

## **Section 5-90**

### **TRANSFER OF DEVELOPMENT RIGHTS**

#### **5-90.1 - Purposes.**

The purposes of this ordinance are:

- a. to protect farmland, water supply resource and rural areas of Westfield;
- b. to provide balanced and efficient economic growth by focusing development in areas served by public services and infrastructure.
- c. to preserve the rural, historic, and agricultural character of the community by redirecting new development to locations appropriate for higher intensity use.

#### **5-90.2 - Definitions.**

1. Sending Area. An area established by the City Council in which use or development should be limited, which shall be comprised of all parcels of land located within the Rural Residential District and, regardless of zoning district, all land within a 400 foot radius of each Westfield Water Department public drinking water wellhead.
2. Receiving Area. An area established by the City Council as suitable by virtue of availability of existing infrastructure to receive transferred development rights, which shall be comprised of all parcels of land located within the Business A, Business B, Industrial A and Industrial Park Districts.
3. Development Rights. Those rights to develop, expressed as the number of residential or commercial/industrial building lots, that could be permitted on a designated sending parcel under the applicable zoning and subdivision rules in effect on the date of the transfer of development rights.

#### **5-90.3 - Special Permit.**

All parcels identified as Sending Areas are eligible to apply to the Planning Board for a Special Permit to transfer all or part of their development rights to a parcel in the Receiving Area.

#### **5-90.4 - Process for Transfer of Development Rights.**

1. 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.
2. The applicant shall also file with the Planning Board a Site Plan for the parcel in the Receiving Area, illustrating lots created using the transferred development rights, and illustrating all wetland and floodplain areas as certified by the Conservation Commission.
  - a. The number of lots eligible for transfer from the parcel in the Sending Area, shall be determined using the following process:
    - i. subtract 50% of all acreage which is identified and certified by the Conservation Commission as wetlands;
    - ii. subtract 5% of the total remaining parcel acreage, to account for land which would be used for roads if the parcel had been developed.
    - iii. after determining the remaining land area, divide by the minimum lot size in that District to determine the number of lots allowable in the Sending Area;

3. Prior to the Planning Board’s final approval of a Special Permit, the applicant shall tender to the Board, a valid instrument granting to the City a permanent Conservation Restriction/Agricultural Preservation Restriction for eligible land in the Sending Area. The Conservation Restriction/Agricultural Preservation Restriction may be held by either the Westfield Conservation Commission, an appropriate state agency, 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 Planning Board.
4. The Planning Board’s approval of a Special Permit is conditional upon:
  - a. a vote by the City Council authorizing acceptance of the Conservation Restriction/Agricultural Preservation Restriction by either the Conservation Commission, an appropriate state agency, or a designated non-profit land trust;
  - b. the approval by the Massachusetts Executive Office of Environmental Affairs or Department of Food and Agriculture of the Conservation Restriction/Agricultural Preservation Restriction; and
  - c. the recording at the Hampden County Registry of Deeds of both the Conservation Restriction/Agricultural Preservation Restriction and the Special Permit, proof of recording of which shall be provided to the Planning Board by submission of certified copies of the instruments as recorded inclusive of Book and Page.
5. 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 5-90.5, as per the process indicated in Article I Section 1-50 of this ordinance. All Special Permits issued under this Article are subject to, and shall not take effect, until the Conservation Restriction/Agricultural Preservation Restriction has been approved by the Massachusetts Executive Office of Environmental Affairs or Department of Food and Agriculture and has been recorded, along with the Planning Board’s Special Permit, in the Hampden County Registry of Deeds.
6. Buyers and sellers of properties which have received a TDR Special permit under this Article must report all transactions involving said property to the Planning Board within ten business days.

**5-90.5 - Receiving Area Regulations.**

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

**5-90.6 - Dimensional and Density Regulations Allowed by the Transfer of Development Rights.**

1. 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. Table of Exchange Standards for Transfer of Development Rights

Sending Area	Receiving Area
1 residential building lot equals	2000 s.f. of additional commercial or industrial floor area <sup>1</sup> , plus a commensurate increase <sup>2</sup> in lot coverage or height requirements, or a decrease in front setback requirements, for a single commercial or industrial lot.

<sup>1</sup> Note: “Additional commercial or industrial floor area” shall be defined as floor area above that which would normally be permitted under the Westfield Zoning Bylaw. The increased floor area shall be accommodated through either increased lot coverage, increased height, or decreased front setback requirements, as noted in Table Two.

<sup>2</sup> Note: See Table Two for limits on increased lot coverage, increased height, or decreased front setback requirements.

2. 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:
  - a. The tax parcel is subdivided;
  - b. The subdivision plan shall specify the agricultural class of all the soils on the site;
  - c. The landowner must sell the development rights from the best agricultural soils first.
3. The maximum limits on density, lot 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

<i>Underlying Zoning District</i>	<i>Existing Dimensional Requirements</i>	<i>Dimensional requirements with Transfer of Development Rights</i>
<i>BA District</i>	<i>Building Coverage: 25% max. Height: 30 feet max. Front Setback: 30 feet min.</i>	<i>Building Coverage: 50% max. Height: 45 feet max. Front Setback: 10 feet min.</i>
<i>BB District</i>	<i>Building Coverage: 80% max. Height: 30 feet max. Front Setback: 30 feet min.</i>	<i>Building Coverage: 80% max. Height: 60 feet max. Front Setback: 10 feet min.</i>
<i>IA District</i>	<i>Building Coverage: 50% max. Height: 35 feet max. Front Setback: 30 feet min.</i>	<i>Building Coverage: 60% max. Height: 60 feet max. Front Setback: 30 feet min.</i>
<i>IP District</i>	<i>Building Coverage: 40% max. Height: 50 feet max. Front Setback: 20 feet min.</i>	<i>Building Coverage: 60% max. Height: 75 feet max. Front Setback: 20 feet min.</i>

### **5-90.7 - Design Standards for Business and Industrial Receiving Areas.**

1. All business and industrial uses developed under this bylaw must meet the following standards:
  - a. To the extent feasible, adjacent uses shall utilize shared parking areas and shared curb cuts to minimize vehicular safety impacts on roads.
  - b. Parking shall be located to the rear or side of buildings;
  - c. Pedestrian and bicycle amenities, such as sidewalks, shall be provided;
  - d. Within the Water Resource Protection Area, all business uses must provide a system for artificial recharge of precipitation, as required in Article III, Section 3-170.6-2.
2. The Planning Board may consider, in making its Special Permit decision, whether the project meets the following design standards:
  - a. Architectural design shall be compatible with the historic character and scale of buildings in the neighborhood and the City through the use of appropriate building materials, screening, breaks in roof and wall lines, windows and other architectural techniques.

### **5-90.8 - Special Permit Criteria.**

1. The Planning Board shall grant a special permit for transfer of development rights if it finds the following criteria are met:
  - a. The proposed use is in harmony with the intent and purposes of this ordinance :
  - b. The proposed use meets all of the procedural, dimensional and density requirements, and design standards of this ordinance.
  - c. All business and industrial uses in the Receiving Area must meet the Design Standards for Business and Industrial Receiving Areas in Section 5-90-7.

### **5-90.9 - Release of Conservation Restriction/Agricultural Preservation Restriction.**

1. *No Conservation Restriction/Agricultural Preservation Restriction, which has been purchased under this ordinance, may be released unless the provisions for release, as stated under Massachusetts General Law, have been met, which include:
  - a. *The restriction must be repurchased from the City by the land owner at its then fair market value, and funds returned to the special revenue account for development rights;*
  - b. *The restriction shall only be released by its holder only if the land is no longer deemed suitable for conservation, agricultural or horticultural purposes and unless approved by a two-thirds vote of both branches of the Massachusetts general court.**

### **5-90.10 - Alternate Method for TDR Transactions.**

1. *The Westfield Department of Community Development and Planning shall keep a voluntary registry of property owners of land in the Sending Area who are interested in participating in this program.*
2. *Should an interested applicant in the Receiving Area not be able to reach an accord with any of the persons listed in the above referenced registry then, in lieu of transferring development rights using the process described Sections 5-90-4 – 5-90-8 above, an applicant for a Special Permit in Section 5-90-4 may request the Planning Board that he/she/they be permitted to make a cash contribution to the City of Westfield to be used for the purpose of purchasing development restrictions. Such request shall include detailed documentation as to the efforts made to reach an accord, and the reasons for the failure to reach an accord. The contribution shall be of a value equal to the value of the required development rights, as determined in the Table of Exchange Standards for Transfer of Development Rights. This value shall be determined by multiplying the number of acres of developable land required by the average cost of development restrictions in the City of Westfield over the past three years, as determined by the Conservation Commission. The Planning Board reserves the right to refuse a payment in lieu of transferring development rights request and require that actual development rights be transferred.*
3. *All funds collected under this section shall be placed in a special revenue account administered by the Conservation Commission, and may only be expended with the authorization of the Conservation Commission, for the purpose of preserving open space.*

(4/17/03)