

(Draft Glenville ordinance, June 2008)

ARTICLE XXII
Transfer of Development Rights

§270-161. Purpose.

The primary purpose of establishing a transfer of development rights (TDR) program is to permanently preserve important farmland, forest land, sensitive natural areas, groundwater quality and rural community character that would be lost in the Town of Glenville if the land were developed. In addition, this Article is intended to protect property rights by allowing landowners whose land is intended for preservation to transfer their right to develop to other areas deemed appropriate for higher density development or other development incentives based on the availability of community facilities and infrastructure. Finally, this Article is intended to permit the establishment and administration of an intermunicipal TDR program between the Town and the Village of Scotia.

§270-162. Authority.

This ordinance is enacted pursuant to the authority granted by §261-a of New York Town Law for the creation of a transfer of development rights program, under the terms of which development rights are acknowledged to be severable and separately conveyable from a “sending area” to a “receiving area.” This ordinance is further enacted pursuant to the authority granted by §284 of New York Town Law on intermunicipal cooperation that permits the development and implementation of intermunicipal planning and regulatory programs. The Town is therefore authorized to enter into an intermunicipal agreement with the Village of Scotia.

§270-163. Basic concept.

- A. The provisions of this Article allow landowners (here “transferor”) in areas of the Town proposed for conservation, called “sending areas,” to voluntarily sell or convey the right to develop their land to other entities (here “transferee”) for use in areas of the Town or Village proposed for additional development, called “receiving areas.” Each transferor shall have the right to sever all or a portion of the rights to develop from a property in a sending area and to sell, trade, donate or barter all or a portion of those rights to a transferee consistent with the purposes of §270-161.
- B. The transferee may retire the development rights, resell them, hold them or apply them to property in a receiving area in order to obtain approval for development at a density of use or for other development incentives greater than would otherwise be allowed on the land, up to the maximum density or incentive indicated in

§270-169.

- C. When transferors sell or convey development rights, they must restrict that portion of land from which the rights are conveyed against any future development with a conservation easement, although the land may still be used for purposes that do not involve residential, commercial, industrial or institutional development, such as agriculture or forestry. Lands within sending areas that are restricted with conservation easements may be sold to others, but the restrictions apply to all future owners of the property. Conservation easements on lands in designated sending areas shall be held by an approved conservation organization defined as a charitable organization under §501(c)(3) of the Internal Revenue Code, or the Town or Village.

§270-164. Establishment of sending and receiving areas.

- A. Sending Areas – The Town has established a large sending area in the northwest part of Town, two smaller sending areas in the south-central part of Town and a smaller sending area in the northeast part of Town. These areas include important farmland, sensitive natural areas, scenic viewsheds and public wellheads (defined by the wellhead protection zone and primary recharge zone) that the Town has identified as important to protect in the 2008 Open Space Plan. All of these areas are zoned RA Rural Residential and Agricultural, except for part of the public wellhead areas. An overlay district is hereby created to apply to these areas, to be entitled “TDR-S” and to be reflected on the official Zoning Map for the Town.
- B. Receiving Areas. The Town has established three receiving areas in the eastern part of Town, two of which have been identified in the Town Center Plan and Freemans Bridge Road Plan as having good potential for redevelopment and mixed-use development, respectively. These areas are zoned Community Business/General Business and Mixed-Use Development, respectively. A third receiving area is a former brownfields site that is ready for redevelopment. An overlay district is hereby created to apply to these areas, to be entitled “TDR-R” and to be reflected on the official Zoning Map for the Town.

§270-165. Calculation of transferable development rights.

- A. Sending area tract qualifications. A tract of land proposed for placement under easement for the purpose of acquiring transferable development rights shall:
 - (1) Be located within a Town or Village TDR-S Overlay.
 - (2) Comprise at least 80 percent of the ownership, which shall include all contiguous, commonly-held land within the sending area.

- (3) Consist of a minimum of 20 acres of contiguous land, except along a stream or potential trail corridor, or where adjacent to already-preserved land.

B. Transferable development rights computation.

- (1) The total number of development rights available on a sending area tract shall be determined by multiplying the net tract area by .5.
- (2) The net tract area shall be determined by subtracting from the gross tract area all lands shown on the Town's GIS Constraints Map, which shall include a) FEMA floodplains, b) State-designated wetlands and steep slopes over 15%.
- (3) Fractions of acres shall be rounded to the nearest whole number in computing assigned development rights.
- (4) Land previously restricted against development by covenant, easement or deed restriction shall not be eligible for calculation of development rights.

§270-166. Issuance of TDR Certificate.

A. Any landowner in a Town or Village sending area may request a TDR Certificate from the Town that specifies the number of development rights that may be separated and transferred from a qualified sending area tract based on the provisions of §270-165 above. The Town planner shall be responsible for making this determination and issuing the certificate, for which no fee shall be charged.

B. An application for a TDR Certificate shall include:

- (1) A new title search and legal description, including any existing boundary survey, of the sending area tract, and legal opinion of title affirming that the development rights being transferred have not been previously severed from or prohibited upon the sending area tract.
- (2) An identification of lands previously restricted by development as described in §270-165.B.(4) above.
- (3) Such additional information required by the Town planner as necessary to determine the number of development rights that qualify for transfer, but not including a plat map or new boundary survey.

C. A TDR Certificate shall:

- (1) Identify the transferor.

- (2) Include a legal description of the original sending area tract.
 - (3) Include a GIS map showing the original sending area tract, the portion of the tract on which the calculation of development rights is based and constrained or otherwise restricted areas as identified in §270.165.B.(2) and (4).
 - (4) Show a calculation for and statement of the number of development rights eligible for transfer.
 - (5) If only a portion of the total development rights are being transferred from the sending area tract, a statement both of the remaining transferable development rights or the remaining on-site development potential in number of dwelling units on the sending area tract.
 - (6) The date of issuance.
 - (7) The signature of the Town planner.
 - (8) A tracking number assigned by the Town planner
- D. No transfer of development rights under this ordinance shall be recognized by the Town as valid unless the instrument of original transfer contains the Town planner's certification.

§270-167. Deed of Transferable Development Rights.

Transferable development rights that have been severed shall be conveyed by a Deed of Transferable Development Rights duly recorded with the Schenectady County Clerk. Such deeds shall include both the original instrument of transfer - "Original TDR Deed" and subsequent instruments of transfer - "Intermediate TDR Deed." All such deeds on land within the Town shall conform to the requirements of this Section.

- A. An Original TDR Deed is required when development rights are initially separated from a sending area tract. The Original TDR Deed shall include or be accompanied by the following information:
 - (1) The names and signatures of the transferor and transferee.
 - (2) Either:
 - a. the identity of the tract of land to which the development rights will be attached, or
 - b. a statement that the rights are either being transferred to the Town, an approved conservation organization or other person, or
 - c. a statement that the rights are being retained by the owner of the

sending area tract.

- (3) The date of transfer.
- (4) A copy of the TDR Certificate described in §270-166 above.
- (5) The number of development rights being transferred up to the number permitted on the TDR Certificate.
- (6) The number of development rights remaining on the sending area tract (both for on-site and off-site use).
- (7) A current title search of the sending area tract (or portion of the tract to be placed under easement) prepared within 30 days prior to submission of the deed, or a signed affidavit that title has not changed since issuance of the TDR Certificate under §270-166.
- (8) A legal description and plat of the sending area tract or that portion of the tract to be placed under easement, prepared by a licensed surveyor.
- (9) A conservation easement, which shall permanently restrict development of the sending area tract as provided in §270-168. below and which shall be recorded with the Schenectady County Clerk at the same time as the Original TDR Deed.

B. An Intermediate TDR Deed is required for any subsequent conveyance of development rights after the recording of the Original TDR Deed. An Intermediate TDR Deed shall include or be accompanied by the following Information:

- (1) Items 1-7 above.
- (2) Copies and a listing of all previous TDR deeds identified by the books and pages where they are recorded with the Schenectady County Clerk.

C. The Town planner shall, prior to their recording and within 30 days of receipt, review and endorse the Original TDR Deed and conservation easement after comparing them with the TDR Certificate to determine the accuracy of the representation of the number of development rights being transferred as well as the number of any remaining development rights that may later be used either on- or off-site. The Town planner shall also, within 30 days of receipt, review and endorse any Intermediate TDR Deeds at the time of submittal of any application for development under §270-169.B. of this Ordinance.

D. The Town legal counsel shall, prior to their recording and within 30 days of

receipt, review and endorse as to form and legal sufficiency the Original TDR Deed and conservation easement. The Town legal counsel shall also, within 30 days of receipt, review and endorse as to form and legal sufficiency any Intermediate TDR Deeds at the time of submittal of any application for development under §270-169.B. of this Ordinance.

- E. No transfer of development rights under this Ordinance shall be recognized by the Town as valid until or unless a TDR Deed Endorsement Certificate signed by both the Town planner and Town legal counsel has been issued.

§270-168. Recording of conservation easement.

Any sending area tract from which development rights have been severed must be permanently restricted from future development by a conservation easement as defined in title three of Article 49 of the Environmental Conservation Law. Such easement must meet the following requirements:

- A. Except where any development rights are retained, such as within an “acceptable development area,” the conservation easement shall permanently restrict the land from future development for any purpose other than principal or accessory agricultural uses, forest uses, public parkland, conservation areas and similar uses, but excluding golf courses. Structural development for such permitted uses shall be allowed subject to compliance with the standards set forth in the Town’s Zoning Ordinance.
- B. The conservation easement shall designate the Town and/or a bona fide conservation organization acceptable to the Town at its sole discretion, as the beneficiary/grantee.
- C. If the Town is to hold or be a party to the conservation easement, it shall be approved by the Town legal counsel with respect to form and legal sufficiency, within 30 days of its receipt and prior to its recording.
- D. The conservation easement shall apply to the tract of land or portion thereof from which development rights are conveyed (sending area tract), and shall specify the number of development rights to be severed as well as any to be retained. No portion of the tract area used to calculate the number of development rights to be severed shall be used to satisfy minimum yard setbacks or lot area requirements for any development rights that are to be retained or for any other development except as permitted under §270-168.A above.
- E. On any portion of a tract from which development rights are severed, retained development rights may not exceed one (1) dwelling unit per twenty (20) acres. Notwithstanding the foregoing, any tract within a designated sending area that is less than twenty (20) acres in area may retain no more than one development right.

- F. On any tract from which development rights are severed, retained development rights may be developed with traditional farm/estate building groupings including one (1) residence and customary accessory structures. In order to be utilized, this option must be specified in the conservation easement as occurring within the “acceptable development area.”
- G. All owners of all legal and beneficial interest in the tract from which development rights are severed shall execute the conservation easement(s). All lienholders of the tract from which development rights are severed shall execute a subordination agreement or a release of lien.
- H. The conservation easement must make permanent provision for the annual monitoring of the eased land to assure its continuing compliance with the terms of the easement.
- I. Final approval for any subdivision or land development plan utilizing transferred development rights shall not be granted prior to the recording of the conservation easement with the Schenectady County Clerk and the New York Department of Environmental Conservation.

§270-169. Application of development rights to a receiving parcel.

- A. Owners of tracts within a designated receiving area may use development rights that are purchased or conveyed from sending area landowners, the Town, an eligible conservation organization or intermediate transferor as described below and in Table 1’s shaded spaces. Transferred development rights shall entitle the owner of those rights to a variety of development incentives that may be used either to increase development density or secure other development advantages within a receiving area.
 - (1) Development incentive A: For each TDR acquired, 3,000 square feet of additional lot coverage shall be allowed up to a maximum combined lot coverage of 70% in the **CB/GB** district and 60% in the MU district.
 - (2) Development incentive B: In the **CB/GB** and MU districts, for each TDR acquired, 10 required parking spaces shall be waived up to a maximum waiver of 20% of required parking.
 - (3) Development incentive C: In the MU district, for each TDR acquired, one additional single-family dwelling or duplex shall be allowed, up to a doubling of underlying permitted density, or 7,500 square feet for a single-family dwelling and 10,000 square feet for a duplex. **In such case, the lot frontage requirement for a single-family dwelling shall be reduced to 60 feet and the side yard requirement reduced to five feet on each side.**

- (4) Development incentive D: In the MU district, for each TDR acquired, four additional dwelling units may be added to a senior complex or condo building, up to a doubling of the underlying permitted maximum per building, or 16 for a condo and 64 for a senior complex.

Table 1
Maximum Density and Development Incentives Allowed
Through Transfer of Development Rights

Existing/Incentivized (shaded) Development Standards	Community Business District	General Business District	Mixed-Use District	Ratio of DRs to Incentives
Max. lot coverage (1)	30%	30%	20%	
<i>A. Max. combined lot coverage w/TDR (2)</i>	70%	70%	60%	<i>3,000sf per DR</i>
Required parking spaces (3)	1 per 350FA	1 per 350FA	1 per 350 FA	
<i>B. Parking space waiver w/TDR (4)</i>	20%	20%	20%	<i>10 parking spaces per DR</i>
Max. density in SF dus & duplexes			15,000sf/ 20,000sf	
<i>C. Max. density w/TDR (5)</i>			7,500sf/ 10,000sf	<i>1 DU per DR</i>
Max. # units in structure			8 per condo 32 per senior	
<i>D. Max. # units in structure w/TDR</i>			<i>16 per condo 64 per senior</i>	<i>4 DUs per DR</i>

1) building lot coverage only

2) combined lot coverage for buildings, parking and loading areas, access drive and sidewalks

3) approximate average; actual number is variable depending on use

4) the 20% waiver is to actual parking standards in Schedule A of the Zoning Ordinance

5) for 7,500 sf lots, the lot frontage requirement shall be 60' and the side yard requirements five feet each

B. A landowner who wants to use development rights on a property in a receiving area up to the maximums specified in Table 1 above shall submit an application for the use of such rights on a receiving area tract as part of an application for a development permit. In addition to any other information required for the development permit, the application shall be accompanied by:

(1) An affidavit of intent to transfer development rights to the property.

(2) Either of the following:

- (a) a certified copy of a recorded Original TDR Deed of the developments rights proposed to be used and any Intermediate TDR Deeds through which the applicant became a transferee of those rights; or
 - (b) a signed written agreement between the applicant and a proposed original transferor, which contains information required by §270-167.A above and in which the proposed transferor agrees to execute an Original TDR Deed for the proposed receiving parcel when the use of the development rights, as determined by the issuance of a development permit, is finally approved.
- C. The Town may grant preliminary subdivision approval of a proposed development incorporating additional development rights upon proof of ownership of development rights and covenants on the sending parcel being presented to the Town as a condition of final subdivision approval.
- D. The Town planner shall be responsible for maintaining permanent records of all certificates issued, instruments of transfer and conservation easements recorded and development rights transferred to specific properties or otherwise retired.

§270-170. Public acquisition.

The Town may purchase development rights, may accept ownership of development rights through transfer by gift, and may accept land in fee simple for the purpose of severing development rights, within designated sending areas in either the Town or Village. All such development rights may be held or resold by the Town for use within designated receiving areas in either the Town or Village. Any purchase or gift of development rights shall be accompanied by evidence of the recording of a conservation easement as specified in §270-168 above. Any gift of land in fee simple may be followed at any time by a conservation easement as specified in §270-168 above, should the Town decide to use said land for the purpose of generating transferable development rights; this provision shall be retroactive from January 1, 2007.

§270-171. Transfers of development rights to conservation organizations.

Development rights may be transferred by the owner of a sending area tract to an approved conservation organization that has as its primary purpose the preservation of land for historic, scenic, agricultural or open space purposes. If such organization purchases or acquires development rights by gift or otherwise, the organization shall be entitled to resell such rights only if the proceeds from the sale of the rights are used to contribute to an endowment fund to monitor existing easements or purchase development rights from other lands in **Town- or Village-designated** sending areas. A minimum of 20% of the revenues generated from the sale of TDRs from any preserved sending area tract shall be dedicated to the endowment fund; as each easement is unique and

monitoring requirements differ, the amount dedicated to the fund must be negotiated with the conservation organization to its satisfaction. Prior to dispersal of the funds, this amount must be ratified by the Town Board. The remaining revenues remaining from the sale of TDRs for a sending area tract shall be used for additional easement acquisition.

§270-172. TDR Bank.

The Town hereby authorizes the creation of a transfer of development rights (TDR) Bank to encourage the exchange of development rights in the private market, thereby promoting the preservation of open space land. The Bank is authorized to acquire and sell development rights through the creation of a revolving dedicated open space preservation fund that will be the repository both for development rights and dedicated revenues.

A. Acquisition of development rights.

- (1) Any development rights acquired under §270.170 above, any revenues from the sale of development rights under §270-172.B(1) below, and any local revenues, grant monies or donations of money received in support of the TDR program shall be held in a revolving dedicated open space preservation fund.
- (2) The Town may accept development rights transferred to it by any approved conservation organization. **A minimum of 20% of the revenues generated from the sale of these TDRs shall be dedicated to the organization's endowment fund; as each easement is unique and monitoring requirements differ, the amount dedicated to the fund must be negotiated with the conservation organization to its satisfaction. Prior to dispersal of the funds, this amount must be ratified by the Town Board. The remaining revenues remaining from the sale of TDRs for a sending area tract shall be used by the Town for additional easement acquisition.**

B. Sale of development rights.

- (1) The Town may periodically sell development rights using a competitive bid process or any other method deemed fair and equitable by the Town Board.
- (2) All offers to purchase development rights from the TDR bank shall be in writing and shall include a minimum 10% down payment with purchase option. Payment of the remaining 90% shall be at the time the development rights are transferred.

C. Program administration.

- (1) The TDR Bank will be administered by the Town Planner, under the supervision of the Town Board. The Planner will set up a TDR webpage on the Town's website to: 1) provide information on the program, 2) provide applicable forms and contacts, and 3) create a registry for TDR buyers and sellers. The Planner will keep records of the dates, amounts and locations of development rights acquisitions and sales and provide periodic reports to the Town Board.
- (2) The Town may use up to 10% of revenues generated from the sale of development rights to cover the administrative costs of the TDR program.

§270.173. Amendment

The Town reserves the right to amend this Article in the future, including the right to change the sending and receiving area boundaries, the right to change the manner in which the number of development rights are calculated and the manner in which the development rights can be conveyed and utilized. No owner of land or owner of development rights shall have any claim against the Town for damages resulting from a change in this Article. The Town further reserves the right to terminate its transferable development rights program at any time. If the program is abolished, holders of outstanding development rights shall have 12 months from the effective date of the termination of the program to apply to use their remaining development rights within formerly-designated receiving areas.

§270-174. Definitions

As used in this ordinance, the following words and terms shall have the meanings specified herein:

ACCEPTABLE DEVELOPMENT AREA -

COMBINED LOT COVERAGE –The proportion of a parcel that is covered by buildings as well as parking and loading areas, access driveways and sidewalks.

DEVELOPMENT RIGHTS – The rights permitted to a lot, parcel or area of land under a zoning ordinance or local law respecting permissible use, area, density, bulk or height of improvements executed thereon. Development rights may be calculated and allocated in accordance with such factors as area, floor area, floor area ratios, density, height limitations, or any other criteria that will effectively quantify a value for the development right in a reasonable and uniform manner that will carry out the objectives of this section.

INSTRUMENT OF TRANSFER – A Deed of Transferable Development Rights that permits a specified number of development rights to be legally transferred from one party to another. A Deed of Original Transfer is the original instrument

that is used to separate these development rights from a sending area tract.

LOT COVERAGE* – The proportion of a parcel that is covered by buildings, including covered porches and accessory buildings.

OVERLAY DISTRICT – A district superimposed over one or more underlying zoning districts or parts of districts that imposes additional or alternative requirements to those applicable for the underlying district.

RECEIVING AREA – One or more designated areas of land to which development rights generated from one or more sending areas may be transferred and in which increased development is permitted to occur by reason of such transfer.

RECEIVING AREA TRACT – A parcel or parcels of land in the receiving area that is the object of a transfer of development rights, where the owner of the parcel(s) is receiving development rights, directly or by intermediate transfers, from a sending area tract, and on which increased density or development incentives is allowed.

SENDING AREA – One or more designated areas of land in which development rights are designated for use in one or more receiving areas.

SENDING AREA TRACT – A parcel or parcels of land in the 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 may no longer be used on the sending area tract.

TDR – A single transferable development right.

TDR CERTIFICATE – A Town-issued certificate for which prospective transferors may apply to determine the number of transferable development rights to which a potential sending area tract would be entitled.

TRANSFeree – The person or legal entity, including one who may own property in a receiving area, who purchases or otherwise acquires development rights.

TRANSFEROR – The owner of either a sending area tract or development rights that originated from a sending area tract.

TRANSFER OF DEVELOPMENT RIGHTS – The process by which development rights are transferred from one lot, parcel or area of land in any sending area to another lot, parcel or area of land in one or more receiving areas.

* already defined in 2005 Zoning Ordinance

§270-175. Enforcement

For the purposes of enforcement of this Article, the provisions of Article XXI of the Zoning Ordinance – Violations and Enforcement – apply.