

ARTICLE XXII

Open Space Subdivision

§ 129-136. Transfer of development rights.

A. Policy and intent.

- (1) The maximum levels of density of development allowed in the various zoning districts by this chapter are designed, among other purposes, to secure:
 - (a) A fair balance between the public interest, through such things as the most economic and efficient possible use of municipal services and utilities, and the interests of individual landowners; and
 - (b) An economically, socially, and environmentally sound balance between developed and open land. In RB-1, CR-1, CR-2, H-1 and R-2 Districts, due regard to the balance between developed and open land throughout the town as well as the balance between developed and open land within the particular districts requires increased density limits. In undeveloped areas within the R-2 and R-3 Districts, due regard to the interests of individual landowners as well as the public interest requires limitation of densities. It is in the public interest, therefore, to shift development from the undeveloped areas within the R-2 and R-3 Districts to RB-1, CR-1, CR-2, H-1 and existing developed areas within R-2 Districts to the extent that this can be accomplished without impairing a sound balance between developed and open land in particular RB-1, CR-1, CR-2, H-1 and R-2 Districts without undue impairment of the interests of individual landowners in undeveloped areas within the R-2 and R-3 Districts. Accordingly, it is the policy and intent of the town to permit development in RB-1, CR-1, CR-2, H-1 and R-2 Districts at increased levels of density when a developer can provide assurance of a corresponding reduction of the density of development in the undeveloped areas within the R-2 or R-3 District.
- (2) The transfer of the development rights system herein established shall have the following specific objectives:
 - (a) To preserve the natural and scenic qualities of open land and accrue to the town and region the benefits of the use of open land.
 - (b) To allow the adequate and economic provision of streets and utilities consistent with the Comprehensive Plan of the Town of Wilton.
 - (c) To provide for a creative and staged development of land and an orderly transition of land from vacant to occupied uses.
 - (d) To foster development in areas best suited to specific uses while providing economic return to owners of property restricted from further development.

- B. Transfer of development rights. Transfer of development rights provides for increased density of residential development in the receiving zones; RB-1, CR-1, CR-2, H-1 and R-2 Districts, when suitable and desirable open space land as recommended by Planning Board and approved by the Town Board within the sending zones R-2 or R-3 District is permanently reserved from development uses and transfers to public use open space. The transfer of the development rights is accomplished by execution of an open space land transfer to the Town, and the increased density is permitted by the issuance of a density permit application to the Town Board; hereinafter provided with instructions and associated fees.
- C. Authorization of transfer of development rights. In the manner and to the extent provided by this section and Town Code chapters 109 and 129 and Schedules B, E, G, N, O, and other applicable provisions of this chapter:
- (1) Development rights in eligible land in undeveloped areas within the R-2 or R-3 District may be transferred to land in RB-1, CR-1, CR-2, H-1 and R-2 Districts.
 - (2) Only undeveloped buildable land greater than 6 acres in a R-2 or R-3 District with the area and dimensions at least equal to the minimum required for residential development shall be eligible land from which development rights may be transferred.
- D. Procedure.
- (1) Development rights for land in undeveloped areas within the R-2 or R-3 Districts may be transferred to land in the RB-1, CR-1, CR-2, H-1 or R-2 Districts pursuant to the following procedure:
 - (a) The developer proposing to develop specified land in the RB-1, CR-1, CR-2, H-1 or R-2 Districts at an optional density allowed by this chapter with a transfer of development rights shall submit an application for a density permit to the Town Board, simultaneously with an application for a subdivision plat or site plan to the Planning Board.
 - (b) Applications received by the Town Board will be referred to the Planning Board for a recommendation and the Town Board will establish an escrow account, as cited in Subsection J, for engineering review.
 - (c) With an application for a density permit, the developer shall tender to the Town Board a valid instrument granting to the town an open space land transfer in eligible land in the R-2 or R-3 Districts. The instrument shall be in the form and contain the terms and conditions provided by Subsection E of this section and shall cover an area of eligible land determined in accordance with Subsections C(2) and F(2) of this section. The developer shall furnish to the Town Board a certificate of title by a duly licensed attorney and such other further evidence or assurance of title as may be satisfactory to the Town Counsel.
 - (d) Upon advice of the Town Counsel that the open space land transfer document is valid and sufficient, and if the applications cited in Subsection D(1)(a) above are otherwise valid and sufficient, the Town Board may accept said document and request applicant submit for

recording in the Saratoga County Clerk's office with Record and Return to the Town Clerk. Upon final approval of the subdivision plat or site plans, the Town Board shall issue a density permit permitting development of the specified land at the increased density.

- E. The grant of an open space land transfer pursuant to this section shall be on the terms and conditions approved by the Town Board and Town Counsel. Whether to approve and accept any proposed land transfer shall be at the sole discretion of the Town Board.
- F. Area of land required, and number of units permitted.
 - (1) The actual number of units permitted to develop at increased density limits in RB-1, CR-1, CR-2, H-1 and R-2 Districts shall be reviewed by Planning Board with a recommendation from third-party engineer. Consideration needs to be given to increased demand for utilities, roadway network and stormwater. Increased density recommendation from Planning Board will be given to Town Board for consideration.
 - (2) Assignment of development rights for transfer. Land in a R-2 or R-3 District shall be assigned development rights for purposes of transfer as follows:
 - (a) In a R-3 District, *one development right (one lot or dwelling unit) for each three eligible buildable acres of desirable open space.*
 - (b) In an R-2 District, *one development right (one lot or dwelling unit) for each two eligible buildable acres of desirable open space.*
- G. Submission of land survey with design layout showing constrained lands, bulk area requirements, density calculations and list out any variances that would be required based on subdivision regulations.
- H. Fee for land management, trail development, monitoring and maintenance is \$2,500/transferred unit. Town Board may request trail development by applicant.
- I. Survey and property line marking by applicant and as directed by Town.
- J. Third party engineering verification on available buildable land and allowable density appropriateness, to be paid by applicant. An escrow account will be funded by the applicant for the Town to hire a consultant of Town's choice. Consultant will review submitted materials and perform site investigations to provide written recommendations to Planning Board.