

BOARD OF SUPERVISORS
COUNTY OF STAFFORD
STAFFORD, VIRGINIA

ORDINANCE

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, Stafford County Administration Center, Stafford, Virginia, on the 19th day of February, 2013:

<u>MEMBERS:</u>	<u>VOTE:</u>
Susan B. Stimpson, Chairman	No
Robert "Bob" Thomas, Jr., Vice Chairman	Yes
Jack R. Cavalier	Yes
Paul V. Milde III	Yes
Ty A. Schieber	Yes
Gary F. Snellings	Yes
Cord A. Sterling	No

On motion of Mr. Milde, seconded by Mr. Snellings, which carried by a vote of 5 to 2, the following was adopted:

AN ORDINANCE TO AMEND AND REORDAIN STAFFORD COUNTY CODE SECTIONS 28-25, "DEFINITIONS OF SPECIFIC TERMS," AND SECTION 28-35, TABLE 3.1, "DISTRICT USES AND STANDARDS;" AND TO ENACT, ADOPT AND ORDAIN CHAPTER 28, ARTICLE XX, "TRANSFER OF DEVELOPMENT RIGHTS"

WHEREAS, under Virginia Code §§ 15.2-2316.1 and 15.2-2316.2, the Board may adopt a transfer of development rights ordinance and establish a transfer of development rights program; and

WHEREAS, the Board desires to amend the Stafford County Code to adopt a transfer of development rights ordinance and establish a transfer of development rights program; and

WHEREAS, the Planning Commission conducted a public hearing on the proposed amendment to adopt a transfer of development rights ordinance and has provided its recommendations to the Board on such proposed amendment; and

WHEREAS, the Board carefully considered the recommendations of the Planning Commission and staff, as well as the public testimony of citizens, if any, at the public hearing; and

WHEREAS, the Board finds that the proposed transfer of development rights ordinance serves and promotes the public health, safety, and general welfare of the County and its citizens; and

WHEREAS, the Board finds that public necessity, convenience, general welfare, and good zoning practices require adoption of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the Stafford County Board of Supervisors on this the 19th day of February, 2013, that Stafford County Code, Sections 28-25, "Definitions of specific terms," and Section 28-35, Table 3.1, "District Uses and Standards," be and they hereby are amended and reordained as follows, all other portions remaining unchanged; and

BE IT FURTHER ORDAINED by the Stafford County Board of Supervisors that Chapter 28, Article XX, "Transfer of Development Rights," be and it hereby is enacted, adopted, and ordained as follows and shall become effective on the 20th day of April, 2013:

Chapter 28 – Zoning Ordinance

Article II. – Definitions and Construction

Sec. 28-25. - Definitions of specific terms.

When used in this Chapter, the following terms shall have the meanings herein ascribed to them:

County Attorney. The County Attorney or his/her designee.

Determination of Development Rights Document. A document issued by the Director that determines the number of residential development rights a sending property has available for transfer to a receiving property or transferee. For purposes of this Ordinance, the right to build one residential dwelling unit equates to one development right.

Development right or rights. The permitted uses and density of development that are allowed on the sending property under Chapter 28 of the County Code on the date of severance of such rights. Development right or rights includes transferable development rights.

Director. The Director of the ~~office of planning~~ Department of Planning and Zoning or his/her designee.

Extinguishment of development rights. The process by which development rights from a sending property are severed and extinguished from a sending property and transferred to a receiving property or transferee, pursuant to the transfer of development rights program under Chapter 28 of the County Code.

Receiving area. One or more areas identified in Article XX of this Chapter and designated by the Comprehensive Plan as an area authorized to receive development rights transferred from a sending area.

Receiving property. A separate parcel of land within a receiving area and within which development rights are increased pursuant to a transfer of development rights to the property.

Retire. The process by which development rights are extinguished.

Sending area. One or more areas identified in Article XX of this Chapter and designated by this Ordinance and the Comprehensive Plan as an area from which development rights are authorized to be severed and transferred to a receiving area or transferee without relation to any particular property.

Sending property. A separate parcel of land or contiguous parcels as set forth in § 28-357(b) of this Ordinance within a sending area that are the subject of a transfer of development rights, where the owner of the parcel(s) is conveying development rights of the parcel(s), and on which those rights so conveyed are severed and may no longer be used on said property as a consequence of the transfer of development rights. If contiguous parcels comprise a particular sending property, those contiguous parcels are hereby deemed to be one sending property.

Transfer of development rights (TDRs). The process prescribed under Article XX of this Chapter whereby the owner of a parcel or lot in a sending area may convey development rights to the owner of a lot or parcel in a receiving area or to another person or legal entity, whereby the development rights so conveyed are severed and extinguished from the sending property and may be exercised on the receiving property in addition to the development rights already existing regarding that parcel or may be held without relation to any particular property by the transferee.

Transferable development rights. Development rights that are transferred or transferable from a sending property.

Transferee. The person(s) or legal entity(s) who owns a receiving property to which development rights have been transferred from a sending property or who receives and holds development rights transferred from a sending property without relation to any particular property.

Transferor. The owner(s) of a sending property and a person or legal entity who conveys development rights that are held without relation to any particular property.

Transfer of Development Rights (TDR) Certificate. A document issued by the Director agreeing, at the request of a transferor, to sever a specified number of residential development rights from a sending property in exchange for a restrictive covenant to which the County is a party, that restricts further development on the sending property.

Urban Development Areas (UDAs). The areas designated by the Comprehensive Plan that are appropriate for higher density development and, to the extent feasible, appropriate to be used for redevelopment or infill development.

Urban Services Areas (USA). Areas designated by the Comprehensive Plan that may be served by public water and sewer facilities and services.

Sec. 28-35. – Table of Uses and Standards.

Table 3.1, District Uses and Standards, sets forth the uses and standards for each zoning district in Stafford County. No land or structure shall be used, occupied or developed except in accordance with the standards set forth therein.

Table 3.1. District Uses and Standards

A-1, Agricultural.

(2) Minimum lot area (in acres)	3
(3) <u>Maximum density with TDRs</u>	<u>2.25 du/acre, TDR developments limited to single-family detached dwellings</u>

(3 4) Minimum yards: (in feet)

Conventional subdivision:

Front50

Side 20

Rear 35

Cluster subdivision:

Front40

Side 10

Rear 35

(4 5) Maximum height (in feet).....35

(5 6) Minimum lot width (in feet):

Cluster subdivision100

R-1 Suburban Residential.

(d) Requirements:

(1) Intensity:

Allocated density for conventional subdivision1.5 du/ac

Open space ratio for conventional subdivision0.50

Allowable density for cluster subdivision (see conditional use permit)1.5 du/ac

Open space requirement for cluster subdivision = thirty (30) percent of total subdivision tract.

Maximum density with TDRs 14.0 du/acre, TDR developments may include townhouses at up to 6.0 du/acre and multi-family dwellings at up to 14.0 du/acre

Open space ratio....0.5

Open space ratio with TDRs....0.25

PD-1, Planned Development 1.

(d) *Requirements:*

(1) *Intensity:*

Allocated Density....7.0 du/ac

Maximum density with TDRs 12.0 du/acre, TDR developments may include single-family detached dwellings and townhouses at up to 7.0 du/acre and multi-family dwellings at up to 12.0 du/acre

Maximum floor area ratio (non-residential)....0.75

Maximum floor area ratio (non-residential) with TDR0.75

Open space ratio....0.25

Open space ratio with TDRs....0.15

PD-2 Planned Development 2.

(d) *Requirements:*

(1) *Intensity:*

Allocated Density....3.25 du/ac

Maximum density with TDRs 12.0 du/acre, TDR developments may include townhouses at up to 6.0 du/acre and multi-family dwellings at up to 12.0 du/acre

Maximum floor area ratio....1.0

Maximum floor area (non-residential) with TDRs0.75

Open space ratio....0.25

Open space ratio with TDRs....0.20

P-TND Planned Traditional Neighborhood Development

(c) *Requirements:*

(1) *Intensity:*

Minimum gross tract area/acres 75 except for redevelopment, provided there is no increase of impervious area greater than ten (10) percent, no minimum gross tract area/acres for such redevelopment.

Minimum gross tract area with TDRs 20 acres

Allocated density: 10.0 du/gross tract acres

Allocated density with TDRs: 12.0 du/gross tract acres

Open space ratio, gross tract 0.25

Open space ratio with TDRs, gross tract0.20

UD Urban Development.

(d) *Requirements:*

(1) *Intensity:*

<i>Single-family detached and duplex:</i>	
Minimum density	Three (3) dwelling units/gross acre
Maximum density	Six (6) dwelling units/gross acre
<u>Maximum Density with TDR</u>	<u>Seven (7) dwelling units/gross acre</u>
<i>Townhouse:</i>	
Minimum density	Five (5) dwelling units/gross acre
Maximum density	Eight (8) dwelling units/gross acre
<u>Maximum Density with TDR</u>	<u>Nine (9) dwelling units/gross acre</u>
<i>Multifamily:</i>	
Minimum density	Eleven (11) dwelling units/gross acre
Maximum density	Fourteen (14) dwelling units/gross acre

<u>Maximum Density with TDR</u>	<u>Fifteen (15) dwelling units/gross acre</u>
<i>Commercial and mixed use development:</i>	
Minimum floor area ratio	0.4
Maximum floor area ratio	1.0
Minimum floor area ratio with TDR	0.6
Maximum floor area ratio with TDR	1.2

Table 3.1(a) Standards for Transfer of Development Rights (TDRs), sets forth the uses and standards for all development utilizing (TDRs) for each zoning district in Stafford County that is permitted by Article XX to serve as a receiving area. No land or structure shall be used, occupied, or developed except in accordance with the standards set forth therein.

Table 3.1(a). Standards for Transfer of Development Rights (TDRs)

A-1 Agricultural

(a) Uses permitted by-right

Community use

Equestrian use and bridle path

Group family day care home

Home occupation

Park and playground

Public facilities/utilities but not including generating facilities, substations, switching stations and wastewater treatment facilities which are permitted by a conditional use permit and not including propane and heating fuel distribution facilities

Public works excluding wastewater treatment facilities

Single-family dwelling

Small family day care

(b) Conditional use permit:

Bed and breakfast inn

Nursing home

 Place of worship

 Public facilities/utilities for generating facilities, substations, switching stations,
 and wastewater treatment plant facilities

 Recreational facility

(c) Special exception:

 Home business

(d) Requirements:

(1) Intensity:

 Maximum density...5.0 du/gross acre

 Open space ratio...0.5

(2) Minimum Yards In Feet

 Front...30

 Side....6

 Rear....25

(3) Minimum lot size ...6,500 sf

(4) Maximum height in feet...35

(5) Minimum lot width in feet...60

R-1 Suburban Residential

(a) Uses permitted by-right

 Community use

 Group family day care home

 Home occupation

 Multifamily dwelling

 Park and playground

Public facilities/utilities but not including generating facilities, substations, switching stations, and wastewater treatment facilities which are permitted by a conditional use permit and not including propane and heating fuel distribution facilities

Public works excluding wastewater treatment facilities

Single-family dwelling

Small family day care

Townhouse

Weak-link townhouse dwellings

(b) Conditional use permit:

Assisted living facility

Nursing home

Place of worship

Public facilities/utilities for generating facilities, substations, switching stations, and wastewater treatment plant facilities

Recreational facility

Retirement housing

(c) Special exception:

Home business

(d) Requirements:

(1) Intensity:

Maximum density...14 du/ acre for multi-family dwellings and 6 du/acre for townhouses

<u>(2) Minimum Yards (in feet)</u>	<u>Single- Family</u>	<u>Townhouse</u>	<u>Multifamily</u>	<u>Weak-link Townhouse</u>
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<u>Front</u>	<u>30</u>	<u>8</u>	<u>15</u>	<u>15</u>
<u>Side</u>	<u>6</u>	<u>15</u>	<u>15</u>	<u>6</u>
<u>Rear</u>	<u>25</u>	<u>25</u>	<u>15</u>	<u>25</u>
<u>(3) Maximum Height (in feet)</u>	<u>35</u>	<u>40</u>	<u>4 stories</u>	<u>35</u>
<u>(4) Minimum Lot Width (in feet)</u>	<u>60</u>	<u>20</u>	<u>Not Applicable</u>	<u>36</u>
<u>(5) Minimum Lot Size (in square feet)</u>	<u>6,500</u>	<u>Not Applicable</u>	<u>Not Applicable</u>	<u>3,000</u>

PD-1 Planned Development –1

- (a) Uses permitted by right:
- Accessory dwellings.
 - Atrium house dwellings.
 - Bakeries.
 - Banks/lending institutions.
 - Barber/beauty shops.
 - Clinic, medical and dental.
 - Commercial apartments.
 - Community uses.
 - Convenience center.
 - Convenience store.
 - Dance studios.
 - Drug stores.
 - Dry cleaners/laundries.
 - Duplex dwellings.
 - Florists.
 - General office uses.
 - Gift/antique shops.
 - Group family day care home.
 - Home occupation.
 - Lot-line dwellings.

Medical/dental offices.

Multifamily dwellings.

Parks and playgrounds.

Patio house dwellings.

Places of worship.

Professional offices.

Public facilities/utilities but not including generating facilities, substations, switching stations, and wastewater treatment facilities which are permitted by a conditional use permit and not including propane and heating fuel distribution facilities.

Public works excluding wastewater treatment facilities.

Recreational facilities.

Restaurants without drive through.

Schools.

School, vocational.

Single-family dwellings.

Small family day care home.

Townhouse dwellings.

Village house dwellings.

Weak-link townhouse dwellings.

(b) *Conditional use permit:*

Adult day care center.

Assisted living facility.

Clubs/lodges/fraternal organizations.

Child care centers.

Dwellings for watchmen or caretaker on premises.

Low intensity commercial retail uses not otherwise listed

Public facilities/utilities for generating facilities, substations, switching stations, and wastewater treatment facilities.

Restaurants with drive through.

Retail food stores greater than ten thousand (10,000) square feet.

Retirement housing.

Theaters.

Vehicle fuel sales.

(c) Special exception:

Home business.

(d) Requirements:

(1) Intensity:

Allocated density TDRs 12.0 du/acre, TDR developments may include single-family detached dwellings and townhouses at up to 6.0 du/acre and multi-family dwellings at up to 12.0 du/acre

Maximum floor area (nonresidential) ratio0.75

Open space ratio0.15

Minimum tract size....20.0 ac

<u>(2)</u> <u>Minimum</u> <u>yds (in</u> <u>feet)</u>	<u>Single-</u> <u>family</u>	<u>Duplex</u>	<u>Town-</u> <u>house</u>	<u>Multi-</u> <u>family</u>	<u>Com-</u> <u>mercia</u> <u>l</u>	<u>Lot-line</u>	<u>Atrium</u>	<u>Village</u>	<u>Patio</u>	<u>Weak-link</u> <u>Townhouse</u>
<u>Front</u>	<u>20</u>	<u>20</u>	<u>8</u>	<u>15</u>	<u>40</u>	<u>20</u>	<u>8</u>	<u>15</u>	<u>12</u>	<u>15</u>
<u>Side</u>	<u>10</u>	<u>3/15</u>	<u>15*</u>	<u>15</u>	<u>0/15</u>	<u>5/20****</u>	<u>0</u>	<u>3</u>	<u>0</u>	<u>0</u>
<u>Rear</u>	<u>35</u>	<u>35</u>	<u>25</u>	<u>20</u>	<u>12/35</u>	<u>30</u>	<u>0</u>	<u>25</u>	<u>0</u>	<u>24</u>
<u>(3)</u> <u>Maximum</u> <u>height (in</u> <u>feet)</u>	<u>35</u>	<u>35</u>	<u>45</u>	<u>80</u>	<u>80</u>	<u>35</u>	<u>18</u>	<u>35</u>	<u>35</u>	<u>28</u>
<u>(4)</u> <u>Minimum</u> <u>lot width</u> <u>(in feet)</u>	<u>80</u>	<u>45</u>	<u>20</u>	<u>=</u>	<u>=</u>	<u>70</u>	<u>50</u>	<u>60</u>	<u>50</u>	<u>36</u>
<u>(5)</u> <u>Minimum</u> <u>lot size</u> <u>(in sq. ft.)</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>7,000</u>	<u>4,000</u>	<u>6,000</u>	<u>5,000</u>	<u>3,600</u>

*For duplex structures, the minimum required side yard setback is three (3) feet, and the minimum required distance between structures is fifteen (15) feet.

**For multi-family structures, the minimum setback is thirty-five (35) feet from any public right-of-way and thirty (30) feet from any other structure.

***For commercial uses adjacent to a nonresidential use, the minimum required side yard setback is zero (0) feet and the minimum required rear yard setback is twelve

(12) feet. For commercial uses adjacent to residential use, the minimum required side yard setback is fifteen (15) feet and the minimum required rear yard setback is thirty-five (35) feet.

****For lot line dwellings, the minimum width of any individual side yard is five (5) feet, and the minimum required distance between structures is twenty (20) feet.

PD-2 Planned Development 2.

(a) Uses permitted by right:

Accessory dwelling.

Bakeries.

Banks.

Barber shops.

Commercial apartments.

Community uses.

Convenience center.

Convenience stores.

Dry cleaners/laundries.

Duplex dwellings.

Florists.

General office uses.

Gift/antique shops.

Group family day care home.

Home occupation.

Low intensity commercial retail.

Medical/dental offices.

Medium intensity commercial retail.

Multifamily dwellings.

Parks and playgrounds.

Places of worship.

Professional offices.

Public facilities/utilities but not including generating facilities, substations, switching stations, and wastewater treatment facilities which are permitted by a conditional use permit and not including propane and heating fuel distribution facilities.

Public works excluding wastewater treatment facilities.

Recreational facilities.

Restaurants without drive-through facilities.

Retail food stores.

Schools.

School, vocational.

Single-family dwellings.

Small family day care home.

Townhouse dwellings.

(b) Conditional use permit:

Adult day care center.

Assisted living facility.

Auto service centers.

Child care centers.

Clinics, medical or dental.

Clubs/lodges/fraternal organizations.

Dance halls.

Dwellings for watchmen or caretaker on premises.

Funeral homes.

High intensity commercial retail.

Hotels/motels.

Marinas.

Public facilities/utilities for generating facilities, substations, switching stations, and wastewater treatment facilities

Recreational enterprises.

Restaurants with drive through.

Retail food stores greater than ten thousand (10,000) square feet.

Retirement housing.

Theaters.

Vehicle fuel sales.

(c) Special exception:

Home business.

(d) Requirements:

(1) Intensity:

Allocated density TDRs 12.0 du/acre, TDR developments may include townhouses at up to 6.0 du/acre and multi-family dwellings at up to 12.0 du/acre

Maximum floor area (nonresidential) ratio0.75

Open space ratio0.20

Minimum tract size....20.0 ac

<u>(2)</u> <u>Minimum yards (in feet)</u>	<u>Single-family</u>	<u>Duplex</u>	<u>Town-house</u>	<u>Multi-family</u>	<u>Commercial</u>
<u>Front</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>8</u>
<u>Side</u>	<u>0/10*</u>	<u>0/10*</u>	<u>0/30**</u>	<u>0/60**</u>	<u>0/15***</u>
<u>Rear</u>	<u>35</u>	<u>35</u>	<u>25</u>	<u>0/60**</u>	<u>12/35***</u>
<u>(3) Maximum height (in feet)</u>	<u>35</u>	<u>35</u>	<u>45</u>	<u>45</u>	<u>45</u>

*For single-family and duplex structures, the minimum required side yard setback is zero (0) feet, however, the minimum required distance between structures is ten (10) feet.

**For townhouses and multi-family structures, the minimum required side setback is zero (0) feet, however, the minimum required distance between structures is thirty (30) feet and sixty (60) feet, respectively.

***For commercial uses adjacent to a nonresidential use, the minimum required side setback is zero (0) feet and the minimum required rear setback is twelve (12) feet. For commercial uses adjacent to a residential use, the minimum required side setback is fifteen (15) feet and the minimum required rear setback is thirty-five (35) feet.

P-TND Planned-Traditional Neighborhood Development

(a) Uses permitted by right:

Bank, lending institution with no drive-through facility.

Bed and breakfast inn, up to five (5) rooms.

Bike station.

Carry out/cafe with no drive-through facility.

Center for the arts.

Conference center.

Convention center.

Country inn, up to twelve (12) rooms.

Day care center.

Dormitory, school.

Duplex.

Dwelling, accessory.

Dwelling, atrium house.

Dwelling, attached.

Dwelling, carriage house.

Dwelling, condominium.

Dwelling, lot line.

Dwelling, multifamily.

Dwelling, patio house.

Dwelling, quadruple-attached.

Dwelling, semi-detached.

Dwelling, single-family.

Dwelling, three-family attached.

Dwelling, townhouse.

Dwelling, village house.

Exhibition center.

Funeral home.

High-intensity retail uses not otherwise listed.

Home occupation.

Hotel.

Instruction with studio.

Kiosk.

Library.

Live/work unit.

Medical, dental office.

Medical, dental clinic.

Museum.

Open, farmers market.

Outdoor pavilion.

Place of worship.

Professional office.

Public facilities for water/sewer pump stations and water tanks.

Public works.

Push cart.

Restaurant.

Retail uses permitted by right in the B-2 zoning district.

School.

School, college or university.

School, vocational.

Telecommunication antennas as an ancillary use to an existing building or structure.

Theater, movie/multiplex.

Triplex.

(b) Conditional use permit:

Automobile repair.

Drive-through facilities.

Home business.

Golf course, minimum of eighteen (18) holes and may include practice tees and golf driving range as an accessory use only.

Hospital.

Motel.

Public facilities, except for water/sewer pump stations and propane and heating fuel distribution facilities.

Substation.

Telecommunication facility.

Telecommunication facility other than antennas which are ancillary to an existing building or structure.

Vehicle fuel sales.

(c) Requirements:

(1) Intensity:

Minimum gross tract area/acres 20.0 ac.

Allocated density, gross tract 12.0 du/gross tract acres

Open space ratio, gross tract 0.20

(2) Refer to tables 3.5(a), 3.5(b), 3.5(c), 3.5(d), 3.5(e), 3.5(f), and 3.5(g) for additional intensity regulations within specific Transect Zones.

UD Urban Development.

(a) Uses permitted by right: see Sec. 28-39(u) for detailed uses allowed by subdistrict.

(b) Conditional use permit: see Sec. 28-39(u) for conditional uses allowed by subdistrict.

(c) Special exception: see Sec. 28-39(u) for special exception uses allowed by subdistrict.

Article XX. – Transfer of Development Rights

Sec. 28-354. – Purpose.

Pursuant to Virginia Code §§ 15.2-2316.1 and 15.2-2316.2, a transfer of development rights (TDR) program is established. The purpose of the TDR program is to provide a mechanism by which a property owner can transfer residential density from sending areas to receiving areas and/or to a transferee without relation to any particular property through a voluntary process intended to permanently conserve agricultural and forestry uses of lands, reduce development densities on those and other lands, and preserve rural open spaces and natural and scenic resources. The TDR program is intended to complement and supplement County land use regulations, resource protection efforts, and open space acquisition programs. The TDR program is intended to encourage increased residential density in areas that can better accommodate this growth with less impact on public services and natural resources.

Sec. 28-355. – Applicability.

This Article shall apply to the transfer of development rights from land in sending areas to land in receiving areas and/or to a transferee without relation to any particular property. Land utilizing transferred development rights may be subdivided or developed in receiving areas at the maximum density specified by County Code § 28-35, Table 3.1, above the base density for the applicable zoning district.

Sec. 28-356. – Right to transfer development rights; general provisions.

(a) A development right shall only be transferred by means of the recordation of a TDR Certificate and a covenant to which the County is a party that restricts further development of the sending property and joins all lien holders, who must execute any necessary releases in order for the transfer of development rights to take place.

- (1) The covenant shall limit the future construction of residential dwelling units on a sending property to the total number of development rights established by the Zoning Ordinance provisions applicable to the property, minus (i) all development rights severed and extinguished from the sending property by the TDR Certificate and thereby transferred under this Article, (ii) any development rights previously severed and extinguished or limited as a result of an earlier recorded covenant or conservation easement against the property, and (iii) the number of existing single-family detached dwelling units located on the sending property, if any, as of the date the TDR Certificate has been issued and recorded by the Director.
- (2) The County Attorney shall review and approve any such covenants and related document(s) for form and legal sufficiency.

(b) Each transferor shall have the right to sever all or a portion of the development rights from a sending property and to sell, trade, and/or barter all or a portion of those development rights to a transferee consistent with the purposes of County Code § 28-354 so long as the requirements of subsection (a) of this section are met.

(c) Any transfer of development rights under this Article only authorizes an increase in maximum density. It shall not alter or waive the development standards of any property in the receiving area, nor shall it allow a use otherwise not permitted in a receiving area.

(d) No development rights may be transferred from a sending property if those rights are materially restricted from development by covenant, easement, and/or deed restriction; provided, however, that no such restriction will be deemed to exist if it arose out of a note on a subdivision plat requiring the provision of public water and sewer to the subdivision.

(e) Any transfer of development rights shall be recorded among the land records of Stafford County, Virginia.

(f) No transfer of development rights will be effective until the Director has recorded the TDR Certificate and its related covenant in the land records of Stafford County, Virginia.

(g) The monetary or other value of transferred development rights is a private matter that is determined by the seller and buyer.

(h) The owner of development rights severed from a sending property under the provisions of this Article may make application to the Commissioner of the Revenue of Stafford County for a real estate tax abatement for a period up to 25 years, to compensate the owner of such development rights for the fair market value of all or part of the development rights, which shall retire the number of development rights equal to the amount of the tax abatement, and such abatement is transferable with the property. The Commissioner of the Revenue shall compute the tax abatement amount and the retirement of development rights in fractional increments; provided, however, that any such fractional development rights are not transferable.

Sec. 28-357. – Sending properties.

(a) For the purposes of this Article, a sending property must be an entire tax map parcel or lot that complies with all requirements of this Article. Sending areas shall be limited to those areas designated as sending areas on the map entitled, “Transfer of Development Rights (TDR) Sending and Receiving Areas,” in the Comprehensive Plan, zoned A-1 (Agricultural) or A-2 (Rural Residential).

(b) In order for a property in a sending area to qualify as a sending property eligible for a transfer of development rights, such property shall be:

- (1) Designated for agricultural, rural, or park land use(s), in the Comprehensive Plan;
- (2) Located in areas designated as sending areas on the Map entitled “Transfer of Development Rights (TDR) Sending and Receiving Areas” in the Comprehensive Plan;
- (3) Zoned A-1 (Agricultural) or A-2 (Rural Residential); and either
 - (i) A separate parcel in existence on the effective date of this Article XX (Transfer of Development Rights) that is at least twenty (20) acres; or
 - (ii) Contiguous parcels in existence and under common ownership on the effective date of this Article XX (Transfer of Development Rights) comprising at least twenty (20) acres that are under the same ownership on the date of the application; or
 - (iii) Contiguous parcels that:

- (A) comprise at least twenty (20) acres; and
- (B) exist and are under common ownership on the effective date of this Article XX (Transfer of Development Rights); and
- (C) are under common ownership on the date of the application; provided that the owner(s) on the effective date of this Article XX (Transfer of Development Rights) are not required to be the same as the owner(s) on the date of the application. (For example, if one party (Owner A) owns contiguous parcels comprising at least twenty (20) acres on the effective date of this Article XX (Transfer of Development Rights), Owner A can sell those parcels to a second party (Owner B), who may then file a TDR application for those parcels.)

(c) If a sending property has any outstanding code violations and/or unpaid taxes, the owner(s) shall completely resolve all of these violations, including any required abatement, restoration, and/or payment of penalties or taxes, before the property may be made the subject of a TDR Certificate by the Director.

Sec. 28-358. – Receiving properties.

(a) In order for a property in a receiving area to qualify as a receiving property eligible for a transfer of development rights to said property, such property shall be:

- (1) Located in one of the following zoning districts: A-1, Agricultural; R-1, Suburban Residential; PD-1, Planned Development-1; PD-2, Planned Development-2; PTND–Planned Traditional Neighborhood Development; or UD, Urban Development;
- (2) Located in areas designated as receiving areas on the Map entitled “Transfer of Development Rights (TDR) Sending and Receiving Areas” in the Comprehensive Plan;
- (3) Located within the USA by the Comprehensive Plan;
- (4) Designated as part of a UDA by the Comprehensive Plan; and
- (5) Included in an assessment of the infrastructure in the receiving area that identifies the ability of the area to accept increases in density and its plans to provide necessary utility services within any designated receiving area.

(b) If a receiving property has any outstanding code violations and/or unpaid taxes, the owner shall completely resolve all such violations, including any required abatement, restoration, and/or payment of penalties or taxes, before the property may have any development rights transferred to it as part of the County’s TDR program.

(c) A receiving property may accept development rights from one or more sending properties, but the density allowed on the receiving property may not exceed the maximum applicable density specified in County Code § 28-35, Table 3.1.

(d) At the discretion of the owner of any residential development rights severed from a sending property, such development rights may be converted to commercial development rights. In the event residential development rights from a sending property are transferred to a receiving property and the owner of the receiving property wishes to convert those residential development rights to commercial development rights, each such residential development right shall be deemed the equivalent of the right to construct 3,000 square feet of commercial space on the receiving property.

(e) Every 3,000 square feet of commercial space, or fraction thereof, in a development project shall be deemed the equivalent of one development right. (For example, 2,788 square feet of commercial space shall be deemed one development right, 3,000 square feet of commercial space shall be deemed one development right, and 3,005 square feet commercial space shall be deemed two development rights.)

(f) The provisions of this Article XX are not intended to supersede any of the protections set forth elsewhere in this Ordinance relating to properties having historical significance and/or properties with environmentally sensitive features such as, but not limited to, hydric soils, wetlands, or steep slopes.

Sec. 28-359. – Calculation of development rights.

(a) The number of residential development rights that a sending property is eligible to send to a receiving property and/or transferee without relation to any particular property shall be determined by the Director after he initially calculates the number of residential dwelling units allowed as a matter of right on the sending property under the provisions of the zoning district in which the sending property is located. In making this initial calculation, the Director shall determine the gross acreage of the sending property from a valid, recorded plat or survey prepared and certified by an engineer or land surveyor licensed in the Commonwealth of Virginia provided to the Director by the applicant as part of the TDR application, and then subtract from the gross acreage of the sending property: (i) the portion, if any, of the sending property that is comprised of hydric soils and/or steep slopes (i.e., those slopes exceeding twenty-five percent (25%)) based on a review of the County's maps and the owner's TDR application by the Director; (ii) the portion, if any, of the sending property that is comprised of easements or rights-of-way for public roads; and (iii) for those sending properties that do not abut any public road, five percent (5.0%) of the gross acreage of such sending property. Upon rendering this initial calculation, the Director shall subtract all of the following to determine the number of development rights that are eligible to be transferred from the sending property:

- (1) All development rights previously transferred under this Article from the sending property;

- (2) All development rights previously extinguished or limited as a result of a recorded conservation easement or similar covenant/restriction against the sending property, or any portion thereof;
 - (3) All development rights previously extinguished or limited as a result of any private agreement or any other County program relating to the extinguishment or limitation of development rights; and
 - (4) The number of existing single-family residential dwelling units on the sending property as of the date of the TDR Certificate.
- (b) Any fraction of development rights resulting from the calculations shall not be included by the Director in the final determination of total development rights available for transfer.
- (c) Development rights from a sending property may be allocated to more than one receiving property and/or transferee. However, fractions of development rights shall not be transferrable.
- (d) A receiving property and/or transferee without relation to any particular property may accept development rights from more than one sending property.
- (e) The determination of the number of residential development rights a sending property has available for transfer to a receiving property and/or a transferee without relation to any particular property shall be documented in a Determination of Development Rights Document issued by the Director.
- (f) A Determination of Development Rights Document shall be used by the Director as the basis for the issuance of a TDR Certificate if there has been no material change in the criteria used by the Director in relation to the sending property to issue the Determination of Development Rights Document.
- (g) The decisions of the Director in the Determination of Development Rights Document shall be considered final determinations for purposes of the TDR program, except that if there is any material change in the criteria, in relation to the sending property, used by the Director to issue the Determination of Development Rights Document, then a new Determination of Development Rights Document must be issued for the sending property before a TDR Certificate may be issued for that sending property.
- (h) Any determination made in a Determination of Development Rights Document shall be valid only for purposes of the TDR program and for no other purpose.
- (i) A transferor may extinguish development rights, sever and hold development rights, sever and sell development rights, or apply severed development rights to a receiving property to allow development of that receiving property at a density greater

than would otherwise be allowed on such land, up to the maximum density specified for the applicable zoning district in County Code § 28-35, Table 3.1.

Sec. 28-360. – Transfer of development rights sending property development limitations.

(a) Following the transfer of residential development rights, a sending property that has retained a portion of its development rights may subsequently accommodate remaining residential dwelling units on the sending property consistent with the requirements of the A-1 (Agricultural) or A-2 (Rural Residential) Zoning District, and all other applicable County Code requirements. A sending property that retains a portion of its development rights may also transfer the remainder of those development rights through the TDR program; provided, however, that fractional development rights shall not be transferrable.

(b) On sending properties with environmental features as outlined in County Code § 28-359(a), (i.e., hydric soils and steep slopes exceeding twenty-five percent (25%)), the development rights shall be severed from the areas outside of the specified environmental features, and any such areas on the sending property that have either hydric soils or steep slopes exceeding twenty-five percent (25%) shall not be eligible for any consideration regarding the transfer of development rights. If development rights are retained on the sending property, future subdivision and development cannot occur on the areas where any development rights have already been severed and those areas cannot be considered as a portion of any buildable lot.

(c) The limitations in this section shall, when development rights are severed from a sending property, be included in a covenant applicable to the sending property which shall be recorded in the land records of Stafford County, Virginia. The County Attorney shall review and approve the covenant as to form and legal sufficiency. A plat shall accompany and be recorded with the deed delineating and describing the location of the portion of the property to be conserved.

(d) Unless otherwise specified in this Article XX, the severance of development rights from a sending property shall not deprive the owner of such sending property of the right to use that portion of the property from which development rights have been severed for any (i) agricultural uses; and (ii) forestal uses with reforestation plans; provided that such uses were permitted by right on the sending property prior to the transfer of such development rights. Any buildings or structures that exist on a sending property at the time development rights are severed shall be allowed to remain to support any such existing agricultural and forestal uses. New buildings and structures comprising up to a cumulative total of 6,000 square feet shall be allowed to be constructed on a sending property to support any such existing agricultural and forestal uses. Any building constructed as a lawful nonconforming use under the provisions of this Article XX shall not count against the allowance of up to 6,000 cumulative square feet for new buildings on any such sending property.

(e) Unless otherwise specified in this Article XX, the severance of development rights from a sending property shall not deprive the owner of such sending property of the right to use that portion of the property from which development rights have been

severed for parks, campgrounds and related camping facilities, provided that such uses were permitted by right on the sending property prior to the transfer of such development rights. Any buildings or structures that exist on a sending property at the time development rights are severed shall be allowed to remain to support any such existing park, campground, and related camping facilities. New buildings and structures comprising up to a cumulative total of 2,000 square feet shall be allowed to be constructed on a sending property to support any such existing park, campground, and related camping facilities. Any building constructed as a lawful nonconforming use under the provisions of this Article XX shall not count against the allowance of up to 2,000 cumulative square feet for new buildings on any such sending property. For purposes of this section, the term “campgrounds” does not include any use by travel trailers, motor homes, and similar vehicular type structures.

Sec. 28-361. – Sending property certification.

(a) The Director shall be responsible for determining whether a proposed sending property meets the qualifications of County Code § 28-357. The Director shall respond in writing to an owner’s request for a Determination of Development Rights Document under this Article XX within sixty (60) days of the date of submission of a complete TDR application.

- (1) If the Director determines that a property satisfies the requirements of County Code § 28-357, the Director shall issue a Determination of Development Rights Document for the sending property.
- (2) If the Director determines that a property does not satisfy the requirements of County Code § 28-357 or any other applicable provisions of this Article, the Director shall issue a written decision to the applicant and shall state the basis for this decision.

(b) Any decision of the Director under County Code § 28-361(a) may be appealed to the Board of Zoning Appeals as provided by law.

(c) The Director shall be responsible for maintaining permanent records of actions taken pursuant to the TDR program under this Article XX, including, but not limited to:

- (1) TDR applications received, and all supporting documents, including plats and surveys showing the gross acreage of the sending property;
- (2) Determination of Development Rights Documents issued;
- (3) Other written decisions of the Director responding to an owner’s request in a TDR application for a Determination of Development Rights Document ;
- (4) TDR Certificates issued;
- (5) Deed restrictions and covenants known to be recorded; and

- (6) Development rights retired, otherwise extinguished, or transferred to specific properties and/or transferees.

(d) The owner(s) of any property proposed to be the subject of a TDR application shall be responsible for preparing and submitting to the Director a complete TDR application for a transfer of development rights on a standard application form provided by the County that satisfies County Code § 28-357 and all other applicable provisions of this Article XX. All owners of any sending property that is the subject of a TDR application must, at the time of application, each own the sending property in its entirety. All such owners must endorse and be parties to that application; otherwise, the application shall be deemed invalid and of no force and effect. In addition to a standard application form completed by the owner(s), an application shall contain:

- (1) At least one of the following:
- a. A certificate of title for the sending property dated no more than thirty (30) days before the date that a complete TDR application is submitted; said certificate to be prepared by an attorney admitted to practice law in the Commonwealth of Virginia;
 - b. Title company report (commitment binder) dated no more than thirty (30) days before the date that a complete TDR application is submitted;
or
 - c. Title company policy dated no more than thirty (30) days before the date that a complete TDR application is submitted.
- (2) Five (5) copies of a valid recorded plat or survey of the proposed sending property that shows the gross acreage of the proposed sending property, and a legal description of the proposed sending property prepared and certified by an engineer or land surveyor licensed in the Commonwealth of Virginia;
- (3) A statement by all owners of the sending property requesting that the Director issue a Determination of Development Rights Document for the transfer of a specified number of development rights in compliance with this Article;
- (4) A chain of title that includes all deeds, covenants, easements, and other encumbrances that materially limit or restrict the ability to develop the sending property;
- (5) A plan showing any existing residential dwelling units, proposed residential dwelling units, and improvements on the sending property and any areas on the sending property that are already subject to a conservation easement or other similar encumbrance;

- (6) A plan prepared and certified by an engineer or land surveyor licensed in the Commonwealth of Virginia that shows the location, extent, and gross acreage calculation of all hydric soils and steep slopes on the proposed sending property;
 - (7) A complete density calculation worksheet that sets forth the number of available development rights and the basis for the applicant's request to transfer the specified number of development rights from the sending property under the provisions of this Article;
 - (8) The applicable application fee adopted by the Board, and
 - (9) Any additional information that the Director deems necessary to determine the number of development rights that qualify for transfer.
- (e) A Determination of Development Rights Document issued by the Director shall contain the following information:
- (1) The name of the transferor;
 - (2) A legal description of the sending property on which the calculation of development rights is based;
 - (3) The tax map parcel number(s) of the sending property;
 - (4) A statement of the size, in acres, of the sending property on which the calculation of development rights is based; and a determination of the number of development rights, stated in terms of number of dwelling units, eligible for transfer;
 - (5) If only a portion of the total development rights is being transferred from the sending property, a statement of the number of remaining development rights, stated in terms of number of dwelling units, remaining on the sending property;
 - (6) The date of issuance;
 - (7) A serial number assigned by the Director; and
 - (8) The signature of the Director.

Sec. 28-362. – Instruments of transfer.

- (a) Upon receipt of a Determination of Development Rights Document for a sending property, the TDR applicant may request the Director to issue a TDR Certificate to sever all or some of the development rights from the sending property that is the subject of the application. If such an applicant wishes to transfer development

rights, the applicant shall request a TDR Certificate in writing from the Director and file with the Director a covenant to which Stafford County is a party, that restricts the development of the sending property to the extent the applicant desires to sever and extinguish development rights from the sending property for the purpose of transferring those development rights to a receiving property or a transferee without regard to a particular property.

(b) Upon receipt from an applicant of a request for the issuance of a TDR Certificate, the Director shall determine whether his decision to issue a Determination of Development Rights Document has been appealed to the Board of Zoning Appeals (BZA). If the Director's decision to issue a Determination of Development Rights Document to an applicant has been appealed to the BZA, then the Director shall withhold the issuance of a TDR Certificate to that applicant until the issues raised in that appeal have been finally decided by the BZA and/or the courts.

(c) If the Director's decision to issue a Determination of Development Rights Document to an applicant has not been appealed to the BZA, then the Director shall proceed with the issuance of a TDR Certificate. In this regard, the Director shall submit the covenant filed by the applicant to the County Attorney for approval as to form and legal sufficiency. If the County Attorney reviews the covenant and approves it as to form and legal sufficiency, the Director shall prepare and record the TDR Certificate and the related covenant(s) in the land records of Stafford County, Virginia, and shall provide a copy to the Commissioner of the Revenue. Upon such recordation, the development rights that are the subject of the TDR Certificate shall be deemed severed and extinguished from the sending property, and the Director shall notify the applicant of the applicable deed book, page number, instrument number, and plat book where the recorded documents may be found in the land records.

(d) The instruments recorded for the purpose of transferring development rights shall comply with the requirements of this section and shall consist of the following:

- (1) The names of the transferor and the transferee;
- (2) The number of residential development rights that are being transferred;
- (3) A legal description and plat of the sending property prepared and certified by an engineer or land surveyor licensed in the Commonwealth of Virginia;
- (4) The TDR Certificate(s);
- (5) A plat showing the portion of the sending property that is restricted from development as a result of the transfer of development rights;
- (6) A covenant(s) to which the County is a party, approved by the County Attorney as to form and legal sufficiency, specifying the number of development rights severed from the sending property and the number of

development rights remaining on the sending property, and stating that the sending property may not be subdivided or developed to a greater density than permitted by the development rights remaining on the sending property;

- (7) A covenant that the transferor grants and assigns to the transferee, its heirs, assigns, and successors, a specified number of development rights from the sending property to a receiving property and/or a transferee without relation to any particular property;
- (8) A covenant by which the transferor acknowledges that he has no further use or right to use the development rights being transferred; and
- (9) A covenant that all provisions of the TDR Certificate and related covenants shall run with and bind the sending property in perpetuity and may be enforced by the County.

(e) The covenants recorded as part of instruments transferring development rights shall be endorsed and approved by all lien holders.

(f) The instruments of transfer of development rights shall be recorded prior to the approval of any development permits for the receiving property, including, but not limited to, building permits.

Sec. 28-363. – Transfer process.

Development rights shall be transferred using the following processes:

(a) Following the issuance of a Determination of Development Rights Document, and the filing by the applicant of a request for a TDR Certificate with all other required documents and information, and compliance with all other provisions of this Article XX, the Director shall issue a TDR Certificate, agreeing to a transfer of development rights in exchange for the required covenant(s) to which the County is a party restricting development on the sending property.

(b) The applicant at whose request a Determination of Development Rights Document has been issued may, if all other requirements of this Article are satisfied, request that the Director issue the TDR Certificate to said applicant or to another person or legal entity specified by the applicant, who may transfer those development rights to an eligible receiving property or may hold those development rights without relation to any particular property.

(c) The owner of development rights severed from a sending property may transfer those rights to a receiving property or to another person, who may hold those development rights without relation to any particular property. In applying for the transfer of development rights to a receiving property or a transferee without relation to any particular property, the applicant shall provide the Director with the following:

- (1) A TDR Certificate issued in the name of the applicant or another person or legal entity and an option to purchase the development rights covered by the Certificate signed by the applicant and the owner(s) of the receiving property or to a transferee without relation to any particular property; and
- (2) Proof satisfactory to the Director that there are no delinquent taxes or penalties owed on the development rights being transferred.

(d) If development rights that are the subject of a TDR Certificate are transferred to another person or legal entity who wishes to hold those rights without relation to any particular property, the Director shall invalidate, in whole or in part, the TDR Certificate that created those rights, and shall issue a new TDR Certificate in the name of the new owner of those rights. The Director will record the new TDR Certificate in the land records of Stafford County, Virginia, upon payment to the Director of any applicable fees by the party requesting the transfer of development rights.

(e) If development rights that are the subject of a TDR Certificate are approved by the Director to attach to a receiving property, then the Director shall invalidate in perpetuity, in whole or in part, the TDR Certificate that created those rights to the extent those rights are transferred to the receiving property.

(f) Development rights from a sending property shall be considered severed and extinguished from the sending property and transferred to a receiving property or a transferee without relation to any particular property when the TDR Certificate and the applicable covenant(s) to which the County is a party and any other required documents have been recorded by the Director in the land records of Stafford County, Virginia.

Sec. 28-364. – Development approval procedures.

(a) A request to utilize transferred development rights on an eligible receiving property must be in the form of a preliminary subdivision plan or final site plan submitted to the Department of Planning and Zoning in accordance with the requirements of Chapter 22 and Chapter 28 of the County Code. Prior to approval of such plan, the Director must be provided proof that the transfer of the development rights has been completed and the development rights have been affixed to the zoning of the receiving property.

(b) A final recorded plat for a subdivision using transferred development rights shall contain a statement setting forth the development proposed, the zoning classification of the property, the number of development rights used, and a notation of the recordation of the conveyance required by County Code § 28-362.

A Copy, teste:

Anthony J. Romanello, ICMA-CM
County Administrator