

**TOWNSHIP OF
CAERNARVON**

Lancaster County, Pennsylvania

ORDINANCE NO. 96

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE TOWNSHIP OF CAERNARVON TO ADD DEFINITIONS OF TERMS AND TO SPECIFY ZONING REGULATIONS PERMITTING SEVERANCE AND CONVEYANCE OF TRANSFERABLE DEVELOPMENT RIGHTS.

BE AND IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of the Township of Caernarvon, Lancaster County, Pennsylvania, as follows:

Section 1. The Zoning Ordinance of the Township of Caernarvon shall be amended to revise Article II, "Definitions," to add the following definitions to Section 201, "Terms" to read as follows:

DEED OF TRANSFERABLE DEVELOPMENT RIGHTS — A legal document duly recorded in the Office of the Recorder of Deeds of Lancaster County, Pennsylvania, which grants transfer of ownership of transferable development rights (TDRs).

RECEIVING AREA — Any area which may be designated by this Ordinance, or by inter-municipal agreement, to permit development beyond that permitted in the applicable base District where transferable development rights (TDRs) are acquired and assigned to the applicable development.

SENDING AREA — Any area designated by this Ordinance, or by inter-municipal agreement, from which one or more transferable development rights may be severed and conveyed in accordance with the provisions of this Ordinance, including any lot or lots meeting the sending area qualifications set forth herein.

TDR — A transferable development right.

TRANSFERABLE DEVELOPMENT RIGHT (TDR) — A completely severable unit of development potential: (A) assigned pursuant to Sections 405, 406 and 505 of this Ordinance, as applicable, to lots meeting sending area qualifications set forth therein; (B) which can be severed and conveyed by a Deed of Transferable Development Rights; and (C) which may, or may not be used to increase the permitted amount of development in any area which may be designated as a receiving area.

Section 2. The Zoning Ordinance of the Township of Caernarvon shall be amended to revise Article IV, AG- Agricultural District, to revise Section 401, "Permitted Uses," to add new subsection 401.P to read as follows:

- P. Severance and transfer of development rights (TDRs) in accordance with Sections 405 and 406.

Section 3. The Zoning Ordinance of the Township of Caernarvon shall be amended to revise Article IV, AG- Agricultural District, to add new Section 405 to read as follows:

SECTION 405. TRANSFERABLE DEVELOPMENT RIGHTS (TDR)

- 1. **PURPOSE** - The primary purpose of establishing a program for transferable development rights is to permanently preserve prime farmland, sensitive natural areas, and rural community character that would be lost if the land were developed, by permitting landowners in the sending area defined below to transfer their right to develop to other individuals or entities, in lieu of developing the sending area lands. These rights to develop are referred to for convenience as TDRs.
- 2. **BASIC CONCEPT AND AUTHORIZATION**
 - A. The provisions of this Zoning Ordinance which permit TDRs allow landowners in areas of Caernarvon Township proposed for conservation, called "sending areas," to voluntarily sever and sell or otherwise convey the right to develop their land to other public or private entities or individuals who may hold ("bank") such rights, retire them or ultimately, pursuant to this Ordinance as may be amended, use them or convey them for use for additional development in areas which are designated as eligible "receiving areas." The creation of TDRs and the ability to sell and purchase them as described below are specifically authorized under Sections 603 (c)(2.2) and 619.1 of the Pennsylvania Municipalities Planning Code, under the terms of which development rights are acknowledged to be severable and separately conveyable from a sending area to a receiving area.
 - B. When landowners in the sending area sever their right to develop their land, they must restrict that land from which TDRs are severed against any future development as provided in this Ordinance, although the land may still be used for purposes that do not involve residential, commercial, industrial or institutional development, such as agriculture or forestry and uses customarily accessory thereto. When landowners in any designated receiving area acquire TDRs which have been severed by landowners in the sending area, they receive the right to increase the density or extent of development as provided below.

- C. Deed restrictions imposed on any lands in the sending area upon severance of TDRs shall not prohibit the landowner's sale of such lands after the TDRs have been severed, subject to the recorded restrictions. Restrictive covenant(s) or conservation easement(s) established on the lands from which TDRs have been severed shall benefit or run in favor of Caernarvon Township and/or another governmental entity and/or a conservation organization approved by the Township.
 - D. The owner of the lands in the sending area from which TDRs are severed, or any subsequent party to whom TDRs may be conveyed, may declare the TDRs for sale, may hold the TDRs or may convey the TDRs to any other party. The only use which may be made of the TDRs is the ultimate transfer to development in a designated receiving area. Notwithstanding anything to the contrary, Caernarvon Township shall have no obligation of any kind to hold, to purchase or to own any TDRs which have been severed from any lands in the sending area.
3. **SEVERANCE AND SALE OR CONVEYANCE OF TDRS** – Owners of any lot or lots which meet the requirements set forth in Sections 406 or 505, as applicable, may sever and sell or convey their TDRs in accordance with this section.
- A. When choosing to sever TDRs as provided for herein, a landowner shall sever all TDRs allocated to his or her tract at one time. No other development rights allocated through these TDR provisions shall remain after the initial TDR severance, except as provided for in Section 406.2.B, or Section 505.2.C, as applicable.
 - B. Severance of TDRs shall be effected by duly recording a Deed of Transferable Development Rights in the Office of the Lancaster County Recorder of Deeds. The Deed of Transferable Development Rights shall specify the lot or lots from which TDRs have been severed and the party(ies) who own the TDRs upon their severance, whether retained by the owner(s) of the lands from which the rights have been severed, or conveyed to any other party.
 - C. Prior to recordation of a Deed of Transferable Development Rights, the owner(s) of the TDRs being severed shall obtain the signed endorsement of the Township. Such endorsement shall not unreasonably be withheld upon submission of the following information to ascertain the availability of the TDRs for severance as proposed:

- (1) The deed of record for the sending tract from which the TDRs will be severed or a metes and bounds description of the tract, or a plot plan or survey thereof, adequately indicating the total acreage of the sending tract; areas of the sending tract subject to easements in favor of governmental agencies, utilities, and non-profit corporations; and areas of the sending tract restricted against development by covenant, easement or deed restriction.
 - (2) A title search of the sending tract from which the TDRs will be severed sufficient to determine all owners of the sending tract and all lienholders prepared by a title insurance company licensed in the Commonwealth of Pennsylvania, together with a commitment to insure title to the TDRs to be severed and recorded in a separate Deed of Transferable Development Rights.
 - (3) A copy of the proposed deed of transferable development rights and a copy of the proposed declaration of restriction of development, as regulated by this Section.
- D. Simultaneously with the recording of any Deed of Transferable Development Rights, or prior thereto, restrictive covenant(s) or conservation easement(s), which shall permanently restrict development of the sending area lands as provided in Section 405.3.E below, also shall be recorded in the Office of the Lancaster County Recorder of Deeds. Subsequent sale or conveyance of any recorded Deed of Transferable Development Rights shall clearly indicate the deed record of the original Deed of Transferable Development Rights effecting the severance of the TDRs, any intervening sale or conveyance, and the pertinent restrictive covenant(s) or conservation easement(s).
- E. Sending Area Restrictive Covenant(s) - Any sending area lands from which TDRs have been severed must be permanently restricted from future development by restrictive covenant(s) or conservation easement(s) which meet the following requirements:
- (1) The restrictive covenant(s) or conservation easement(s) shall permanently restrict the lands from future development for any purpose other than principal or accessory agricultural uses, forestry, public park land, conservation areas and similar uses. Structural development for such permitted uses shall be permitted subject to compliance with the regulations set forth in the base zoning district and, if applicable, conformance with any pre-existing restrictive covenant(s) or

easement(s). Where not precluded by any pre-existing restrictive covenant(s) or easement(s), mineral extraction may be permitted subject to limitations on temporary and permanent surface disturbance acceptable to the Township and, where applicable, any agency or organization participating with the Township in the purchase of the TDRs.

- (2) The restrictive covenant(s) or conservation easement(s) shall be approved by Caernarvon Township, in consultation with the Township Solicitor.
 - (3) The restrictive covenant(s) or conservation easement(s) shall designate Caernarvon Township, and/or a bona fide conservation organization or governmental agency acceptable to Caernarvon Township at its sole discretion, as the beneficiary/grantee, but shall also designate the following parties as having separate and independent enforcement rights:
 - a. All future owners of any portion of the original sending area lands, and
 - b. All future owners of any portion of any lot to which the TDRs shall be permanently attached.
 - (4) The restrictive covenant(s) or conservation easement(s) shall apply to the lot or lots from which TDRs are severed (sending area lands) and the acreage which is restricted.
 - (5) All owners of any legal or beneficial interest in the lands from which TDRs are severed shall execute the restrictive covenant(s) or conservation easement(s). All lienholders of the lands from which TDRs are severed shall execute a joinder and/or consent to the restrictive covenant(s) or conservation easement(s).
- F. The proposed deed of transferable development rights and the proposed restrictive covenants or conservation easements shall be reviewed and must be approved by the township solicitor or other consultants, the reasonable costs of which shall be paid by the party seeking to sever the TDRs, unless waived by the Township.

4. RECEIVING AREA QUALIFICATIONS AND CALCULATIONS

Reserved

5. **PLAN SUBMITTAL PROCESS FOR RECEIVING DEVELOPMENT**

Reserved

6. **PUBLIC ACQUISITION OF TDRS** – Caernarvon Township may purchase TDRs and may accept ownership of TDRs through conveyance by gift. All such TDRs may be held, resold, or extinguished by Caernarvon Township. Any such purchase or gift shall be accompanied by restrictive covenant(s) or conservation easement(s) as specified in Section 405.3.E.

7. **CONVEYANCE OF TDRS TO CONSERVATION ORGANIZATIONS** – TDRs may be conveyed to an organization which possesses a tax exempt status under Section 501(c)(3) of the Internal Revenue Code [26 U.S.C. Section 501(c)(3)] and which has as its primary purpose the conservation of land for historic, scenic, agricultural or open space purposes, or to the Lancaster County Agricultural Preserve Board. If such organization purchases or acquires TDRs by gift or otherwise, the organization shall be entitled to resell TDRs originating in Caernarvon Township only if the proceeds from the sale of the TDRs are used to purchase TDRs from other lands in Caernarvon Township.

8. **AMENDMENT AND/OR TERMINATION** – Caernarvon Township reserves the right to modify, amend, and/or repeal any of the provisions of this Ordinance regarding TDRs at any time in the future. The Township expressly reserves the right to modify the manner in which the number of TDRs shall be calculated in the sending area and the manner in which TDRs may be conveyed and used in designated receiving area(s). Caernarvon Township further expressly reserves the right to terminate its TDR program at any time. No owner of the land or owner of TDRs shall have any claim against Caernarvon Township for damages resulting from a change in this Ordinance relating to the regulations governing the calculation, conveyance and use of TDRs or the termination of the TDR program.

Section 4. The Zoning Ordinance of the Township of Caernarvon shall be amended to revise Article IV, AG- Agricultural District, to add new Section 406 to read as follows:

SECTION 406 TDR SENDING IN THE AG – AGRICUTURAL DISTRICT

1. **Sending Area Qualifications**

- A. The sending area lot or lots from which TDRs are to be severed within the AG – Agricultural District shall comprise a minimum of ten (10) acres;
- B. The sending area lot or lots shall be restricted from future development in accordance with Section 405.3.E.

2. **Calculation of TDRs**

- A. The total number of TDRs available for severance from a sending lot within the AG – Agricultural District shall be determined by multiplying the lot area, measured in acres, by 0.2.
- B. Where any lot severs TDRs pursuant to this section, one (1) available TDR shall be retained and extinguished for each habitable structure located on the lot, excluding structures devoted principally to agricultural or agricultural accessory use. Future construction of additional habitable structures shall require the original retention or the purchase of one (1) TDR per structure and shall not be subdivided on to individual lots. Lots less than twenty (20) acres in area shall not be permitted to retain TDRs for future construction.
- C. Land previously restricted against development by covenant, easement or deed restriction shall not be eligible for calculation of TDRs unless and until such time as said covenant, restriction or easement is dissolved or rescinded with agreement of all beneficiaries of such covenant, restriction or easement.
- D. Where calculation of available TDRs results in fractional numbers, a fraction of 0.5 or higher shall be rounded up to the next whole number and a fraction of less than 0.5 shall be rounded down to the next lowest whole number.

Section 5. The Zoning Ordinance of the Township of Caernarvon shall be amended to revise Article V, OS/C – Open Space/Conservation District, to revise Section 501 to add new subsection 501.N to read as follows:

- N. Severance and transfer of development rights (TDRs) in accordance with Section 505.

Section 6. The Zoning Ordinance of the Township of Caernarvon shall be amended to revise Article V, OS/C – Open Space/Conservation District, to add new Section 505 to read as follows:

SECTION 505 TRANSFERABLE DEVELOPMENT RIGHTS (TDR) – TDR shall be permitted in the OS/C – Open Space/Conservation District pursuant to the provisions set forth in Section 405 and the following:

1. **Sending Area Qualifications**

- A. The sending area lot or lots-from which TDRs are to be severed within the OS/C – Open Space/Conservation District and shall

comprise a minimum of ten (10) acres, except for pre-existing lots of record less than ten (10) acres in area, which shall be eligible for TDR severance in accord with Section 505.2.B., below.

- B. The sending area lot or lots shall be restricted from future development in accordance with Section 405.3.E.

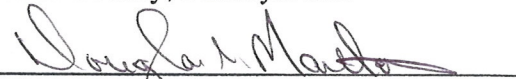
2. **Calculation of TDRs**

- A. The total number of TDRs available for severance from a sending lot within the OS/C – Open Space/Conservation District shall be determined by multiplying the lot area, measured in acres, by 0.2, except for pre-existing legal lots of record less than ten (10) acres in area, which shall be subject to the provisions of Section 505.2.B.
- B. Lots less than ten (10) acres in the OS/C – Open Space/Conservation District:
 - (1) Pre-existing legal lots of record less than ten (10) acres in area shall be allocated one (1) TDR, where the following conditions are met:
 - a. The lot is adjacent to a lot or lots that has/have been permanently restricted from any development and which, collectively, contain ten (10) acres or more;
 - b. The lot has no existing habitable structures on it;
 - c. The lot, prior to or upon the recording of a Deed of Transferable Development Rights, shall be permanently restricted from future development pursuant to Section 405.3.E.
 - (2) Where any pre-existing legal lot(s) of record less than ten (10) acres in area shall be legally consolidated with one or more additional lots to form a single lot greater than ten (10) acres in area, upon recordation of the single consolidated lot, the consolidated lot shall be allocated one (1) TDR per each original lot subject to the consolidation and 0.2 TDRs per acre as provided in Section 505.2.A above, where the consolidated lot, prior to or upon the recording of a deed of transferable development rights, shall be permanently restricted from future development pursuant to Section 405.3.E.

- C. Where any lot severs TDRs pursuant to this section, one (1) available TDR shall be retained and extinguished for each habitable structure located on the lot or consolidated lot, as applicable. Future construction of additional habitable structures shall require the original retention or the purchase of one (1) TDR per structure and shall not be subdivided on to individual lots.
- D. Land previously restricted against development by covenant, easement or deed restriction shall not be eligible for calculation of TDRs unless and until such time as said covenant, restriction or easement is dissolved or rescinded with agreement of all beneficiaries of such covenant, restriction or easement.
- E. Where calculation of available TDRs results in fractional numbers, a fraction of 0.5 or higher shall be rounded up to the next whole number and a fraction of less than 0.5 shall be rounded down to the next lowest whole number.

This ordinance has been adopted at a public meeting at which a quorum of the Board of Supervisors were present and voted in favor thereof this 3rd day of December, 2012.

CAERNARVON TOWNSHIP
Lancaster County, Pennsylvania

By: 
(Vice) Chairman

Attest: 
(Assistant) Secretary

I, Kathryn M. Norris, Secretary of the Board of Supervisors of Caernarvon Township, Lancaster County, Pennsylvania, hereby certify that the foregoing is a true and correct copy of an ordinance duly adopted at a legally constituted meeting of the Board of Supervisors of Caernarvon Township held on December 3rd, 2012, at which meeting a quorum was present and voted in favor thereof.

Kathryn M. Norris
Kathryn M. Norris, Secretary