

## **Article 17: Transfer of Development Rights**

### **17.1 Purpose and Intent:**

This bylaw enables the transfer of development potential from one parcel to another. The transfer of development rights (TDR) makes it possible to greatly restrict or even prohibit development entirely in one area called the Preservation Area and transfer those rights to another area called the Receiving Area where there are little or no impediments to higher density, such as an area serviced by public water and sewer. The density is transferred from a "sending" parcel to a "receiving" parcel. By creating receiving parcels as markets for the sale of unused development rights in the sending parcels, TDR program encourages the maintenance of low-density land uses, open spaces, historical features, critical environmental resources, and other sensitive features of the designated sending parcels. When the owner of a sending parcel sells development rights to the owner of a receiving parcel, the purchaser thereby increases the development rights beyond otherwise permissible limits. In this manner, local governments can protect a variety of sensitive features while providing a mechanism to compensate any perceived diminution in land development potential. The TDR program is consistent with the Raynham Master Plan to further the conservation and preservation of natural and undeveloped areas, wildlife, flora, and habitats for endangered species; the preservation of coastal resources including aquaculture; protection of ground water, surface water, as well as other natural resources; balanced economic growth; the provision of adequate capital facilities, including transportation, water supply, and solid, sanitary, and hazardous waste disposal facilities; the coordination of the provision of adequate capital facilities with the achievement of other goals; the development of an adequate supply of affordable housing; and the preservation of historical, cultural, archaeological, architectural, and recreational values.

### **17.2 Definitions**

**Development Rights:** Rights to develop a single-family house lot, expressed as the maximum number of lots permissible on a designated sending parcel or parcels under the applicable zoning and subdivision rules and regulations in effect on the date of the transfer of development rights. Development rights (house lots) are computed on a one for-one-basis. Determination of the maximum number of development rights (house lots) available for transfer shall be made by the Special Permit Granting Authority (Planning Board).

**Transfer of Development Rights (TDR):** A development right (house lot) can be transferred from a sending parcel(s) to a receiving area. A "receiving area" is defined as a residential subdivision. Development rights can be transferred to multiple parcels, if multiple parcels are under consideration for a residential subdivision in order to increase the number of house lots for said development. The density of said development would be increased above existing zoning requirements in order to accommodate the transferred development rights.

**Sending Parcel(s):** A parcel or parcels of land determined by the Planning Board to be of special importance to remain in a natural state because of its visual prominence, potential vista impairment, ecological significance, fragility, special importance as farmland, its value for recreation, future Town water supply, or because it is important to the Town's Open Space Plan and/or Town's Master Plan. The sending parcel or parcels must be residentially zoned from which development rights may be transferred.

**Receiving Area:** A previously approved subdivision serviced by Town water or sewer, which can support the increased development and complies with the most recently amended Zoning Bylaws and Planning Board Rules and Regulations. A receiving area can also be a pending conventional subdivision that can support the increased development and complies with the most recently amended Zoning Bylaws and Planning Board Rules and Regulations.

### 17.3 Determination of Development Rights

(a) To establish the development rights available for transfer, the SPGA may require the applicant for residentially zoned land to submit a preliminary plan or a more detailed subdivision plan, as defined by the Planning Board's subdivision rules and regulations, to illustrate the number of lots or dwelling units.

(b) Development rights may be transferred at a rate expressed as the maximum number of lots permissible on a designated sending parcel or parcels under the applicable zoning and subdivision rules and regulations in effect on the date of the transfer of development rights.

(c) The lot must comply with all existing density limitations imposed by the Raynham Zoning Bylaws as well as those that may be imposed as a condition of a special permit and effective at the time of application for approval of the proposed development.

(d) The credited land must not be wetlands as defined in MGL 131 Section 40 or be used to satisfy lot area requirements for any other development.

### 17.4 Permanent Development Restrictions

Any lot or lots deemed to meet the standard of qualifying for a transfer must be permanently restricted from future development by way of a conservation restriction in accordance with Massachusetts General Law Chapter 184, Section 31-33 as most recently amended. Such restriction shall be submitted to the Planning Board prior to approval of the project and recorded at the Registry of Deeds/Land Court prior to the conveyance of any building lot. A management plan may be required by the Planning Board, which describes how existing woods, fields, meadows or other natural areas shall be maintained in accordance with good conservation practices. Upon receipt of a special permit for development where such special permit is conditional upon the voluntary, permanent restriction of development rights, the land owner in the Receiving Area shall not receive any building permits until all documents described in this bylaw have been recorded in the appropriate Registry of Deeds.

### 17.5 Receiving Area

(a) An approved or proposed residential subdivision that is capable of supporting

additional development. Town water and sewer must service the subdivision. The lot sizes for the receiving area cannot be less than one-half of the minimum requirements in Article Five: Intensity of Use Regulations; however, the lots sizes for the receiving can vary provided they are not less than half of the minimum requirements in Article Five: Intensity of Use Regulations.

(b) The Special Permit is not effective until the purchased development rights from the sending parcel or parcels are under a conservation restriction.

#### 17.6 Title Recordation, Tax Assessment, and Restriction of Development Rights

(a) All instruments implementing the transfer of development rights shall be recorded in the manner of a deed in the Registry of Deeds of the jurisdiction for both sending and receiving parcels. The instrument evidencing such TDRs shall specify the map and lot number of the sending parcel(s) and the map and lot of the receiving parcel(s).

(b) The clerk of the Registry of Deeds shall transmit to the applicable town assessor(s) for both the sending parcel(s) and receiving parcel(s) all pertinent information required by such assessor to value, assess and tax the respective parcels at their fair market value as enhanced or diminished by the TDRs.

(c) The record owner of the sending parcel shall, within forty-five (45) days of receipt of a special permit authorizing TDRs, record at the Registry of Deeds a Conservation Restriction as defined by G.L. c. 184 §§31-33 running in favor of the Town prohibiting, in perpetuity, the construction, placement, or expansion of any new or existing structure or other development on said sending parcel. Evidence of said recording shall be transmitted to the Planning Board of the town in which the restriction has been placed, indicating the date of recording and deed book and page number at which the recording can be located. The grant of the special permit to transfer development rights shall be conditioned upon such restriction, and no special permit for a transfer of development rights shall be effective until the restriction noted above has been recorded at the Registry of Deeds.

#### 17.6 Severability

If a court of competent jurisdiction holds any provision of this bylaw invalid, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Town's zoning bylaw.