

## AN ORDINANCE

NO. 13-1277

AN ORDINANCE To Amend The Code Of The Township Of Upper Dublin, Chapter 255, Zoning, To Add Definitions; To Add Uses And Identify Development Rights In The EC Employment Center District; And To Add A New Article XXXV To Establish An Overlay District Within A Portion Of The EC Employment Center District To Provide For And Regulate Transferable Development Rights.

The Board of Commissioners of the Township of Upper Dublin hereby ordains:

**Section 1.** The Code of the Township of Upper Dublin, Chapter 255, entitled Zoning, Article I, General Provisions, §255-7, Definitions, shall be amended by the addition, in alphabetical order, of the following:

**§ 255-7. Definitions.**

DEED OF DEDICATION – With respect to Transferable Development Rights, the legal instrument used by a landowner to transfer ownership of a cleared and stabilized Sending Parcel, without its associated Development Credits, to Upper Dublin Township or its designated agent.

DEED OF DEVELOPMENT CREDITS - The legal instrument necessary to sever and transfer Development Credits currently or previously appurtenant to a Sending Parcel in the Transferable Development Rights Overlay District.

DEVELOPMENT CREDITS – Within the Transferable Development Rights Overlay District, the quantification of a landowner’s right under the Township’s zoning and development regulations to use a parcel and the structures thereon for a particular use and/or to develop land and structures thereon to a particular area, density, bulk, or height. The terms “Development Credits” and “Development Rights” are synonymous as used herein.

DEVELOPMENT POTENTIAL - The maximum number of dwelling units and/or square feet of nonresidential floor area that may be constructed on a given lot in a specified zoning district in accordance with all the applicable laws and regulations, including, for example, land use, zoning, stormwater, and floodplain regulations in effect on the date of the development application.

POTENTIAL INCREMENTAL DEVELOPMENT – Within the Transferable Development Rights Overlay District, the amount of additional building area or density that may be added to a Sending Parcel beyond that already developed, as per the zoning code regulations in existence on the date Article XXXV was adopted.

RECEIVING PARCEL – a parcel of land in the Receiving Zone where the landowner/authorized agent may attach Development Credits, directly or by intermediate transfers, from a Sending Parcel, and on which increased density and/or intensity is allowed by reason of the transfer of Development Credits

RECEIVING ZONE - A designated area in the Transferable Development Rights Overlay District, not including a Sending Zone, in which Development Credits that were originally associated with a Sending Parcel may be associated with a Receiving Parcel.

SENDING PARCEL – a parcel of land in the Sending Zone from which the landowner may sever Development Credits, and after which those Development Credits that are severed and transferred may only be used for certain limited activities.

SENDING ZONE – A designated area in the Transferable Development Rights Overlay District in which Development Credits associated with a Sending Parcel may be severed from the Sending Parcel and separately transferred for use in a designated Receiving Zone.

TRANSFER OF DEVELOPMENT CREDITS – the procedure prescribed by this Chapter whereby Development Credits may be severed from a Sending Parcel and utilized for additional development on a Receiving Parcel, held for later use or extinguished; and the procedure whereby owners of Development Credits, currently or previously appurtenant to a Sending Parcel, convey some or all of those Credits to another party, including landowners/assignees of Receiving Parcels. The terms “Development Credits” and “Development Rights” are synonymous as used herein.

TRANSFeree or BUYER or GRANTEE – With respect to Transferable Development Rights, the person or legal entity who purchases or otherwise receives Development Credits and who may apply the Development Credits to a Receiving Parcel, hold them, or subsequently sell or otherwise transfer the Development Credits.

TRANSFEROR or SELLER or GRANTOR – With respect to Transferable Development Rights, the owner of Development Credits and/or the owner of a Sending Parcel who severs and then sells, grants or otherwise transfers the Development Credits associated with the Sending Parcel to another person or entity.

**Section 2.** The Code of the Township of Upper Dublin, Chapter 255, entitled Zoning, Article XVI, EC: Employment Center District, Section 255-102. Uses permitted by-right, shall be amended by adding the following new subsection:

**§ 255-102. Uses permitted by-right.**

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**L. Transfer of Development Credits.** Certain lots within the EC District are also within the TDR Transferable Development Rights Overlay District. These lots may be developed in accordance with the provisions of Article XVI, EC Employment Center District. In the alternative, a landowner/applicant may choose to develop a lot within a Sending or

Receiving Zone in accordance with the provisions of Article XXXV, TDR - Transferable Development Rights Overlay District.

- 1. Those lots in the TDR Transferable Development Rights Overlay District and that have been specifically identified in Article XXXV, §255-264 are within the TDR Sending Zone.
- 2. Those lots that are in the TDR Transferable Development Rights Overlay District and are outside of the TDR Sending Zone are within the TDR Receiving Zone. Provided the standards in Article XXXV are met, additional uses and higher densities are permitted on Receiving Parcels utilizing Development Credits.

**Section 3.** The Code of the Township of Upper Dublin, Chapter 255, entitled Zoning, Article XVI, EC: Employment Center District, Section 255-115. Lot, yard and bulk regulations, shall be amended by adding the following new subsection:

**§ 255-115. Lot, yard and bulk regulations.**

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C. Adjustments to Yard Requirements.

- 1. The front yard setback noted above shall be replaced with a “build to line” as detailed below, for new development on lots near the intersection of Delaware Avenue, Commerce Drive and Pinetown Road:
  - a. Those lots on the north and south side of Delaware Avenue within 500 feet east of the above noted intersection.
  - b. Those lots on the East and west sides of Commerce Drive within 600 feet south of the above noted intersection.
  - c. Those lots on the East and west sides of Pinetown Rd. within 250 feet north of the above noted intersections.
- 2. The front façades of buildings on lots within the above noted area shall be situated no further than 25 feet from the street right of way line. The build to line may be increased an additional 15 feet, to a total of 40 feet, when the additional area is designed and used for outdoor dining and/or for use as a public plaza with outdoor seating areas.
- 3. Surface parking for buildings on lots within the above noted area shall be situated to the rear of the building. A minor number of parking spaces, equal to horizontal dimension of the side of the building measured in feet and divided by ten (10), may be located along the side of the building provided that parking is screened from the view of pedestrians and vehicles traveling in the public right of way. Screening may be created by using fences and/or landscaping.

**Section 4.** The Code of the Township of Upper Dublin, Chapter 255, entitled Zoning, shall be amended by the addition of a new Article XXXV, TDR: Transferable Development Rights Overlay District, to provide as follows:

### **ARTICLE XXXV – TDR Transferable Development Rights Overlay District**

#### **§ 255-260. Purpose.**

- A. In addition to the purpose and statement of community development objectives found in Article I, § 255-2, of this Chapter, the specific intent of this district is to establish an equitable method to encourage the transfer and change in use of privately owned land containing sensitive natural resources, such as, for example, floodplains and alluvial soils, and to conserve this land to protect and enhance the public's health, safety and welfare.
- B. The provisions of the TDR Transferable Development Rights Overlay District are intended to protect property rights by allowing property owners whose land is flood prone or otherwise appropriate for conservation to sell some or all of the Development Credits associated with their land in-lieu of development and to provide the opportunity to certain other landowners in designated areas of the Township the option to increase the density of development on their land by acquiring those Development Credits.
- C. Upper Dublin Township's specific objectives include the following:
1. To establish a Transferable Development Rights (TDR) program that will help achieve the land use planning goals identified in the Township's 2010 Comprehensive Plan while recognizing existing property rights.
  2. To protect environmentally sensitive areas and reduce the risk of flooding through the establishment of designated Sending Zones from which landowners may sever and transfer Development Credits to reduce development and thereby enable the Township to protect the public health, safety and welfare and natural resources including floodplains, riparian buffers, alluvial soils, woodlands, steep slopes and related open land;
  3. To manage growth by providing incentives in designated portions of the Township for removing development in certain areas by establishing Sending Zones and encouraging additional compact development by establishing Receiving Zones. Development Credits purchased through the TDR program may be used in Receiving Zones to supplement the development permitted in the underlying zoning district;
  4. To limit development in flood prone areas that contain environmentally sensitive features while providing an equitable method to compensate landowners in the designated Sending Zones who voluntarily forbear developing their property;

5. To enable a more efficient land use pattern that will facilitate the implementation of an effective, long term management plan to maintain public infrastructure and provide public services, ensuring the quality and character of Upper Dublin Township is sustained into the future.
6. To create a more sustainable, inviting, and pedestrian oriented land use pattern where new development, on higher, drier ground may include a greater intensity and variety of uses and people may choose to travel by using an interconnected network of sidewalks and greenways to be created on portions of previously developed Sending Parcels.

### **§ 255-261. Legislative Framework**

- A. The TDR program is established pursuant to the authority granted by Sections 603(c)(2.2) and 619.1 of the Pennsylvania Municipalities Planning Code (MPC), Act 247 of 1968, P.L. 805, as reenacted and amended, from time to time. By authority of the MPC, Development Credits are a separate estate in land and may be declared severable and separately conveyable from a Sending Parcel.
- B. The severability and transferability of Development Credits from certain parcels of land within the Township is hereby recognized and established, and Development Credits may be transferred and used in accordance with the provisions of this Article. The TDR program is recognized as a voluntary program under the terms of this Article and transfers between a willing seller and a willing buyer shall be governed by the following criteria:
  1. Land designated for conservation shall be situated within Sending Zones and designated as Sending Parcels. A landowner may sever and transfer Development Credits as provided for herein, if some portion or all of the Development Credits are to be utilized for development on a Receiving Parcel and the Sending Parcel landowner agrees to dedicate their land as a vacant parcel to the Township or its designated agent for a public purpose.
  2. Land designated to receive Development Credits for additional, compact development shall be situated within Receiving Zones. After Development Credits are severed from a Sending Parcel they may be used to increase the variety and intensity of development permitted on a Receiving Parcel, as provided for in this Article.
  3. Instruments necessary to sever Development Credits from a Sending Parcel, to convey Development Credits to one or more parties, or to affix Development Credits to one or more Receiving Parcels may be issued, transferred and recorded. These instruments shall be executed by the owners of Development Credits being transferred, and lien holders, and the Township.
  4. Development Credits not designated for use on a Receiving Parcel may be transferred because all Development Credits do not need to be used at any

particular time, so long as the Development Credits are exercised, if at all, within a Receiving Zone and otherwise in compliance with this Article.

5. The number and use of Development Credits are established by this Article.
6. The price of Development Credits will be determined by the willing Seller and the willing Buyer under fair market conditions.
7. Upper Dublin Township may purchase and accept the donation of Development Credits. All such Development Credits shall be either retired by the Township or held in a TDR account for future sale or use by the Township.

### **§ 255-262. Use Categories.**

The following permitted uses as provided for in the EC Employment Center District §255-102A, are categorized for the purpose of assigning Development Credits associated with Sending Parcels:

- A. Industrial/Warehouse Use: Any industrial or warehouse use not specifically prohibited; flexible space used for either accessory or support office space; kennels; indoor storage facilities.
- B. Retail Use: Automated teller machines; restaurants; commercial/retail uses; health clubs; gas stations; car wash; recreational facilities.
- C. Office Use: Offices; banks; schools and/or other educational facilities; medical facilities and clinics; animal hospitals; doctors and veterinary offices; religious facilities/places of worship; day care centers; exhibition space; museums.
- D. Hotel Use: Buildings designed for overnight or other short term residential purposes, either furnished or unfurnished, with or without common dining facilities or in-room kitchenettes; personal care facilities; nursing homes; and similar uses

### **§ 255-263. Character Of Development Credits**

- A. Development Credits are an integral part of real property when they are appurtenant to a Sending Parcel. Development Credits may be severed from a Sending Parcel when, in accordance with the provisions of this Article, they are separately identified and registered with the Township and the Sending Parcel is accepted for dedication and transferred to the Township, or its assignee.
- B. Development Credits separately identified and registered with the Township may be held, sold or retired as provided for in this Article, by registering the transfer with the Township and recording a Deed of Transfer of Development Credits with the Montgomery County Recorder of Deeds.

- C. Appropriate Deeds with respect to Development Credits shall be recorded with the Montgomery County Recorder of Deeds and notification shall be given to the Montgomery County Board of Assessment so that a proper reassessment of Sending and Receiving Parcels may occur.
- D. Development Credits may be assigned to and utilized as part of an approved development plan on a Receiving Parcel.

#### § 255-264. Sending Parcel – Development Credit Allocation and Use

- A. General. A Sending Zone parcel shall be designated in accordance with criteria established in this Article.

**Table 1: Sending Zone Parcels**

Address	Street	Block/Unit #	Parcel ID #	Lot Size (Acres)
135	Commerce Dr.	Block 50/Unit 30	54-00-04366-008	7.10
155	Commerce Dr.	Block 50/Unit 58	54-00-04367-007	3.20
175	Commerce Dr.	Block 50/ Unit 35	54-00-04372-002	4.87
285	Commerce Dr.	Block 50/ Unit 26	54-00-04381-002	3.08
425	Delaware Ave.	Block 50/ Unit 48	54-00-04618-008	2.10
165	Indiana Ave.	Block 50/ Unit 33	54-00-08788-005	0.96
467	Pennsylvania Ave.	Block 43/Lot 23	54-00-13393-008	2.93
471	Pennsylvania Ave.	Block 43/ Unit 15	54-00-13390-002	0.92
475	Pennsylvania Ave.	Block 43/ Unit 21	54-00-13387-005	0.65
515	Pennsylvania Ave.	Block 50/ Unit 37	54-00-04363-002	4.42
535	Pennsylvania Ave.	Block 50/ Unit 36	54-00-08791-002	1.73
440	Virginia Dr.	Block 50/ Unit 49	54-00-16372-053	2.93
475	Virginia Dr.	Block 50/ Unit 51	54-00-16389-009	5.97
525	Virginia Dr.	Block 50/ Unit 46	54-00-16390-008	10.33
550	Virginia Dr.	Block 50/ Unit 47	54-00-16387-002	2.27
555	Virginia Dr.	Block 50/ Unit 45	54-00-16393-005	2.14
565	Virginia Dr.	Block 50/ Unit 44	54-00-16396-002	2.10
575	Virginia Dr.	Block 50/ Unit 54	54-00-16397-001	2.23
1005	Virginia Dr.	Block 50/ Unit 42	54-00-04627-008	8.80
1015	Virginia Dr.	Block 52/ Unit 20	54-00-16402-005	2.31
1035	Virginia Dr.	Block 52/ Unit 25	54-00-16375-104	2.34
1250	Virginia Dr.	Block 52/ Unit 17	54-00-16384-005	4.20

- B. Determination of Development Credits. Development Credits shall be determined based on the current development and the Potential Incremental Development of a Sending Parcel as permitted by the land development, zoning and other regulations applicable in the EC Employment Center District as of the date of enactment of this ordinance. The

formulas to be used in determining the number of Development Credits applicable to a particular parcel are set forth below.

1. One (1) Development Credit per 5,000 SF of existing Office or Hotel Building Area.
    - a. One fifth ( $1/5^{\text{th}}$ ) Development Credit per 5,000 SF of potential Office or Hotel Building Area
  2. One (1) Development Credit per 10,000 SF of existing Industrial/Warehouse Building Area.
    - a. One third ( $1/3^{\text{rd}}$ ) Development Credit per 10,000 SF of potential Industrial/Warehouse Building Area
  3. One (1) Development Credit per 3,500 SF of existing Retail Building Area
    - a. One half ( $1/2$ ) Development Credit per 3,500 SF of potential Retail Building Area
  4. Development credits calculated for a parcel shall be rounded to the nearest  $1/4^{\text{th}}$  credit.
- C. Mixed Uses. Where the lawful use of a parcel is mixed and each use comprises more than 10% of the Building Area, the formulas above shall be proportionate to such uses. For calculation of Development Credits due to Potential Incremental Development, the mix of uses and the percentage of area devoted to each use shall be proportionate to the current mix of uses.
- D. Development Credit Allocation. Based on the formulas set forth above, the initial Development Credit allocations for Sending Parcels are identified in Table 2.
- a. If at any point subsequent to the date this Article is adopted, a Sending Parcel is subdivided, then the property must go through the Credit Allocation Process detailed in this Article.

**Table 2: Development Credit Allocation:**

St. #	Street	Block/ Unit #	Building Category	Existing Building (SF)				Potential Incremental Development (SF)				Credit
				Industrial/Warehouse	Hotel	Office	Retail	Industrial/Warehouse	Hotel	Office	Retail	
135	Commerce Dr.	Block 50/ Unit 30	Industrial/Warehouse	144,908								14.50
155	Commerce Dr.	Block 50/ Unit 58	Industrial/Warehouse	25,088				16,700				3.00
175	Commerce Dr.	Block 50/ Unit 35	Industrial/Warehouse	42,990				20,700				5.00
285	Commerce Dr.	Block 50/ Unit 26	Hotel		76,343							15.25
425	Delaware Ave.	Block 50/ Unit 48	Office			21,058				6,400		4.50
165	Indiana Ave.	Block 50/ Unit 33	Office			10,189						2.00
467	Pennsylvania Ave.	Block 43 Unit 23	Office			32,464						6.50
471	Pennsylvania Ave.	Block 43/ Unit 15	Retail				4,720				1,300	1.50
475	Pennsylvania Ave.	Block 43 Unit 21	Retail				1,392				2,800	0.75
515	Pennsylvania Ave.	Block 50/ Lot 37	Office			83,998						16.75
535	Pennsylvania Ave.	Block 50/ Unit 36	Office			30,160						6.00
440	Virginia Dr.	Block 50/ Unit 49	Office			17,436				14,500		4.00
475	Virginia Dr.	Block 50/ Unit 51	Office			76,008						15.25
525	Virginia Dr.	Block 50/ Unit 46	Industrial/Warehouse	129,704				27,800				14.00
550	Virginia Dr.	Block 50/ Unit 47	Industrial/Warehouse	16,944				12,700				2.00
555	Virginia Dr.	Block 50/ Unit 45	Industrial/Warehouse	10,864				17,100				1.75
565	Virginia Dr.	Block 50/ Unit 44	Office			14,868				8,000		3.25
575	Virginia Dr.	Block 50/ Unit 54	Industrial/Warehouse	21,976				7,200				2.50
1005	Virginia Dr.	Block 50/ Unit 42	Office			87,000				8,800		17.75
1015	Virginia Dr.	Block 52/ Unit 20	Office			19,920				5,300		4.25
1035	Virginia Dr.	Block 52/ Unit 25	Office			30,720						6.25
1250	Virginia Dr.	Block 52/ Unit 17	Office			45,252						9.00

- E. Right to Develop. An owner of a Sending Parcel is not required to utilize the TDR program and may choose, instead, to develop the Sending Parcel in accordance with the underlying zoning district standards, retaining the parcel's Development Credits as they are set forth in this Table 2.
- F. If a Sending Parcel identified in Table 2 is subdivided at some time in the future and there is a change to its Parcel Number and/or the block and unit number, then the assigned number of development credits shall be divided proportionately based on the

parcel's lot area and Table 2, the Development Credit Allocation Table, shall be administratively adjusted without the need for any Zoning Code amendment.

§ 255-266. Credit Allocation Revision Process

- A. General. An owner may apply for a revision of the Sending Parcel Development Credit allocation in Table 2 in accordance with the following procedures.
1. Any revision request must occur and be decided prior to new development being approved or permitted by the Township or prior to severing Development Credits from a Sending Parcel and recording the a Deed of Transfer of Development Credits.
  2. Once development plans are approved, building permits are issued, or the Development Credits are independently described and severed from a Sending Parcel, the opportunity to revise the allocation is lost and the landowner shall be irrefutably presumed to have elected to accept the allocation listed on Table 2, above, as an accurate measure of the Sending Parcel's Development Potential.
- B. Process. In order to revise the allocation of Development Credits, a landowner or assignee shall submit a properly completed Credit Allocation Revision Application for the Sending Parcel with the required review fees to the Township Zoning Officer. Review fees shall be as specified in Chapter 110. The application shall include the following:
1. Supporting documentation which fulfills the requirements of this application process, including detailed information on existing structures and uses, any Potential Incremental Development and any information required by the Township Engineer to confirm compliance with stormwater and sanitary sewer regulations.
  2. Any other information the Zoning Officer requires to properly determine the amount and type of existing development and the Potential Incremental Development of the property.
- C. When a Credit Allocation Revision Application is submitted with an objection to the Development Credit Allocation as shown on Table 2, a development plan conforming to the requirements for a Preliminary Plan submission as set forth in Chapter 212 hereof shall be included with the application. The development plan shall demonstrate compliance with all zoning, land development and other land use regulations applicable to the subject property in effect as of the date of the adoption of this Article without the need for any zoning relief or waivers of regulations.
- D. Once a complete application has been submitted, the Zoning Officer shall, within the time period required for consideration of a land development plan as provided for in Chapter 212, calculate the Development Credits applicable to the subject property based upon the formulas set forth in this Article and the plan... If the allocation calculated is different from the initial allocation noted in Table 2, then Table 2, the Development

Credit Allocation Table, shall be administratively adjusted, without the need for any Zoning Code amendment.

- E. Any appeal of the Zoning Officer's determination of the Development Credits applicable to a Sending Parcel shall be made to the Zoning Hearing Board.

#### **§ 255-267. Registration of Development Credits**

- A. Upper Dublin Township shall maintain an accurate record of Development Credits, including those severed from Sending Parcels and held without application to a Receiving Parcel, those that are sold and applied to a Receiving Parcel and those that are retired. The record shall utilize an appropriate indexing system and information shall be keyed to the original tax parcel number associated with the Sending Parcel.
- B. Based on the provisions of this Article, Development Credits shall be issued and registered as either "Unrestricted," "Residential," or "Non-Residential". Development Credits shall be identified as "Unrestricted" when they are initially severed from and are no longer appurtenant to a specific Sending Parcel.

#### **§ 255-268. Sending Parcels: Separation And Sale Of Development Credits**

- A. Severing and selling Development Credits. To sell, transfer, dedicate or otherwise convey any or all of a Sending Parcel's Development Credits, the Credits must be severed from the real estate by utilizing the following procedure:
  - 1. The Sending Parcel shall be cleared of all improvements. All buildings, paving and other improvements shall be demolished or otherwise removed and the ground shall be graded level, stabilized with respect to erosion and sediment control, and seeded with an appropriate meadow mix. Proper clearing, grading and stabilization shall be documented by a Phase 1 Environmental Assessment Report satisfactory to the Township.
    - a. The cleared and stabilized Parcel shall be covered with high quality topsoil to a depth readily sufficient to support the continued growth and development of any remaining or newly planted vegetation, including wildflower and/or other meadow seed mixtures.
    - b. The dedicated vacant Sending Parcel must be cleared and stabilized for purposes of erosion and sedimentation control to the satisfaction of the Montgomery County Conservation District and the Township Engineer in accordance with applicable laws and regulations, and, if subject to their jurisdiction and regulation, determined by the Pennsylvania Department of Environmental Protection ("DEP") or U.S. Environmental Protection Agency ("EPA"), as applicable, to not pose a threat to human health or the environment.

- c. Sending Parcels having experienced environmental contamination through spills or other releases of hazardous or other regulated substances shall be remediated to the satisfaction of DEP, and, as applicable, EPA.
  2. Development Credits severed from a Sending Parcel shall be separately described in a Deed of Development Credits which shall identify the owner of the Credits and shall be filed with the Township and recorded with the Montgomery County Recorder of Deeds. A Deed of Development Credits shall be endorsed by the Township prior to conveyance and recording.
    - a. A Deed of Development Credits submitted to the Township for endorsement shall be accompanied by a title search of the source Sending Parcel and the Development Credits, and a legal opinion with respect to the good and marketable title of the Development Credits. A title report should be prepared within ten days prior to submission of the deed and the legal opinion of title must meet the reasonable approval of the Township Solicitor.
  3. The Sending Parcel from which the Development Credits are severed shall be separately described in a Deed of Dedication that identifies the owner of the Sending Parcel as the Grantor and that specifies that the Sending Parcel is to be used for a public purpose. The Deed of Dedication shall be offered to the Township or its designee.
    - a. The Sending Parcel Deed of Dedication shall be accompanied by a title search of the Sending Parcel and a legal opinion with respect to the good and marketable title of the Sending Parcel. A title report should be prepared within ten days prior to submission of the deed and the legal opinion of title must meet the reasonable approval of the Township Solicitor. The Sending Parcel Deed of Dedication shall also be accompanied by a surveyor-confirmed deed description.
  4. The Deed of Dedication shall be offered to the Township, or its assignee, but there is no obligation to accept such offer until such time as the Sending Parcel owner demonstrates, to the satisfaction of the Township, that there is a commitment to utilize 50% or more of the Sending Parcel's Development Credits on a given Receiving Parcel(s) within five (5) years of the date of recording the Deed of Development Credits.
    - a. When an offered Deed of Dedication is accepted by the Township, or its assignee, it shall be recorded with the Montgomery County Recorder of Deeds prior to and/or concurrently with recording the Deed of Development Credits for the Sending Parcel's Development Credits.
- B. The Deed of Dedication for a Sending Parcel subject to a Deed of Development Credits shall address and comply with the following:
1. The Deed of Dedication shall be placed on the entirety of the Sending Parcel that is subject to the Deed of Development Credits. The Deed of Dedication shall

specify that the Parcel is to be used for public purposes.

2. Upon acceptance of the Deed of Dedication the owner of the Sending Parcel shall pay the Township or its assignee a fee for the maintenance and management of the Sending Parcel in an amount set forth in Chapter 110.
  3. The Deed of Dedication shall be filed with the Township and recorded in the Montgomery County Recorder of Deeds prior to and/or concurrently with recording the Deed of Development Credits severed from the Sending Parcel.
- C. An owner of Development Credits not appurtenant to any Sending Parcel may transfer some or all of those Credits in fractional shares not less than a quarter ( $\frac{1}{4}$ ) credit through the use of the following procedures:
1. The owner shall submit an Application for Transfer to the Zoning Officer together with the application fee as set forth in Chapter 110.
  2. The Zoning Officer shall determine that the application contains all of the required information and that it transfers no more than the maximum number of Development Credits available and that those Credits are not already assigned or extinguished.
  3. If the Zoning Officer determines that the Application and supporting documentation establishes the criteria as set forth above, then the Zoning Officer shall sign the Transfer Application, certifying that, upon recording, the Deed of Development Credits will transfer ownership of the number of Development Credits contained within it to the party named, provided that if the Deed is not recorded within 90 days of the date that the certification is signed, unless this time period is extended by the applicant, then the assignment shall be null and void.
  4. Upon signing the Application for Transfer, the Deed of Development Credits shall be returned to the owner for recording. Proof of recording shall thereafter be submitted to the Zoning Officer.
  5. Upon receipt of proof that the Deed has been recorded, the Zoning Officer shall document the recordation upon the Township's Development Credit registry. The record shall include the Recorder of Deed's assigned book and page of recording.
  6. The owner shall be responsible for all costs associated with the review of the Transfer Application and recording the Deed, including professional consultant fees.
- D. Once a Deed of Dedication and Deed of Development Credits have been recorded for a Sending Parcel and the required maintenance fee has been submitted, Development Credits severed from a Sending Parcel may be sold, retired or used on an eligible Receiving Parcel. Until these Deeds are recorded and the fee is paid, the Receiving Parcel is subject to the underlying zoning district's density and land use restrictions.

**§ 255-269. Subdividing and Redesignating a Sending Parcel.**

Provided the process and standards below are met, a Sending Parcel landowner who believes a portion of the Sending Parcel is outside of the 100 year floodplain and who desires to retain and/or redevelop the dry portion of the property, may do so by submitting a subdivision application. If approved, the plan will redefine the resultant parcels as Sending and Receiving Parcels.

- A. The originally designated Sending Parcel, which is the subject of a Subdivision and Land Development application, shall have a minimum Lot Area of 3.5 acres.
- B. Subdivision and Land Development plans and an application shall be submitted to determine the number of Development Credits that will remain associated with the newly created Sending Parcel(s). This application shall include a Yield Plan, as provided for in this Chapter, showing the development and Potential Incremental Development that can occur on the proposed Receiving Parcel.
  - 1. The Application shall detail the number of Development Credits allocated to the subject property, the original Sending Parcel. A conceptual development plan based on the underlying zoning district regulations shall be submitted for the proposed Receiving Parcel, calculating the number of Development Credits associated with the conceptual development, similar to how a Yield Plan provides the basis for determining the number of residential lots permitted on an Open Space Preservation Plan.
  - 2. The calculation of the Development Credits associated with the conceptual development on the Yield Plan for the proposed Receiving Parcel shall be based on the factors detailed above in this Article for Development Credit Allocation and Use.
  - 3. The number of Development Credits allocated to the proposed Sending Parcel(s) shall be determined by subtracting the Development Credits associated with conceptual development of the proposed Receiving Parcel, i.e. the Yield Plan, from the Development Credits allocated to the original Sending Parcel.
- C. Submission of a Sending Parcel subdivision plan shall occur when a landowner/applicant intends to concurrently sever the Development Credits from the newly created Sending Parcel(s) and record a Deed of Development Credits and Deed(s) of Dedication for the real estate. Recording the Subdivision Plan shall occur concurrently with recording the Deed of Dedication and Deed of Development Credits and the Township's Development Credit Registry shall be amended accordingly.
- D. The portion of the Sending Parcel being redesignated as a Receiving Parcel shall comply with the following:
  - 1. The Lot Area shall be no less than 2 acres and there shall be developable areas on the lot that are outside of the designated Floodplain Conservation District.

2. All Building Area on the new Receiving Parcel shall be outside of the Floodplain Conservation District. Surface parking for that Building Area may remain and/or be developed, as permitted by this Chapter.
  3. Remaining and new development shall comply with all provisions of the Floodplain Conservation District and with the EC Employment Center District dimensional standards.
  4. The landowner and/or applicant shall demonstrate and document how safe, orderly and efficient access onto and off of the newly created Receiving Parcel is provided for in flood emergencies.
- E. In determining which portion of a Sending Parcel is to remain and be subject to a Deed of Dedication, and in an effort to meet this Article's purpose and objectives, a landowner shall consider including space with the following characteristics:
1. Land within the Floodplain Conservation District and Riparian Buffers,
  2. Land with alluvial or hydric soils, including wetlands,
  3. Land containing woodlands and/or slopes in excess of fifteen percent, and
  4. Land adjacent to Township or other publicly owned land, and
  5. Land identified in the Township's Open Space & Recreation Plan and/or the Official Map.
- F. The new Sending Parcel(s) shall comply with the following standards:
1. The total area that will be the subject of a Deed of Dedication shall be no less than 1.5 acres
  2. There shall be no more than two separately described Sending Parcels created by the Subdivision and described in a Deed of Dedication. The Development Credits allocated to the new Sending Parcel(s) shall be described in a Deed of Development Credits.
  3. No individual Sending Parcel shall be smaller than 30,000 square feet, nor shall it have a width and/or length of less than 40 feet.
- G. Provided the remaining Sending Parcel(s) subject to the Deed of Dedication complies with the above noted standards, the Township, or its assignee, may accept the Deed of Dedication as provided for in this Article.

### **§ 255-270. Receiving Zone: Process for Using Development Credits**

Development Credits may be acquired and used to enhance a Receiving Parcel's Development Potential by utilizing the following procedures:

- A. The Receiving Parcel landowner/applicant must first obtain final approval of a land development plan contingent and conditioned on the acquisition and assignment of Development Credits to the Receiving Parcel.
- B. To meet the condition of approval, the landowner/applicant, at or prior to the approval of a Final Plan or the issuance of the first building permit, whichever occurs first, shall submit to the Zoning Officer a completed Development Credit Use Application and the appropriate review fees, as set forth in Chapter 110.
- C. Provided the application and supporting documentation are complete and accurate, the Zoning Officer shall approve the Development Credit Use Application certifying the permanent transfer of the Development Credits required for the proposed development on the designated Receiving Parcel and that the source Sending Parcel(s) associated with each Development Credit has been cleared, stabilized and transferred to Upper Dublin Township or its assignee.
- D. A Deed of Development Credits shall be recorded to make the Development Credits appurtenant to a specific Receiving Parcel, thereby enabling the approved development plan to be recorded and to prevent the use of the transferred Development Credits on any parcel other than the designated Receiving Parcel.
- E. The landowner/applicant shall be responsible for all costs associated with the review of the Development Credit Use Application for the use of Development Credits, including professional consultant fees as authorized by this Chapter.

### **§ 255-271. Receiving Zone: Standards For Use of Development Credits**

- A. Rights Attributable To Utilizing Development Credits. Provided a Deed of Development Credits and the necessary Deed(s) of Dedication have been recorded, a landowner/applicant utilizing Development Credits has the right to the following additional Development Potential on the Receiving Parcel:
  1. Floor Area Ratio (FAR) density limits shall be increased as follows:
    - Office: from a functional limit of 0.25 FAR to an absolute limit of 0.55 FAR
    - Hotel: from a functional limit of 0.60 FAR to an absolute limit of 0.85 FAR

## 2 Residential Density:

Minimum. bldg. height	FAR		Dwelling units/acre	
	Min	Max	Min	Max
4 stories	1.0	1.50	30	50
5 stories	1.0	1.55	30	55
6 stories	1.0	1.60	30	60
7 stories	1.0	1.65	30	65

3. Density limits for Retail use. The maximum floor area of an individual retail use shall be 10,000 square feet.
- Retail uses are permitted only on the ground floor of multi-story buildings.
  - All retail uses may comprise no more than 50% of the building's total floor area.
  - For the purpose of this Article, the calculation of Total Floor Area excludes structured parking.
4. Height Limits. The minimum height limit for all uses is 30 feet. The maximum height limits range from 35 and 70 feet and are detailed in Map 1, in Appendix A
- B. Increments of TDR Development. The Development Potential of an individual Receiving Parcel utilizing Development Credits in accordance with provisions of this Article may be increased as follows:
- Up to 10,000 square feet of additional Office or Hotel Floor Area is permitted on each Receiving Parcel for each one-quarter (0.25) Development Credit utilized.
  - Up to 12,500 square feet of Residential Floor Area is permitted on each Receiving Parcel for each one-quarter (0.25) Development Credit utilized.
  - No more than a total of 24 Development Credits within the Transferable Rights Overlay District may be allotted for Residential use within the entirety of the Receiving Zone. The Township shall track the use of Development Credits in the Development Credit Registry.
  - Up to 2,500 square feet of additional Retail Floor Area, not otherwise allowed, is permitted for each one quarter (0.25) Development Credit utilized.

**§255-272. Receiving Zone: Additional Development Standards**

The development standards set forth in Article XVI, the EC, Employment Center District, shall apply on a Receiving parcel utilizing Development Credits, except when in conflict with the following:

- A. A Receiving Parcel with frontage along and/or vehicular access exclusively onto Highland Avenue or Camp Hill Road may not be developed with a mixed-use building if that building contains more than 750 square feet of retail space.
1. Access provisions in Township Code Chapter 233, Sections 233-17, 233-18.2 and 233-52 are applicable to all Receiving Parcels developed in accordance with the TDR Overlay District regulations.
- B. Multi-family residential buildings are permitted in two distinct areas in the Receiving Zone, as shown on Map 2, and in Appendix A
- C. Parking ratios shall be reduced from minimum of 5 spaces per 1,000 square feet to a minimum of 3.8 spaces per 1,000 square feet for any non-residential Building Area developed. Parking ratios for residential units shall be 1.5 spaces per unit.
- D. Impervious Surface: The maximum impervious surface on a Receiving Parcel shall not exceed 85%.
- E. Dimensional Standards.
1. Minimum Setbacks. The following accessory uses shall be setback a minimum of 150 feet from residentially zoned lots or the right of way line of a street adjacent to residentially zoned land.
    - a. Loading and delivery areas
    - b. Structured parking
  2. Minimum Parking Setbacks. Surface Parking shall be setback a minimum of 50 feet from residentially zoned lots or the right of way line of a street adjacent to residentially zoned land.
    - a. The first 25 feet of the 50 foot setback shall contain a Screen Buffer as provided for in §212-32 of the Upper Dublin Township Subdivision and Land Development Code. Existing vegetation and elevation differences can be used to achieve this required level of screening.
  3. Front Yard Setbacks. Minimum front yard setback shall be 25 feet for buildings up to 40 feet in height. Buildings or any portion of a building taller than 40 feet shall have a minimum setback of 35 feet.
- F. Design Guidelines
1. All mechanical equipment for new development shall be situated in the building or on the roof.
    - a. Roof mounted mechanical equipment shall be visually and acoustically screened from any adjacent residential use.

- b. Restaurant ventilation equipment shall be roof mounted to minimize odors.
  - 2. Outdoor lighting shall comply in all respects with the Township Code. In addition, to minimize glare impacting nearby properties, full cut off shields shall be used to screen views of the light source.
  - 3. Noise generated on site shall be minimized and be maintained within the limits specified by the Township Code.
  - 4. The Township's sign regulations concerning on-site Freestanding Signs are further limited to permit only monument signs no taller than eight feet. These signs shall be screened from the views of adjacent residential lots.
- G. Architectural Design Standards. To ensure that the size, proportions and design of buildings and other development within the Transferable Rights Overlay District accomplishes the goal of creating a pedestrian-friendly environment, especially at the street level, new construction shall comply with the following criteria:
- 1. Visual mass of all buildings shall be de-emphasized through the use of architectural and landscape elements including form, architectural features and materials, to reduce their apparent bulk and volume, to enhance visual quality and contribute to human scale development.
    - a. Vertical Articulation. Vertical articulation of the building facade, including changes in building plane and materials, shall be used to create pedestrian-scale buildings. Vertical articulation may include architectural features such as projecting bays, changes in roof line, recessed entries, balconies and other similar features. The depth of such articulation shall be a minimum of 2'-0". Such vertical articulation shall occur at a minimum 50' interval.
    - b. Horizontal Articulation. Horizontal articulation of the building facade, including changes in building plane and/or materials, shall be used to break up the scale of the building facade. Such horizontal articulation may be provided by roof terraces, setbacks or other devices. Horizontal articulation shall emphasize the building base, to reinforce the pedestrian scale.
  - 2. No reflective glass shall be permitted. Tinted windows shall allow a minimum of 85% light penetration into the building.
  - 3. Flat roofs must have articulated parapets and cornices. Pitched roof material may include slate (either natural or man-made), shingle (either wood or asphalt composition) and metal formed to resemble standing seams or other similar materials. Specifically prohibited are white, tan or blue shingles, and corrugated plastic or corrugated metal.
  - 4. Exterior wall materials may include stucco, wood, wood clapboard, stone,

architectural concrete block or polished block, or brick of a shape, color and texture as that commonly found within the area. Specifically prohibited shall be white, tan or any type of painted brick, T-111 or other similar plywood siding. Other materials shall be limited as follows:

- a. All forms of conventional concrete block shall be prohibited, unless authorized by the Board of Commissioners as a conditional use as provided for below.
  - b. Exterior insulation and finishing system (e.g., drivit) shall be limited to a maximum of 50% of any single facade, subject to approval by the Board of Commissioners
5. The Board of Commissioners may, by conditional use, approve the use of architectural concepts and designs which differ from those set forth above, if the applicant demonstrates to the satisfaction of the Board that such concepts and designs are in furtherance of the legislative intent of this article and of this subsection.

#### **§ 255-273. Plan Submittal Process For Development Utilizing Development Credits**

- A. Applicants seeking to develop Receiving Parcels utilizing Development Credits shall submit Sketch and Preliminary Plans showing the development with the use of Development Credits. The plans shall be submitted and processed in accordance with the requirements of the Chapter 212, Subdivision and Land Development Code and any other applicable Township regulations.
- B. The TDR Transferable Development Rights Plan application shall also include:
  1. A draft Deed of Development Credits detailing the number of Development Credits required for development of the Receiving Parcel as proposed and the Sending Parcel(s) from which the Credits were obtained.
  2. The number of residential dwelling units and/or floor area of non-residential development that may be built in accordance with underlying zoning regulations.
  3. The number of dwelling units and/or floor area of non-residential development that may be built when Development Credits are applied.
  4. A location plan identifying the Sending Parcel(s) from which the applicant proposes to use Development Credits. This plan shall show all information needed to determine the number of Development Credits which are available and how many are sold, if that number varies. A draft of the Deed of Dedication shall be submitted. The deed shall be recorded with the Final Plan if one is required.

C. In order to receive Final Plan approval, the applicant must guarantee the Deed of Dedication and the Deed of Development Credits is registered and recorded as provided for in this Article.

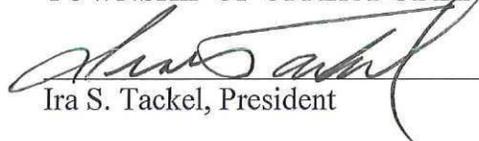
**Section 5.** Nothing in this Ordinance or in Chapter 255 of the Code of the Township of Upper Dublin, as hereby amended, shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the said Chapter 255 prior to the adoption of this amendment.

**Section 6.** The provisions of this Ordinance are severable, and if any section, sentence, clause, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any Court of competent jurisdiction, such decision of this court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this ordinance. It is hereby declared to be the intent of the Board that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, sentence, clause, part, or provision had not been included herein.

**Section 7.** This Ordinance shall take affect and be in force from and after its approval as required by law.

Enacted by the Board of Commissioners of Upper Dublin Township this 26<sup>th</sup> day of November, 2013.

BOARD OF COMMISSIONERS OF THE  
TOWNSHIP OF UPPER DUBLIN

  
Ira S. Tackel, President

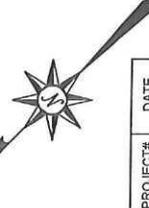
ATTEST:  
  
Paul A. Leonard, Secretary

Exhibit "A"

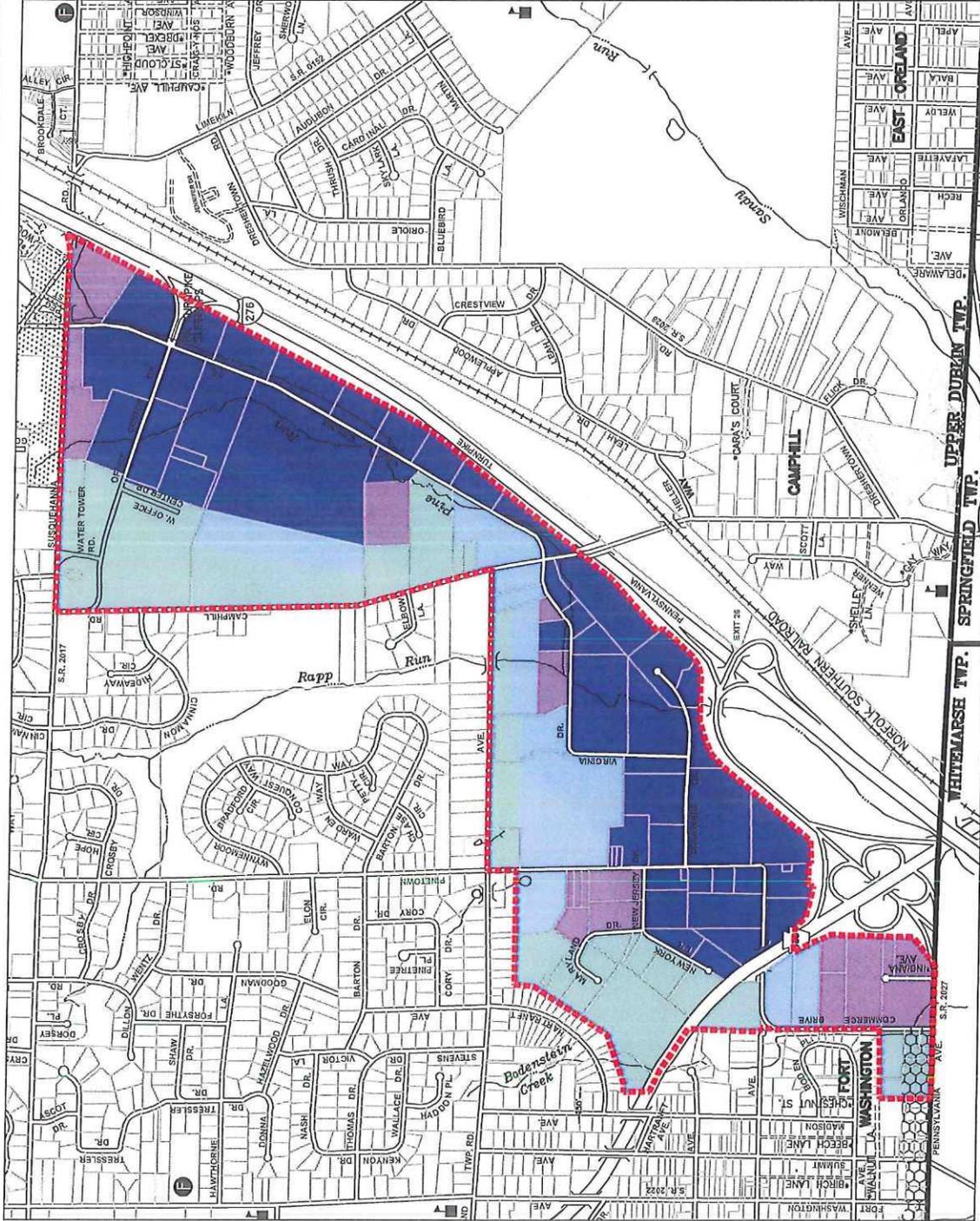
Maps

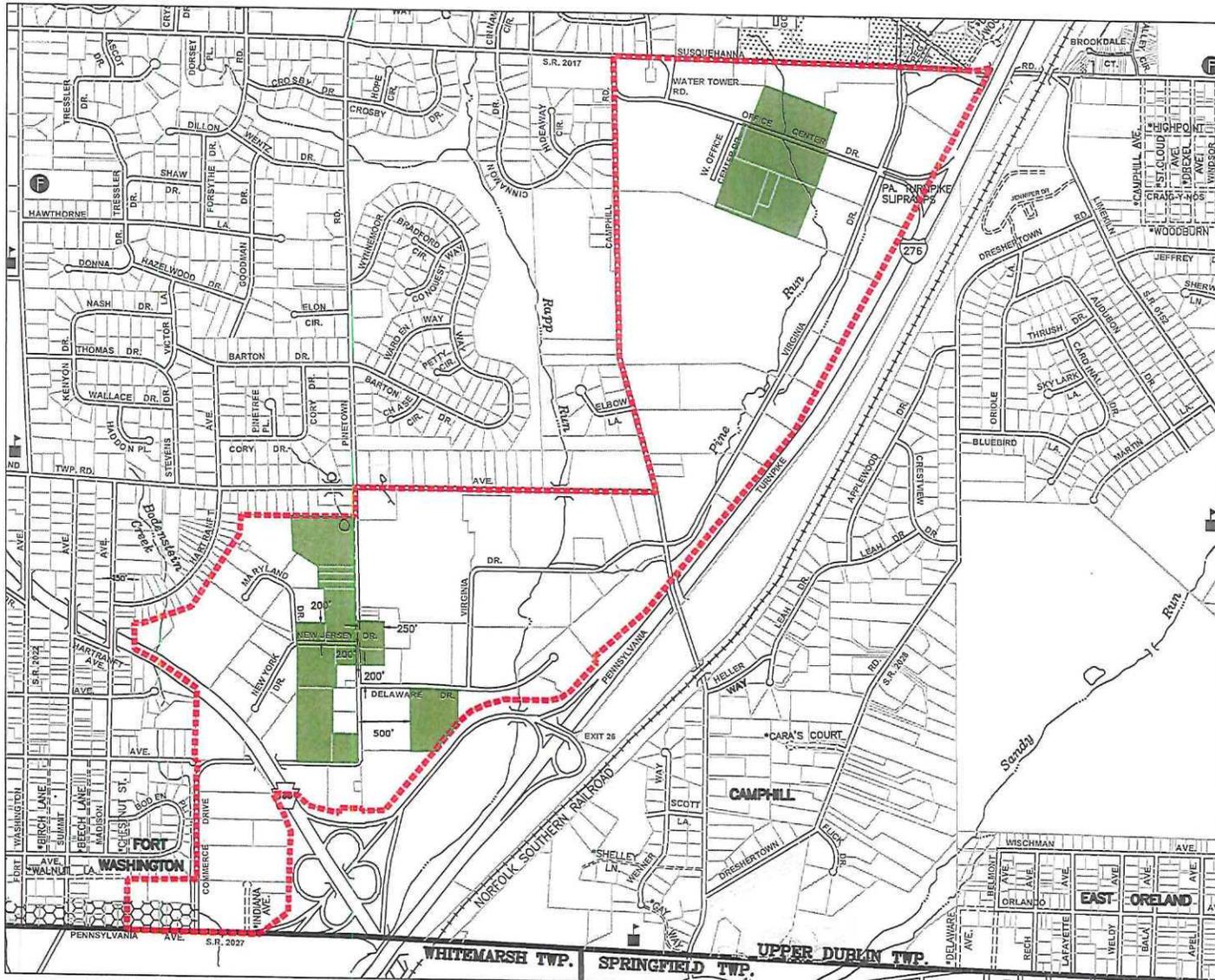
TDR  
 TRANSFERABLE DEVELOPMENT RIGHTS  
 HEIGHT RESTRICTIONS  
 MAP-1

LEGEND



PROJECT#	DATE
UD13102	10-29-13

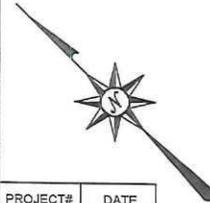




TDR  
TRANSFERABLE DEVELOPMENT RIGHTS

RESIDENTIAL  
LAND USE RESTRICTION  
MAP-2

- LEGEND
- TDR DISTRICT BOUNDARY
  - Areas that allow Residential buildings



**Metz Engineers**  
 410 Oremia Ave., PO Box 507, Leesville, PA 15448-0507  
 Chief Engineer & Land Surveyor  
 (717) 855-3111

PROJECT#	DATE
UD13102	10-29-13

WHITEMARSH TWP.    SPRINGFIELD TWP.    UPPER DUBLIN TWP.