEY, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by (Grantor's Name) and (Grantee's Name).

[AFFIX NOTARIAL SEAL]

Notary Public

My Commission Expires: _____