

FINAL REPORT AND RECOMMENDATION OF THE PLANNING BOARD ON
THE PROPOSED AMENDMENT TO THE ZONING BYLAW
TO EXPAND AND FURTHER DEFINE THE EXISTING TRANSFER OF
DEVELOPMENT RIGHTS

DATE OF PUBLICATION OF PUBLIC HEARING: AUGUST 4, 2004
 AUGUST 11, 2004

DATE OF PUBLIC HEARING: AUGUST 23, 2004
 AUGUST 30, 2004
 SEPTEMBER 8, 2004
 SEPTEMBER 13, 2004

VOTE: On September 13, 2004, the Planning Board voted unanimously (5 - 0) to recommend approval of the following amendment to the Fall Annual Town Meeting.

PROPOSED AMENDMENT:

To see if the Town will vote to amend its Zoning Bylaw to expand and further define the existing Transfer of Development Rights language by creating a new Section, Article VII § 205-70. **Transfer of Development Rights** and amend Article VI § 205-40. **Rural Residential**, Article VI § 205-43. **Small Lot Residential**, Article VI § 205-59. **Recreational Development**, Article VI § 205-62. **Rural Density Development** and amend associated definitions, procedures, and schedules, or take any other action relative thereto.

See attached language

NEED & JUSTIFICATION:

The Zoning Bylaw establishes a 3-acre (120,000 square foot) density of development in the Rural Residential Zoning District. One of the reasons for such a low density of development is to discourage development in locations where Town services do not exist. However, development continues to occur in these rural sections of Town. If this trend continues, the Town will be in the difficult position of providing services (roads, police, fire, and school transportation) to some of the remotest sections of Plymouth. Additional options are needed.

The Town has taken several successful steps to minimize the impacts of development in our rural neighborhoods. These steps include:

- Adoption of a 3-acre density of development standard in the Rural Residential District.

- Adoption of the Rural Residential Development and Recreational Development special permits which allows for flexibility in design and the creation of permanently protected open space.
- The creation of a transfer of developments rights (TDR) to protect natural resources, create passive recreation, and secure land for future municipal uses.

The A.D. Makepeace Company owns approximately 3,600 acres of land in the Town of Plymouth. All of this land is located the Rural Residential District. Some of this land is in the remotest section of Plymouth where no public services exist. The cost to provide services to these areas will be staggering. In addition, the company owns some of the most environmentally sensitive land in the Town. Due to outside circumstances, the company has stated that it must develop some of this land. Over the past several months the Planning Board has worked closely with the company to draft a bylaw that gives the company the opportunity to receive a financial benefit from its real estate potential while also protecting open space and limiting development in remote and environmentally sensitive sections of the property.

This amendment was not crafted solely for the benefit of the A.D. Makepeace Company. The refinements in the existing language will benefit other property owners looking to use Plymouth's Transfer of Development Rights process to either protect or develop their property.

What is new in this bylaw?

- Consolidates existing language into a single section.
- Allows a two phase process.
- Bases unit count on land value.
- Allows development rights “Banking”.
- Certificates are issued.
- Allows denser development in new subdivisions.
- The maximum 50% increase in density in existing developments remains.
- Creates a site plan review process for large (500+ acre) receiving areas.

EFFECT:

The effect of this amendment would be to allow for the transfer of development rights from a certain piece of property in the Rural Residential District (RR) to another piece of property within the Rural Residential District (RR). It would also restrict the uses allowed on the property transferring its rights (sending land) by placing permanent Conservation Restriction on that land.

When transferring development rights, the amendment allows, by site plan review, a density of development of one unit per acre for parcels greater than 500 acres in size. Greater densities will trigger a more intensive special permit review process.

INTENT:

The amendment is intended to preserve land for uses other than residential and commercial development at no cost to the Town or the landowner. The rights to develop

a particular parcel would be transferred to another parcel so that the landowner would achieve the same outcome as if they developed the preserved parcel.

The amendment provides more flexibility for preserving sensitive environmental land, acquiring land for municipal purposes, and other uses besides single family residential development.

TOWN OF PLYMOUTH

Loring Tripp, III, Chairman

Nicholas F. Filla

Larry Rosenblum

Paul McAluff

Malcolm MacGregor

BEING A MAJORITY OF THE PLANNING BOARD

DATE SIGNED BY THE PLANNING BOARD: _____

DATE FILED WITH TOWN CLERK: _____

cc: Town Clerk
Board of Selectman
Advisory and Finance Committee

Article VII Section 205-70 Transfer of Development Rights

A) Intent:

This section of the zoning bylaw enables the development potential of one or more parcels in the Rural Residential (RR) District to be transferred to one or more other parcels in the Rural Residential (RR) District. The transfer of development rights makes it possible to permanently protect parcels containing a sensitive resource, such as a wellhead protection area, by transferring the development rights of that parcel to other parcels where there are little or no impediments to higher density. When development rights from a sending parcel have been transferred to a receiving parcel, the receiving parcel acquires development rights beyond otherwise permissible limits. In order for a parcel to become a receiving parcel, a special permit subject to environmental design conditions from the Planning Board is required, unless the parcel is located in a Rural Residential Receiving Area (RRRA), as defined in Section B. This section encourages the maintenance of low-density land uses, open spaces, critical environmental resources, and other sensitive features of the designated sending parcels. This section also fosters the fiscal well being of Plymouth by concentrating service demands for adequate capital facilities, including transportation, water supply, and sanitary waste disposal facilities. Authority for this section is found in G. L. Chapter 40A, Section 9 (fourth paragraph).

B) Definitions

Development Rights. The number of dwelling units available for transfer from a designated sending parcel(s), to be determined by the Planning Board, as set forth in Section D.

Unless and until development rights have been transferred, they shall be deemed to be appurtenant to the sending parcel(s). After development rights have been transferred, they shall be deemed to be appurtenant to the receiving parcel(s). Documentation of development rights available for transfer shall take the form of a recordable certificate issued by the Planning Board to the owner of the sending parcel(s). Said certificate shall remain in full force and effect until the Planning Board approves the transfer of the development rights represented by the certificate. Documentation of development rights that have been transferred shall take the form of a recordable certificate issued by the Planning Board to the owner of the receiving parcel(s) together with a recordable certificate transferring the certificate previously issued by the Planning Board to the owner of the sending parcel(s). The Planning Board shall maintain a ledger of all certificates issued under this section of the bylaw.

Transfer of Development Rights. The severance of development rights from a sending parcel(s) and the affixing of development rights onto a receiving parcel(s).

Subject to the issuance of a certificate by the Planning Board for a sending parcel(s) and, unless the parcel is located in a RRRA, the issuance of a special

permit subject to environmental design conditions by the Planning Board for a receiving parcel(s), development rights may be sold by the owner of a sending parcel(s) and purchased by the owner of a receiving parcel(s).

Sending Parcel. A lot or group of lots located in the Rural Residential (RR) District forming a contiguous parcel from which development rights may be transferred, upon issuance of a certificate from the Planning Board.

A sending parcel must contain land of significant economic or environmental character, as determined by the Planning Board, by utilizing the following criteria:

- (1) wellhead protection areas;
- (2) aquifer recharge areas;
- (3) potential public water supply areas;
- (4) land designated under G.L. Chapter 61, 61A and/or 61B;
- (5) locations of historic and/or cultural significance;
- (6) land areas adjacent to permanently protected open space;
- (7) land areas providing public access to an ocean, great pond, forest, or other natural resource;
- (8) land containing significant natural resources such as rare species habitat, unfragmented forest areas, and similar natural areas determined by the Planning Board to be significant;
- (9) land appropriate to a specified potential municipal use(s); and/or
- (10) land so situated that, if developed, would result in the need for significant capital improvements for roads, water distribution, wastewater treatment, and other needed capital facilities and services.

Receiving Parcel. A lot or group of lots located in the Rural Residential (RR) District forming a contiguous parcel to which development rights may be transferred, upon issuance of a special permit subject to environmental design conditions from the Planning Board. Notwithstanding the foregoing, however, if the parcel is located in a RRRA, a special permit shall not be required.

The development rights acquired by a receiving parcel shall be in addition to the residential density otherwise permitted on the receiving parcel, if the Planning Board finds that the proposed development will include adequate on-site and/or off-site improvements, including but not limited to recreational areas, roadways, sidewalks and other such amenities, and if the Planning Board finds that the proposal adequately provides for the costs of construction, maintenance, and repair of said improvements. Notwithstanding the foregoing, however, if the parcel is located in a RRRA, site plan approval shall be required.

If the receiving parcel is shown on a plan endorsed prior to [the effective date of this section] by the Planning Board under G. L. Chapter 41, Section 81U, the resulting density of the receiving parcel shall not exceed 150% of the residential density otherwise permitted on the receiving parcel, unless the parcel is located in a RRRA.

Rural Residential Receiving Area (RRRA): One or more contiguous parcel(s) in the Rural Residential (RR) District containing a minimum area of 500 acres and having frontage of at least 500 feet on a Major Street, as defined in Section 205-22. The contiguous parcels comprising the 500 acres minimum area may be divided by highways or public or private roadways. If a receiving parcel(s) is located in a RRRA, then development shall not comply with the zoning requirements allowed as of right in the RR District, but instead all development shall comply with the standards for Rural Density Development (RDD), as set forth in Section 205-62, except for the following:

- (1) Notwithstanding Section 205-62 (E), the density of the development shall not exceed one dwelling unit per 40,000 square feet. (Note: this increase in density can only be achieved through the transfer of development rights).
- (2) Notwithstanding anything in Section 205-62, to the contrary, in reviewing the development, the Planning Board shall be furnished with the information listed in Section 205-9 (C) (3) which shall be distributed in the manner listed in Section 205-9 (C) (2), but the approval required shall only be site plan approval as set forth in Section 205-32, rather than special permit approval

Assignment of Certificate. Subsequent to the issuance of a certificate of development rights to the owner of a sending parcel(s), and prior to the approval of a transfer of the development rights to a receiving parcel(s), said certificate shall be assignable as a matter of right by a recordable document from the assignor to the assignee. The assignee shall, within fourteen (14) days of recordation of an assignment, transmit to the Planning Board a certified copy of same, in order to enable the Planning Board to keep current its certificate ledger. The assignment of a certificate of development rights shall not be deemed to be a transfer of those development rights.

C) Conservation Restrictions on Sending Parcels

Upon the transfer of development rights to a receiving parcel(s), the owner of a sending parcel(s) shall enter into a permanent conservation restriction, as set forth in Section F.

D) Guidelines for Transfer of Development Rights

1. Fees

The Planning Board shall adopt regulations setting forth reasonable fees for applications and reasonable fees for review of applications by the Planning Board and its consultants, pursuant to G. L. Chapter 40A, Sections 9 and 12.

2. Conservation Restriction

As a condition of any approval of a transfer of development rights to a receiving parcel(s), the Planning Board shall require the owner of a sending parcel(s) to submit a proposed conservation restriction for the sending parcel(s), as set forth in Section F.

3. Preliminary Plan

The Planning Board shall require the owner of the sending parcel(s) to submit a preliminary subdivision plan or a more detailed subdivision plan, prepared by a licensed Massachusetts professional land surveyor and a licensed Massachusetts professional civil engineer, to determine the "FMV" of the sending parcel(s), as defined in Section D (5). The Planning Board shall determine, based upon customary Planning Board practice, that the plan is in substantial conformance with applicable provisions of the zoning bylaw and the subdivision rules and regulations.

4. Appraisal

The Planning Board shall also require the owner of the sending parcel(s) to submit a complete appraisal according to the Uniform Standards of Professional Appraisal Practice prepared by a licensed Massachusetts certified general real estate appraiser with five years of experience in valuation of subdivision plans of the land shown on the preliminary plan. The Planning Board may in appropriate circumstances waive all or part of this requirement, provided suitable evidence of value is provided to the Planning Board's reasonable satisfaction. The Planning Board may, also require that a second such appraisal be done at the expense of the owner of the sending parcel(s) by an appraiser chosen by the Planning Board.

5. Determination of Development Rights Available for Transfer from Sending Parcel

As a reflection of the importance of permanently protecting the sending parcel(s) and the value of the foregone development potential on the sending parcel(s), the Planning Board shall determine the development rights available for transfer from the sending parcel in accordance with the formula set forth below, where:

- (i) "FMV" represents the difference between the total projected lot sales and the total projected infrastructure costs, as set forth in the appraisal, and
- (ii) "AVG" represents the average assessed value of a buildable lot located in the Rural Residential (RR) District as of January 1 of the year in which the owner of the sending parcel submits his preliminary plan and appraisal.

The development rights available for transfer from the sending parcel shall be equal to the following quotient, rounded off to the nearest integer:

$$\frac{\text{FMV}}{\text{AVG}}$$

6. Exemption Available for Receiving Parcels

If the Planning Board approves the transfer of development rights, the development rights transferred to the receiving parcel(s) shall be deemed exempt from the provisions of Section 205-11(Building Permit Limitations) and Section 205-68 (Residential Development Phasing).

E) Review by Planning Board

1. Sending Parcel: In reviewing an application for a certificate for a proposed sending parcel(s), the Planning Board shall apply the criteria set forth in Section A. If the owner of a proposed sending parcel is aggrieved by the decision of the Planning Board, he shall have the right to appeal the decision of the Planning Board to a Court of competent jurisdiction in accordance with the provisions of G. L. Chapter 249, Section 4.

2. Receiving Parcel: Unless the parcel is located in a RRRA, in reviewing an application for a special permit for a proposed receiving parcel(s), the Planning Board shall apply the criteria set forth in Section A, the special permit criteria set forth in Section 205-9 (B), and the environmental design conditions and standards set forth in Section 205-9 (C). If the parcel is located in a RRRA, in reviewing an application for site plan approval for a proposed receiving parcel(s), the Planning Board shall apply the criteria set forth in Section 205-32. Any person aggrieved by the decision of the Planning Board shall have the right to appeal the decision of the Planning Board to a Court of competent jurisdiction in accordance with the provisions of G. L. Chapter 40A, Section 17.

F) Recordation and Reporting of Instruments

1. All instruments implementing this section of the bylaw shall be recorded at the Plymouth County Registry of Deeds or at the Land Court Registry District of Plymouth County. The instruments evidencing such transfer of development rights shall specify the Assessors' lot and map numbers of the sending parcel(s) and the Assessors' lot and map numbers of the receiving parcel(s).

2. Prior to any utilization of transferred development rights on a receiving parcel(s), the owner of a sending parcel(s) shall , record at the Plymouth County Registry of Deeds or at the Land Court Registry District of Plymouth County a conservation restriction as defined by G.L. c. 184 §§31-33 running in favor of the Town or any other governmental body or a charitable corporation or trust whose purposes include conservation of land or water areas or of a particular such area

(“the restriction beneficiary”), prohibiting or limiting, in perpetuity, the construction, placement or expansion of any new or existing structure or other development on said sending parcel(s) and requiring that said parcel(s) be left substantially in its natural state. This conservation restriction requirement shall be deemed satisfied if the owner of a sending parcel(s) elects, with the consent of the restriction beneficiary, to convey the fee in said parcel(s) to the restriction beneficiary. At any time prior to the approval of a transfer of development rights to a receiving parcel(s), the holder of the certificate of development rights issued to the owner of the sending parcel(s) shall have the right to voluntarily surrender said certificate, in which case the sending parcel(s) shall be unrestricted.

3. The owner of a sending parcel(s) and the owner of a receiving parcel(s) shall, within fourteen (14) days of recordation of all such instruments, transmit to the Planning Board and to the Board of Assessors certified copies of same.

Other Sections to be Amended:

~~Strikethrough Language Deleted~~

Underline language Added

§ 205-40. Rural Residential (RR).

A) Intent.

- (2) To channel development into zones where public utilities and community facilities and services may be provided efficiently. To utilize the provisions of transfer of development rights as specified in § 205-70. [Amended 4-10-2002 ATM by Art. 23]

Deleted: 59, Recreational development, and § 205-62.

D. Special permit uses subject to environmental design criteria.

- (4) Recreational development as provided in Recreation Development, § 205-59, Rural Density Development, § 205-62, and Transfer of Development Rights, § 205-70. [Amended 4-10-2002 ATM by Art. 23]

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§ 205-59. Recreational development (RD).

C. Objectives.

- (4) To allow flexibility and creativity in the design of developments through a carefully controlled special permit process of negotiation of particular plans. To utilize the provisions of Transfer of Development Rights, § 205-70. [Amended 4-10-2002 ATM by Art. 23]

E. Location and Density

- (2) In a Rural Residential (RR) District, the provisions pertaining to an increase in overall density as a result of utilizing transfer of developments as specified in § 205-70. [Added 4-10-2002 ATM by Art. 23]

Deleted: ¶

(7) . Transfer of development rights.

[Added 4-10-2002 ATM by Art. 23]¶

(a) . Residential density permitted in an RR District may be increased with the transfer of development rights from other parcels of land, whether contiguous or noncontiguous, within any Rural Residential Zoning District.¶

[1] . The property sending the transferred developable lots is called the "sending property" and the property receiving the transferred developable lots is called the "receiving property." A sender property may transfer some or all of the developable lots to one or more receiving properties. A receiving property may receive transferred developable lots from one or more sending properties.¶

[2] . The property receiving the increased density is called the "receiver property"; the property transferring development rights is called the "sender property."¶

(b) . The density increase in the receiver property shall be no greater than the number of legally developable lots in the sender property or properties and no greater than a fifty-percent increase in the density in the pre-transfer number of legally developable lots in the receiver property, whichever number is smaller.¶

[1] . The sender property must contain land of significant environmental character, as determined by the Planning Board, by utilizing the following criteria: wellhead protection areas; aquifer recharge areas; potential public water supply areas; land designated under MGL c. 61, 61A and/or 61B; locations of historic and/or cultural significance; land areas adjacent to permanently protected open space; land areas providing public access to an ocean, great pond, forest, or other natural resource; land containing significant natural resources such as rare species habitat, unfragmented forest areas, and similar natural areas determined by the Planning Board to be significant; and specific municipal use(s) appropriate to the specific property.¶

[2] . Upon transfer of development rights, permanent use restrictions shall be placed on the sender property by the Planning Board as a condition of the special permit, and such permanent use restrictions shall provide that said land shall be left undeveloped in a substantially natural state and shall not be used for any purpose other than recreation and such specific municipal use(s) as deemed appropriate by the Planning Board and further specified in the conditions of the special permit.

§ 205-62. Rural density development (RDD).

C. Objectives.

(2) To encourage flexibility in the design of developments through a carefully controlled process of negotiation of particular plans. To utilize the provisions of transfer of development rights contained in § 205-70, [Amended 4-10-2002 ATM by Art. 23]

Deleted: herein

K. Transfer of development rights. Residential density permitted in an RDD may be increased with the transfer of development rights from other parcels of land, whether contiguous or noncontiguous, within any Rural Residential Zoning District and as specified in § 205-70, Transfer of Development Rights, [Added 4-10-2002 ATM by Art. 23]

Deleted: 59

Deleted: Recreational development, Subsection F(7), Planning principles and requirements, transfer of development rights