

Table of Contents

1. Title	2
2. Purpose	2
3. Code Amendment	2
138-27.12 Authority	2
138-27.13 Purpose/Legislative Intent	2
138-27.14 Definitions	3
138-27.15 Establishment of Sending and Receiving Districts	6
138-27.16 Eligibility	7
138-27.17 Administration, General Procedures and Restrictions	8
A. Development Rights Bank (TDR Bank)	8
B. Transfer of Development Rights through TDR Bank	9
138-27.18 Requirements of the Sending Area	9
A. Sending Area Landowner Options	9
B. Determination of the Number of Transferable Development Rights and Application Procedure	10
C. Transfer of Less Than All Transferrable Development Rights	11
D. Execution of Conservation Easement, Closing and Registration Procedures (Sending district)	12
E. Costs for Review	14
138-27.19 Requirements of the Receiving District	14
A. Landowner Options	14
B. Valuation of Development Rights	15
C. General Procedures and Restrictions	15
D. Transfer of Development Rights to Receiving Parcels Requirements and Procedures	17
E. Review Costs	19
138-27.20 End of TDR Program	20
4. Severability	20
5. Effective Date	20

LOCAL LAW NO. __ OF 2016 OF THE TOWN OF BALLSTON
TO AMEND CHAPTER 138 OF THE CODE OF THE TOWN OF BALLSTON (“ZONING LAW”) TO ADD A
TRANSFER OF DEVELOPMENT RIGHTS PROVISION

BE IT ENACTED by the Town Board of the Town of Ballston as follows:

1. Title

This local law is adopted pursuant to Section 10 of the Municipal Home Rule Law and Section 138-96 of the Code of the Town of Ballston and shall be known as the Transfer of Development Rights Local Law.

2. Purpose

This local law amends Chapter 138 of the Code of the Town of Ballston (“Zoning Law”) to authorize use of a transfer of development rights program and creation of a Transfer of Development Rights Bank (hereinafter known as a TDR Bank) in the Town of Ballston.

3. Code Amendment

Section 138 of the Town Code is hereby amended by adding a new article (Article XB) to read as follows:

Article XB Transfer of Development Rights (TDR)

138-27.12 Authority

- A. A Transfer of Development Rights program shall be established in the Town of Ballston and shall also be known as TDR. This TDR program is established pursuant to the authority established in Section 261-a of the New York State Town Law, and pursuant to both the Town of Ballston Comprehensive Plan and the Town of Ballston Agricultural and Farmland Protection Plan.

138-27.13 Purpose/Legislative Intent

- A. This Article enables the voluntary transfer of development potential from one parcel to another. It gives landowners the option of voluntarily selling the right to develop their land in certain agricultural areas of the Town having limited infrastructure, and transferring those development rights to lands in other areas of the Town better suited for residential development. Lands from which development rights have been transferred are permanently conserved for farming and open space uses. Lands to which development rights have been transferred are allowed to build at a higher density than otherwise allowed under the Town’s zoning law.
- B. This article is adopted in furtherance of the purposes set forth in Section 261-a (2) of the New York State Town Law, to implement the goals and vision of the Town of Ballston Comprehensive Plan, and also in furtherance of the following specific purposes:

- (1) To protect, preserve and enhance farmland and open space in the Town of Ballston and to encourage the conservation of farmland and significant open spaces and ensure the long-term viability of agriculture as per the Town of Ballston Comprehensive Plan;
 - (a) The Town of Ballston Comprehensive Plan establishes the following vision which articulates the importance of agriculture: “The Town of Ballston aspires to preserve its working agricultural landscapes, natural resources, and high quality of life as it continues to accommodate residential and commercial growth. The community has expressed a desire to maintain the small town and rural qualities still present throughout much of the Town. As the Capital Region continues to attract new commercial growth and new residents, the Town seeks to manage this growth in a manner that maintains the best of the Town of Ballston’s character for this and future generations. “
- (2) To protect, preserve and enhance farmland and open space while at the same time protecting property values and providing a fair economic return for property owners;
- (3) To foster development in areas in the Town deemed suitable for denser development and which areas are already served by public services and infrastructure;
- (4) To preserve the existing rural, historic, and agricultural character of Ballston by directing higher density residential development to appropriate locations;
- (5) To protect the natural, scenic, and economic qualities associated with the town’s agricultural lands;
- (6) To promote the design of new residential subdivisions in a manner consistent with the Town of Ballston Comprehensive Plan; and
- (7) To promote the vision and goals of the Town of Ballston Agricultural and Farmland Protection Plan.

138-27.14 Definitions

Definitions listed here are in addition to those found in the Town of Ballston Zoning Law.

ACTIVELY FARMED LAND: Land used in agricultural production as defined in NY AML 25-AA (301) (4).

ANIMALS, LIVESTOCK, AND LIVESTOCK PRODUCTS: See NY AML 25-AA (301), Livestock, and amended/or successor laws.

AGRICULTURE OR AGRICULTURAL USE: Those activities necessary to:

- (i.) produce “Crops, Livestock and Livestock Products”; or
- (ii.) use the Property as a “Farm Operation” to the extent permitted by this Easement; or
- (iii.) be actively enrolled in any federal or state or local program whose intent is to temporarily suspend (for a specified period of one or more years or crop seasons) the production of Crops, Livestock and Livestock Products for the stipulated purpose of soil and water conservation, wildlife habitat, or similar conservation purpose; or manage the Property or a portion thereof in a fallow or otherwise idled manner provided such management is described in a Conservation Plan.

AGRICULTURAL BUILDING: A structure designed and constructed to house farm implements, hay, grain, farm animals, or other agricultural products and materials by a farmer engaged in a farming operation including but not limited to barns, sheds, poultry houses and other buildings. Agricultural buildings shall also include structures used for the processing, storage, or marketing of agricultural products. Structures used for housing farm labor are also agricultural buildings.

APPRAISAL – An appraisal is the act or process of developing an informed opinion of the market value of real estate. The valuation process is a systematic procedure the appraiser follows.

CERTIFICATE OF DEVELOPMENT RIGHTS: An official document issued by the Town of Ballston and signed by the Town Supervisor that certifies that development rights have been acquired and fully paid for by the party to whom the Certificate is issued, and evincing that all other requirements of this Article have been met including but not limited to, an approved conservation easement.

CONSERVATION EASEMENT: An easement, covenant, restriction or other interest in real property, created under and subject to the provisions of this title which limits or restricts development, management or use of such real property for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, environmental, ecological, agricultural, or natural condition, character, significance, amenities, or working landscape of the real property in a manner consistent with the public policy and purpose set forth in section 49-0301 of the New York State Environmental Conservation Law, provided that no such easement shall be acquired or held by the state which is subject to the provisions of article fourteen of the constitution.

CROPS: See NY AML 25-AA (301), Crops, and amended/or successor laws.

DEVELOPMENT COST ANALYSIS: An analysis of the costs associated with the development of a piece of land at various densities and/or configurations. In the context of this law, it is one measurement to be used to evaluate the value of any increase in density provided through the transfer of development rights to a receiving area parcel.

DEVELOPMENT RIGHTS: The right to develop land, which is one of several rights that come with landownership. The development right may be sold or given away separately from the other rights. If the development right is removed, the land is still private property, though the uses that are allowed are limited. For the purposes of this Zoning Law, development rights are measured in the number of residential dwelling units. Further for the purpose of this Zoning Law, reference to a development right in the singular shall refer to the holder's right to develop a single (1) residential dwelling unit.

DEVELOPMENT RIGHTS BANK (TDR BANK): An entity which is part of the Town of Ballston municipal government, and as authorized by Section 261-a of the New York State Town Law, established to serve as an intermediary between development rights transferors and transferees, and to facilitate and to assist in the orderly and lawful transfer of development rights pursuant to the Town of Ballston Zoning Law. The Bank also accepts deposits of development rights from transferors the owners of Sending Area land, holds depositing development rights, and dispenses development rights upon purchase to transferee owners of Receiving Area land. All conveyances and transfers involving the Bank are governed by Section 261-a of the New York State Town Law and by the provisions of the Town of Ballston Town Code, including but not limited to, the Town of Ballston Zoning Law and in particular, this Article. The Bank shall transact its monetary business through a special municipal account of the Town of Ballston and shall be subject to the control measures and checks which apply to special municipal accounts generally. The Bank shall maintain a Registry

containing the records and information as prescribed in the Zoning Law as well as complete records regarding all money and development rights transactions.

ENVIRONMENTALLY SENSITIVE FEATURE(S): An area with one or more of the following environmental characteristics: (1) steep slopes greater than 15%; (2) having flood plain; (3) exposed bedrock or areas of land incapable of meeting percolation requirements; 4) known aquifer recharge or discharge areas; 5) habitats of or known locations of endangered or threatened species; 6) critical habitats identified by NYS DEC; 7) regulated streams (classified by DEC as a Class C(t) stream or higher), 6) NYS DEC or Federally identified wetlands; and any feature identified as critical to the Town of Ballston in the adopted Comprehensive Plan or other duly adopted plan or inventory.

FARM OPERATION: shall be defined pursuant to Article 25-AA of the AML, or such successor law as enacted or amended. In the event that this definition or all of Article 25-AA (and all such successor laws) shall be repealed, then the definition existing at the time of repeal shall serve thereafter.

FARM LABOR HOUSING: dwellings or structures, together with accessory improvements used to house seasonal and/or full-time employees where such residences are provided by the farm owner and/or operator, the worker is an essential employee of the farm owner and/or operator employed in the operation of the farm and the farm worker is not a partner or owner of the Farm Operation. For instance, a structure used as the primary residence of a farm owner and/or operator is not "Farm Labor Housing"

OVERLAY DISTRICT: A zoning district that encompasses one or more underlying zoning districts and that imposes additional requirements or planning options above those required by the underlying district. Overlay districts deal with special situations that are not appropriate to a specific zoning district or apply to several districts.

RECEIVING AREA: The area of land to which development rights generated from the sending districts may be transferred, and in which increased development is permitted to occur by reason of the transfer.

REGISTRY: a record consisting of a serial number, address, acreage and other information to record development rights that are to be transferred from the Sending Area to the Receiving Area as set forth in Section 138-27.18 (D) (11) and 138-27.19 (C) (6).

RESIDENTIAL DWELLING UNIT: A building or portion of a building providing complete living facilities for not more than one household, including, at a minimum, facilities for cooking, sanitation, and sleeping. A residential dwelling unit may be located within a commercial or other non-residential building, or located on a parcel that includes other non-residential uses.

SENDING AREA: The area of land in which development rights may be designated for use in one or more "receiving districts." They are the areas from which development rights may be transferred. (The sending district must consist of "natural, scenic, recreational, agricultural or open land, or sites of special historical, cultural, aesthetic or economic values sought to be protected.")

SEQRA (STATE ENVIRONMENTAL QUALITY REVIEW ACT): Review of an application according to the provisions of the New York State Environmental Quality Review Act, 6 NYCRR, Part 617 (Statutory Authority: Environmental Conservation Law, Section 8-0113), which incorporates the consideration of environmental, social and economic factors into the planning, review and decision-making processes of state, county and local government agencies.

TRANSFER OF DEVELOPMENT RIGHTS: The removal of the right to develop or build from land in one location (Sending Area) and the transfer of that right, to land in another area where such transfer is permitted (Receiving Area).

VACANT AGRICULTURAL LAND: Land that is suitable for agriculture and farm operations, but is not currently being used for that purpose.

138-27.15 Establishment of Sending and Receiving Districts

- A. Districts. For the purposes of this Article, the Town of Ballston hereby establishes the following overlay districts for the purpose of transferring development rights. These areas are depicted as overlay districts on the official Town of Ballston Transfer of Development Rights Sending and Receiving Areas map and are:
 - (1) Sending Areas, consisting of 70 parcels with approximately 2,300 potential development rights that could be sent.
 - (2) Receiving Areas, consisting of approximately 82 parcels able to absorb the development rights from the Sending Area.
- B. Map. The overlay districts are bounded and defined as shown on the map entitled "Transfer of Development Rights Sending and Receiving Areas of the Town of Ballston". Where uncertainty exists with respect to the boundaries of any of the overlay districts as shown, the rules pursuant to 138-4 (B) of the Town of Ballston Zoning Law shall apply.
 - (1) Such map shall become an element of Chapter 138 (Zoning).
- C. Map Amendments. The sending and receiving areas overlay map may be amended from time to time in the future in accordance with the provisions of the New York State Town Law applicable to TDR programs and in accordance with the process applicable to amendments to the Zoning Law established in Article XXIV, Section 138-96 of the Town of Ballston Zoning Law governing amendments. Any owner of a parcel of land not currently in the Sending Area or Receiving Area can petition the Town Board for a zoning amendment so as to be included in the sending or receiving area provided that parcel meets the criteria set forth in Section 138-27.15 (B) (2) (a) or (b) of the Zoning Law. The criteria of subsections (a) or (b) below shall be specifically met in order to qualify for addition to the sending or receiving area map:
 - (1) Qualifying Land added to the Sending Area: Land that meets all of the following criteria qualifies for additional designation by the Town Board as a sending area:
 - (a) Additional Sending Area parcels must be part of a farm operation, or contain vacant agricultural land suitable for use by a farm operation. Any parcel which has already been developed for uses inconsistent with agricultural use shall be deemed ineligible to participate in the TDR program.
 - (b) Additional Sending Area parcels shall provide at least one (1) development right or be at least two acres in size.
 - (c) Additional Sending Area parcels shall be contiguous to a parcel that is already designated as a Sending Area parcel.
 - (2) Qualifying Land added to the Receiving Area: Land that meets the following criteria qualifies for additional designation by the Town Board as a receiving area:

- (a) Additional Receiving Area parcels shall be located so that the parcel has access to public water supply service. This shall mean that the parcel must be within, or contiguous to an existing or proposed water district. In addition, the public water supply system which will supply water to the parcel must have the capacity to accommodate the additional demand that will be created by development of the parcel.
- (b) Additional Receiving parcels shall be located so that the parcel has access to public sewer service. This shall mean that the parcel must be within, or contiguous to existing sewer districts or currently proposed sewer extensions. In addition, the public sewer system which will provide waste water disposal to the parcel must have the capacity to accommodate the additional demand that will be created by development of the parcel.
- (c) Additional Receiving Area parcels shall be designed in a way that maintains a five hundred (500) foot buffer between any new development and the property line of any adjacent parcel with existing actively farmed land.

138-27.16 Eligibility

- A. Only those parcels designated as either Sending or Receiving Areas on the Town of Ballston Transfer of Development Rights Sending and Receiving Areas Map as adopted or amended are eligible to participate in the TDR process.
- B. The use of TDR in the Receiving Area shall only take place as part of a subdivision approval pursuant to Chapter 104 of the Town of Ballston Code. All procedures and time frames of this Section shall be concurrent with those established in Chapter 104.
- C. Sending Area: All owners of parcels of land located in the designated "Sending Area" shown on the "Transfer of Development Rights Sending and Receiving Areas map" are eligible to voluntarily sell or donate all or part of the development rights of their parcel(s), and transfer those rights to a different parcel or parcels located in the Receiving Area. This transfer of development rights shall occur through the use of the Town of Ballston TDR Bank, as described in this Article. Lands from which development rights have been transferred shall thereafter be permanently encumbered by a perpetual conservation easement that restricts further development of the parcel and which easement shall be duly recorded in the Saratoga County Clerk's office and registered with NYS DEC.
- D. Receiving Area: All owners of parcels located in the designated "Receiving Area" shown on the "Transfer of Development Rights Sending and Receiving Areas map" are eligible to voluntarily purchase, accept, and use all or part of the development rights from a different parcel located in the Sending Area. This transfer of development rights shall occur through the use of a TDR Bank, as described in this Article.
- E. No transferable development rights are available for parcels when all of the development rights have already been sold, or transferred, or where there is an easement provision, deed restriction or other condition of previous Town approval already in existence which restricts development.
- F. Receiving areas are eligible to use transferred development rights only from sending areas located within the Town of Ballston, or, within other municipalities with which the Town of Ballston has established intermunicipal agreements for transfer of development rights. Development rights shall be required to come from the TDR Bank pursuant to Section 138-27.17 of this Article.

138-27.17 Administration, General Procedures and Restrictions

A. Development Rights Bank (TDR Bank)

- (1) For the purposes of this Article, the Town of Ballston hereby establishes a TDR Bank pursuant to its authority under New York State Town Law Section 261-a (2) (e) to assist in the administration of the Transfer of Development Rights program in the Town of Ballston. The Town of Ballston TDR Bank shall have the authority to acquire development rights through donation, sale, bargain-sale, or bequest, and to retain and sell development rights.
- (2) Members.
 - (a) The TDR Bank shall be governed by a Board of Directors comprising three (3) members. The Board of Directors shall include one member of the Town Board appointed by the Town Board, one member of the Town Planning Board appointed by the Town Planning Board, and one member of the Town Farmland Protection Committee appointed by the Town Farmland Protection Committee. All members shall serve at the pleasure of their respective board or committee, provided they remain a member of their respective board or committee. The members should have expertise in banking, law, land use planning, natural resource protection, historic site preservation, real estate, or agriculture.
 - (b) A Board Chairperson shall be elected annually from among the members of the Board.
- (3) Executive Director.
 - (a) The Board of Directors shall appoint an Executive Director as the chief administrative officer of the TDR Bank. The Executive Director shall serve at the pleasure of the Board. The Executive Director may be the executive director of another not-for-profit organization.
 - (b) The Executive Director shall be guided by and report to the Board of Directors.
 - (c) The Executive Director will have overall operational responsibility for the TDR Bank. The Executive Director is responsible for all business operations, including management of the assets of the TDR Bank, and for establishing and maintaining the business organization and structure to efficiently conduct the management functions of the TDR Bank.
- (4) By-Laws.
 - (a) The Board of Directors is hereby authorized to adopt by-laws for the regulation of its affairs and the conduct of its business.
- (5) Regular Meetings.
 - (a) Meetings of the Board of Directors shall be held on an as-needed basis, and shall be held in accordance with NYS Open Meetings Law (Public Officers Law, Article 7)
- (6) Powers of TDR Bank.
 - (a) The TDR Bank is established to provide funding to purchase Development Rights, accept assignments of Development Rights, hold Development Rights, sell Development Rights, and to maintain a registry of Development Rights in accordance with the provisions of this Article Xb of the Zoning Law, and any regulations adopted by resolution of the Town of Ballston Town Board regarding the TDR Bank.
 - (b) The TDR Bank shall receive monies from the sale of Development Rights, and may also accept gifts, donations, grants, and bequests of money, development rights, or other

- property. All funds received from the foregoing sources shall be used by the TDR Bank and the Town of Ballston solely in connection with the Town TDR program.
- (c) All funds generated through the sale of development rights shall be deposited in a special account or accounts in the name of the Town pursuant to Town Law 261-a.
 - (d) Monies from this account shall be expended from the TDR Bank only for the purchase of Development Rights and for related expenses such as but not limited to: program administration, title search, title insurance, legal fees, project management, baseline preparation, environmental investigation, Stewardship Fund surveys, or filing fees necessitated by the Transfer of Development Rights program.
 - (e) The TDR Bank shall operate according to the procedures set forth herein.
- (7) The TDR Bank may acquire the development rights of parcels located in the designated Sending Area through purchase, donation, bargain-sale, or bequeathing, and hold them until such time as demand develops for their use in the Receiving Area.
 - (8) The TDR Bank may sell development rights only to parcels located in the designated Receiving Area. Property owners in the Receiving Area are eligible to buy these development rights to increase the densities at which their lands may be developed.
 - (9) The TDR Bank may sell development rights before it has acquired such development rights from the sending area with the following limitations:
 - (a) The TDR Bank may keep a record of sending area land owners that have expressed an interest in participating in the TDR program, and have begun the application process, but have not completed the transfer of development rights into the TDR Bank. In this case, the TDR Bank may sell the anticipated number of development rights that would result from this purchase to a receiving area landowner or developer before the purchase and transfer is complete.
 - (b) The TDR Bank may additionally sell up to a maximum of 300 development rights over and above the number of development rights that are in the approval process as described in 138-27.17 A 9 (a) above.
 - (c) The TDR Bank shall not sell a larger number of development rights than the number of development rights it anticipates it will be able to purchase from the sending area.

B. Transfer of Development Rights through TDR Bank

- (1) The sole mechanism to transfer development rights from a Sending Area parcel to a Receiving Area parcel shall be through the TDR Bank.

138-27.18 Requirements of the Sending Area

A. Sending Area Landowner Options

The landowner of a parcel of land located in the Sending Area has the following development and transfer options, subject to all other applicable provisions of Chapters 104 (Subdivision) and 138 (Zoning) of the Town of Ballston Code. Participation in the Transfer of Development Rights option is voluntary.

- (1) Option 1: A landowner may choose not to transfer any development rights and may develop his or her property in compliance with all applicable provisions of the requirements of Chapter 104

and 138 of the Town of Ballston Code including, but not limited to, lot size, density, setbacks, uses, and all other development standards for that district(s).

- (2) Option 2: A landowner may transfer through sale, donation, bargain-sale, bequest, or bequeathing all or part of the development rights associated with the parcel to the Town of Ballston TDR Bank for subsequent resale to a landowner in the Receiving Area. The owner of land in the Sending Area may retain, at a maximum, the ability to build one residential dwelling unit (one development right) for every 25 acres of tillable farmland to be preserved. All requirements of Zoning Law Article XB shall be met. Any development rights retained by the landowner shall be subtracted from the total number of development rights eligible for that parcel. Such residential dwelling units shall be delineated in the conservation easement, and sited in a manner that limits disruption to farming activities or minimizes farmland fragmentation.

B. Determination of the Number of Transferable Development Rights and Application Procedure

- (1) Landowners in designated Sending Areas who wish to sell or donate development rights must demonstrate that their land is located within the designated Sending Area shown on the Town of Ballston Transfer of Development Rights Sending and Receiving Area map.
- (2) Sketch Plan Conference. In order to facilitate the process, outline the steps, and explain the requirements of this section, a sketch plan conference may be held between the Planning Board and the applicant prior to the preparation and submission of a formal application. No fee is required to schedule a sketch plan conference but a written request for such a conference must be made in to the Planning Board Chairman and delivered to the Building Department at least three weeks prior to the next regularly scheduled Planning Board meeting in order to get on the agenda for that meeting.

The purpose of the sketch plan conference is to enable the applicant to inform the Planning Board of their intention to apply for TDR, to discuss the sending area application process, the conservation easement model, the requirements of the TDR Bank and the conservation easement holder, and to provide some guidance with the required yield plan. The sketch plan conference should be attended by the applicant, the Planning Board, representatives of the TDR Bank, and the potential easement holder.

- (3) The number of development rights that qualify for transfer shall be determined and approved by the Town of Ballston Planning Board according to the following procedure:
 - (a) Calculating the Number of Development Rights. The number of development rights available to be transferred from a sending area parcel is based upon the underlying density permitted pursuant to the Zoning Law and all other requirements in the applicable zoning district.
 - (b) A Sending area landowner interested in TDR shall submit a written application to the Planning Board seeking approval of the proposed transfer of development rights. The application shall be on a form provided by the Town and shall:
 - (1) Include a map of the proposed sending area parcel. The map shall be of sufficient detail and scale to show its general location, streets, available infrastructure, and shall identify natural features including any environmentally sensitive features. The applicant may use data available at the Town Hall or at the Saratoga County Planning Department to determine the location of floodplains, wetlands, and other environmental features. If less than the full area of the parcel is being used for transfer of development rights, a

map showing the specific area of the parcel subject to transfer of development rights shall be included with the application.

- (2) Include a determination of the total number of development rights proposed to be transferred. The total density allowed on the parcel, or portion of the parcel to be included in the transfer, shall be calculated based on a yield plan based on the density, road frontage, lot size, environmental constraints, internal roads, and other zoning and subdivision requirements of the zoning district in which the parcel is located.
 - (3) The application shall include the formula and mathematical calculations used to derive the number of development rights available for transfer and shall also demonstrate how the calculation complies with all applicable provisions of the Zoning Law.
 - (4) Include a TDR Sending Area Application Fee, as stipulated in the Town's Fee Schedule, if one is set by the Town Board, to be used for the administration, and recording of the transferred development rights pursuant to this Article. This Fee does not cover costs associated with the holding of conservation easements including, but not limited to easement monitoring, legal fees, insurance, or other transactional costs.
- (c) The Planning Board shall forward the calculation and proposal for transfer of development rights application to the Town Planner/Engineer within 5 days of acceptance by the Planning Board. Within 10 days prior to the next Planning Board Meeting, the Town Planner/Engineer shall review the submission for accuracy and compliance with the density allowances from the Town of Ballston Zoning Law and Subdivision Regulations. The Planner/Engineer shall advise the Planning Board of findings and required adjustments to the application and calculation of development rights and his or her findings shall be accompanied by a recommendation. The Planner/Engineer's findings and recommendation shall be in writing and shall set forth a reasoned elaboration for his or her conclusion and analysis.
- (d) After receipt of the planner/engineer's report and at their next regular meeting, the Planning Board shall make a final determination as to the number of Development Rights eligible for transfer. The Planning Board can accept or accept with changes, the transfer of development rights from the Sending Area. The Planning Board's determination shall be in writing and shall contain a reasoned elaboration of the basis and reasons in support of its determination. A copy of the determination shall be provided to the applicant and the TDR Bank.
- (e) If the Planning Board approves the TDR application, the filing procedures of Town of Ballston Zoning Law 138-21.16 (D) shall be followed.

C. Transfer of Less Than All Transferrable Development Rights

In the event that only a portion of the total transferable development rights are conveyed, the remaining unrestricted portion of a sending area parcel may still be developed in accordance with whatever development rights are allowable on the unrestricted portion of the parcel under the Zoning Law. Any unused transferable development rights will run with the land and will be transferred to any successor in title. Also running with the land will be the conservation easement which was placed on the parcel as part of the transfer of a portion of the parcel's development rights. The TDR Bank has the right to reject any application for which the non-encumbered portion of a property degrades the value of agricultural uses on the portion proposed for conservation easement.

- (1) The location of any additional residential dwelling unit allowed shall be specified in the application and in the conservation easement. The location of the residential dwelling unit and its driveway shall not harm the economic viability of the land that has been preserved for agricultural production.

D. Execution of Conservation Easement, Closing and Registration Procedures (Sending district)

- (1) Upon approval of the transfer of development rights from the sending area by the Planning Board, the Town will require a baseline study to be conducted to identify the current conditions of the parcel for the purposes of monitoring the easement in the future. This baseline study shall be developed pursuant to the requirements of the proposed easement holder. It shall include, but is not limited to a boundary survey and a written description of the boundary of the land area to be placed in a conservation easement.
- (2) The sending area landowner shall also obtain a current, certified survey conducted by a licensed surveyor of the entire parcel, according to the specifications of the easement holder. The survey shall be certified to the land owner, the Town of Ballston, and the entity that will be the holder of the conservation easement. The survey map must depict both the parcel boundaries as well as that portion of the property from which development rights are being transferred, as that portion of the property will be encumbered by a conservation easement, and any residential or other designated area, as well as any retained rights for future residential units. The applicant shall also obtain from the surveyor a written metes and bounds description of both the boundaries of the parcel as well as the boundaries of the portion of the parcel from which the development rights are being transferred and any designated areas. These will be necessary for the proper drafting, recording, and stewardship of the conservation easement.
- (3) The landowner of a sending area parcel shall retain the title to the property but shall be required to encumber that portion of the property from which development rights have been transferred with a perpetual, permanent conservation easement, recorded in the Saratoga County Clerk's office.
 - (a) The Town of Ballston shall provide the landowner with a Town-approved Standard Conservation Easement form. The conservation easement shall be in recordable form and shall contain the content set forth in the Town of Ballston Standard Conservation Easement as approved by the Ballston Town Board and the proposed easement holder.
 - (b) The perpetual conservation easement shall allow for farm operations and residences as allowed in 138-27.18 (D) (3) and prohibit any use not associated with the farm operation on that portion of the parcel in the future except for any residential use specifically allowed for in the conservation easement in connection with retained right to develop a single residential dwelling unit per 25 acres as per 138-27.8 (D)(3).
 - (c) Other buildings or structures may be permitted to be constructed on the land preserved for agriculture provided it is related to the farm operation. No conversions of agricultural buildings to residential dwelling units on the preserved land shall be permitted except to house farm labor.
 - (d) Subdivision of the land from which TDRs have been sold is permitted only if such subdivision of land shall not harm the economic viability of the land for agricultural production.
- (4) Following the determination in Town of Ballston Zoning Law Section 138-21.18 (B) that accepts transfer of development rights from the sending area, the applicant shall submit to the Planning

Board and the proposed easement holder, a current appraisal of the value of the land area presented in the TDR Application and of the value of the development rights to be transferred.

- (5) After the Town Planning Board approves the transfer of development rights, the sending landowner shall submit to the Town Attorney for legal review:
 - (a) An original, signed survey (certified to the land owner, the Town and the easement holder);
 - (b) Surveyor's written metes and bounds description of both the parcel boundaries and the boundaries of the portion of the property to be encumbered by the conservation easement;
 - (c) An unsigned, proposed Town of Ballston Standard Conservation Easement;
 - (d) A title report documenting that the portion of the parcel to encumbered by the conservation easement is free of all liens, mortgages, and any other easements, rights-of-way or other encumbrances that would violate the terms of the conservation easement.
- (6) The Town Attorney shall determine that the conservation easement is in proper legal form for recording in the Saratoga County Clerk's Office. The Town Attorney shall also determine, based upon the title report and any accompanying documents, that the portion of the parcel to encumbered by the conservation easement is free of all liens, mortgages, and any other easements, rights-of-way or other encumbrances that would violate the terms of the conservation easement, or that the holder of any lien, mortgage, or other interest affecting the conservation easement has agreed in writing to subordinate their interest in the parcel to the conservation easement.
- (7) Prior to execution of final easement documents, the Town shall allow for review by the proposed easement holder's Governing Board.
- (8) The proposed easement holder's Governing Board shall also ensure that the easement meets all requirements of the proposed easement holder.
- (9) Upon approval of the Title Report, the Town Attorney shall ensure that the applicant purchases a policy of title insurance, purchased at the sole expense of the applicant, insuring both the Town of Ballston and the easement holder. The coverage amount of the title insurance policy shall be equivalent to the value of the development rights transferred from that portion of the property to be encumbered by the conservation easement.
- (10) After Town Attorney approval, the applicant and the proposed easement holder shall execute and sign the conservation easement and any other documents necessary for the proper execution and recording of the easement.
- (11) The easement holder shall record the conservation easement and file any necessary and appropriate ancillary documents, in the office of the Saratoga County Clerk and with NYS DEC.
- (12) Upon receipt of proof that the conservation easement has been recorded with the Saratoga County Clerk's Office, the TDR Bank shall:
 - (a) Assign a serial number to each development right;
 - (b) Record the deposit of the development rights in the TDR Bank in a Registry maintained by the responsible municipal official. The information posted in the Registry shall include all of the necessary details about development rights deposited, including but not limited to: the date of deposit; the name of the transferor land owner; the address and tax parcel identification number of the transferor parcel; a quantification of the number of development rights transferred as part of the development rights transfer; the serial

number of each development rights transferred; a quantification of the value of the developments rights transferred; and the document number of the conservation easement as that easement is recorded in the records of the Saratoga County Clerk.

- (c) Maintain in its records a copy of the recorded conservation easement and also forward a copy of the recorded conservation easement to the land owner and to the Planning Board for their records information. The original conservation easement shall be provided to the easement holder after it is recorded and returned by the Saratoga County Clerk.

- (13) Within one year after development rights are transferred, the assessed valuation placed on the affected properties for real property tax purposes shall be adjusted to reflect the transfer.

E. Costs for Review

A landowner shall be responsible for all reasonable costs associated with the Town's review and processing of the TDR sending area application, including any professional fees incurred by the Town of Ballston in connection with the application and transfer, as such fees are authorized by the Ballston Town Code. This shall include, but not be limited to, attorney's fees, recording fees, and other professionals that may be required to assist in the review of the application. The amount required for said review shall be based on the specific fee schedule of the particular consultant or consultants retained as well as the scope of services to be provided by such consultant(s). The Town shall hold such deposit in escrow for the sole purpose of paying the costs and fees of the consultant(s) retained for review of the application. The consultant retained shall provide the Town with detailed invoices showing the services rendered for the time period billed, and the Town shall provide the applicant with an opportunity to review said invoices prior to payment. Additional deposits may be required as the review process continues.

A third party including but not limited to New York State, the County, the TDR Bank, a land trust, or a developer interested in using transferred development rights is permitted to cover these costs for the landowner.

138-27.19 Requirements of the Receiving District

A. Landowner Options

The landowner or developer of a parcel of land located in the Receiving Area has the following development and transfer options, subject to all other applicable provisions of Articles 104 (Subdivision) and 138 (Zoning) of the Town of Ballston Code. Use of transferred development rights in the receiving area is voluntary.

- (1) Option 1: A landowner can choose not to purchase any additional development rights and may develop his or her property in compliance with all applicable provisions of the requirements of Chapter 104 and 138 of the Town of Ballston Code including lot size, density, setbacks, uses, and all other development standards for that district(s).
- (2) Option 2: A landowner or developer may purchase additional Development Rights through the Development Rights Bank and apply those development rights to an approved receiving area parcel, through this Article and by meeting all requirements of the subdivision review pursuant to Chapter 104, zoning pursuant to Chapter 138 of the Town of Ballston Code, and as approved by the planning board.

B. Valuation of Development Rights.

- (1) It is important to effectively quantify an appropriate value for the development rights that are being transferred from the sending area in order to create a viable market for them in the receiving area. It is assumed that the added density allowed in the receiving area through the transfer of development rights will lead to additional value to the developer. This additional value is to be used for the purchase of those development rights transferred.
- (2) As real estate markets change over time, and development costs can be different depending on the characteristics of the property being developed, the value of the development rights transferred shall be determined at the time of application for the use of such rights. In order to determine this value, the following steps shall be taken:
 - (a) An appraisal of the parcel and an analysis of the development costs of the parcel(s) shall be performed for the parcel proposed to be developed using the transferred development rights.
 - (b) This appraisal and development cost analysis shall be performed by an agreeable third party real estate appraiser with MAI or SRA Designation. The appraisal and development cost analysis must be approved by the TDR Bank.
 - (c) The development cost analysis shall include an estimate of the costs involved to develop a particular property both at the allowed base density, and at the proposed density using the transferred development rights. The total cost of development at the higher density shall include the cost of the analysis described here.
 - (d) The difference between the value of the undeveloped property at the base density, and the value of the undeveloped property with the transferred development rights at the proposed density using the transferred development rights, will determine the total fair market value of the development rights to be transferred.
 - (e) The value of each individual development right being transferred will be the total fair market value of the transferred development rights, divided by the number of development rights being transferred.
- (3) The value of each development right as established above, shall be the cost to the developer for the purchase of each transferred development right.

C. General Procedures and Restrictions

- (1) The developer or landowners in the Receiving Area wishing to use transferred development rights must purchase development rights from the Development Rights Bank at their fair market value as determined in section 138-27.19 B.
- (2) Sketch Plan Conference. In order to facilitate the process, outline the steps, and explain the requirements of this section, a sketch plan conference may be held between the Planning Board and the applicant prior to the preparation and submission of a formal application to use development rights in the receiving area. No fee is required to schedule a sketch plan conference but a written request for such a conference must be made to the Planning Board Chairman and delivered to the Building Department at least three weeks prior to the next regularly scheduled Planning Board meeting in order to get on the agenda for that meeting.

The purpose of the sketch plan conference is to enable the applicant to inform the Planning

Board of their intention to apply for and use development rights in the receiving area, to discuss the application process, the valuation of development rights, the requirements of the TDR Bank, and to provide some guidance with the required yield plan. The sketch plan conference should be attended by the applicant, the planning board, and a representative of the TDR Bank.

- (3) Landowners or developers in the receiving area are eligible to receive residential density bonuses when purchasing development rights pursuant to this section. This density bonus shall be in addition to the base density allowed for in the underlying district pursuant to Chapter 138. The number of residential dwelling bonus units allowed shall be as specified in the following chart:

Density Bonuses Available when Development Rights from a TDR are Used	
Zoning District of Receiving Area	Maximum Bonus Units Allowed Per Acre, Above Base Density
Hamlet Residential	6 units per buildable acre, above base density
Mixed Use Center	6 units per buildable acre, above base density
Rural	4 units per buildable acre, above base density
Ballston Lake Residential	4 units per buildable acre, above base density
Business Highway 1	6 units per buildable acre, above base density

- (4) The calculation of the number of additional residential units allowed through the transfer of development rights shall be based on the net density allowed under the base density of the zoning district. This net density is calculated through the use of a yield plan using the base density of the zoning district in which the parcel is located. It shall take into consideration road frontage, lot size, environmental constraints, required internal roads and infrastructure, and other zoning and subdivision requirements. The result of this yield plan is the maximum number of residential dwelling units that would be allowed to be built on the parcel without the use of TDR. The number of additional development rights available to the applicant is then based on the number of residential dwelling units calculated using the yield plan. The application shall include the formula and mathematical calculations used to derive the number of development rights allowed under base zoning, and those available for transfer, and shall also demonstrate how the calculation complies with all applicable provisions of the Zoning Law.
- (5) Development added to property in a Receiving Area through the TDR Program shall be consistent with the list of permitted residential uses in the applicable district, and shall be compatible with the existing and/or proposed uses on the property; and shall meet all permitting agency requirements.

- (6) The final subdivision plat, site plan, special use permit, or Planned Unit Development District shall indicate the sending parcel(s) and the serial numbers of the specific development rights being purchased.

D. Transfer of Development Rights to Receiving Parcels Requirements and Procedures.

- (1) The use of transfer of development rights in the receiving area shall only occur in conjunction with a development proposal that includes an application for subdivision, site plan review, special use permit, or Planned Unit Development District.
- (2) The Planning Board shall ensure that each lot in a proposed subdivision to which a development right shall be attached shall be identified on the subdivision plat.
- (3) Where a subdivision proposes to include the use of transferred development rights, the procedures of Town Code Chapter 104 (Subdivision) for all preliminary and final plat requirements shall also be followed. The maximum density in the receiving area will be based upon an approved preliminary plat. Upon approval of a final plat, the development rights will be transferred to a development parcel. If the final plat is approved for fewer lots than the approved preliminary plat, the unused development rights will remain in the Registry.
- (4) Where a site plan, special use permit, or Planned Unit Development District proposes to include the use of transferred development rights, the procedures of Town Code Chapter 138 (Zoning) also be followed. The maximum density in the receiving area will be based upon an approved site plan, special use permit, or planned unit development district. Upon approval, the development rights will be transferred to the development parcel. If the project is approved for fewer lots than the original application, the unused development rights will remain in the Registry.
- (5) An owner or developer of land located within a Receiving Area may use development rights purchased from the Development Rights Bank to increase the number of units that may be developed by using the following procedures:
 - (a) A Receiving Area landowner interested in using transferred development rights shall submit, as part of their subdivision site plan, special use permit, or Planned Unit Development District application, a written application to the Planning Board seeking approval to use the proposed transfer of development rights. The application shall be on a form provided by the Town and shall include the total number of development rights proposed to be transferred to the receiving parcel, a TDR Receiving Area Approval Fee, if one is set by the Town Board, and/or escrow funding to be used for the administration and recording of the transferred development rights pursuant to this Article. Prior to any initiation of subdivision review site plan review, special permit, or planned unit development district, the Planning Board shall ensure that adequate escrow funds are received to cover all review costs associated with the TDR request. The application shall also confirm the availability and registry information related to the development rights to be used within the development.
 - (b) The approval of use of development rights shall be concurrent with and part of the preliminary plat approval of a subdivision, site plan review, special permit, or planned unit development district.
 - (c) The application must demonstrate that the developer is able to acquire all development rights from the TDR Bank needed for the proposed development;

- (d) The application must accurately specify by reference to assigned serial numbers or otherwise which development rights are being used by the development.
- (e) The application must include an environmental analysis pursuant to New York State Town Law 261-a (2) (b) that evaluates the environmental impacts of the specific TDR proposal not adequately reviewed in the Generic Environmental Impact Statement (GEIS) accepted by the Town of Ballston in connection with the Town's adoption of its TDR program.
- (f) The Planning Board shall forward the proposal to use transferred development rights to the Town Planner/Engineer within 5 days of acceptance by the Planning Board as complete to determine adequacy and capacity of the receiving parcel and available municipal services and infrastructure to accept such increased density. Within 10 days prior to the next Planning Board Meeting, the Town Planner/Engineer shall review the submission for accuracy and compliance with the Town of Ballston Zoning Law and Subdivision Regulations. The Planner/Engineer shall advise the Planning Board of findings and required adjustments to the conceptual plan application and use of development rights.
- (g) The Town, with the assistance of the Town Attorney and the Town Planner/Engineer, shall within sixty-two (62) days of receipt, determine in writing if the application for use of transfer of development rights is complete and ensure that the preliminary plat, site plan, special use permit, or planned unit development district accurately specifies the number of development rights to be used. If the Town determines the application to be incomplete, that determination shall be made in writing and shall identify with specificity the incomplete aspects of the application along with a reasoned explanation for the determination. A copy of that determination shall be provided to the applicant.
- (h) The Planning Board shall not approve either the use of transferred development rights, a preliminary plat a site plan, special use permit, or planned unit development district until all the requirements of Section 6 NYCRR Part 617 of the SEQRA Regulations are complete.
- (i) The Planning Board can accept, accept with changes, or deny the application for use of transfer of development rights. After receipt of the planner/engineer's report and at a regular meeting, the Planning Board shall make a preliminary determination as to the acceptability of using the proposed Development Rights that are eligible for transfer as part of and at the same time of preliminary plat review, site plan review, special use permit, or planned unit development district.
- (j) Final plat approval and approval of a site plan, special use permit, or planned unit development district is contingent and conditioned on the proof of acquisition of the appropriate number of development rights. The final determination of use of the transferred development rights shall be made simultaneously with final plat approval and approval of a site plan, special use permit, or planned unit development district.
- (k) The landowner shall submit, prior to the signing of a final subdivision plat, site plan, special use permit, or planned unit development district, and on forms approved by the Planning Board and obtained from the Town Clerk, an original and two copies of a certificate of development rights transfer.
 - (1) The Certificate of Development Rights shall dedicate the entire site for use in the Transfer of Development Rights program. When recorded, the Certificate of Development Rights shall entitle the landowner to exercise Development Rights obtained through this program.

- (2) Until the Certificate of Development Rights is recorded, the land is subject to the density and use restrictions otherwise controlling within the district pursuant to the Zoning Law.
- (3) The Certificate of Development Rights transfer shall certify that recording the Certificate of Development Rights transfer will permanently and irreversibly transfer the number of Development Rights contained within it to the parcel of land cited, and arrange for the recording of the deed/certificate with the County Clerk.
- (4) The approval resolution of the Planning Board shall authorize the Planning Board Chair to sign the Certificate of Development Rights Transfer at the same time as the final plat, site plan, special use permit, or planned unit development district is signed and recorded with the Saratoga County Clerk.
- (6) Proof of recording of the Certificate of Development Rights transfer shall be a prerequisite to the issuance of any building permit for development of the land upon which the Development Rights are to be used.
- (7) Recording the Certificate of Development Rights transfer shall extinguish the ability to use any development rights transferred except upon the parcel to which the development rights have been transferred.
- (8) Upon receipt of proof that the Certificate of Development Rights transfer has been recorded, the Development Rights Bank shall:
 - (a) Record the transfer of Development Rights from the Bank in the Development Rights Bank Registry maintained by the responsible municipal official. The information posted in the Registry shall include all of the necessary details about development rights transferred from the Bank, including but not limited to: the date of transfer; the name of the transferee land owner; the address and tax parcel identification number of the transferee parcel; identification of the quantity of development rights transferred; the serial number of each development right transferred; a quantification of the value of the developments rights transferred; and the Document Number of the Certificate of Development Rights Transfer as that Certificate is recorded in the records of the Saratoga County Clerk.
 - (b) The Development Rights Bank shall maintain a copy of the recorded Certificate of Development Rights Transfer in its records. It shall forward a copy of the recorded Certificate of Development Rights transfer to the Planning Board for its information. After recording, the original Certificate shall be returned to the purchaser of the development rights.
 - (c) Assign the transferred Development Rights to the receiving parcel in the Development Rights Registry.

E. Review Costs

A receiving area landowner shall be responsible for all costs associated with the review of the development rights transfer application in addition to the costs associated with the subdivision review or site plan review pursuant to Town Code sections 138-106 (B) or 104-5, including all professional fees authorized by the Town Code and required by the Planning Board, and recording expenses. The Planning Board may consult with the Town staff, Fire Commissioners, Highway Superintendent, other local county officials and its designated private consultants and engineers, in addition to representatives of federal and state agencies, including but not limited to the Soil Conservation Service, the State Department of

Transportation and the State Department of Environmental Conservation. The amount required for said review shall be based on the specific fee schedule of the particular consultant or consultants retained as well as the scope of services to be provided by such consultant(s). The Town shall hold such deposit in escrow for the sole purpose of paying the costs and fees of the consultant(s) retained for review of the application. The consultant retained shall provide the Town with detailed invoices showing the services rendered for the time period billed, and the Town shall provide the applicant with an opportunity to review said invoices prior to payment. Additional deposits may be required as the review process continues.

138-27.20 End of TDR Program

A. When all potential farmland has been preserved, the goals of the Town of Ballston TDR program have been met, and there is no need to continue the program, the Town may determine that the TDR Bank contains a monetary surplus. In that case, the Town of Ballston may adopt a resolution following a public hearing declaring a finding of Excess Money. The finding will be based upon one of three criteria as follows:

- (1) The TDR Bank has generated more money than is needed to purchase the remaining Development Rights available from the Sending Areas.
- (2) No purchase of Development Rights by the TDR Bank are either requested through a submission of an application under Article XB or completed within a period of ten years.
- (3) All Development Rights from approved Sending Areas have been purchased, at which time the TDR Bank may be extinguished.

B. Excess moneys generated by the TDR Program through the TDR Bank may be used by the Town for any purpose dedicated to farm and farmland protection programs.

4. Severability

If any part or provision of this Local Law, or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved and the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town of Ballston hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provisions been apparent.

5. Effective Date

This local law shall take effective immediately upon its filing in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.