



Township of Woolwich
120 Village Green Drive
Woolwich Township, New Jersey 08085
856-467-2666 fax: 856-467-3545

RE: SEVERANCE OF TDR CREDITS IN TDR SENDING ZONE FOR TRANSFER OF PROPERTY TO ANOTHER PARTY

Question Presented

Can an owner of property located within a TDR Sending Zone sever the property's TDR Credits and continue the present use of the property remaining under his or her ownership?

Factual and Legal Analysis

Property owners within a TDR Sending Zone may sell their property by severing the existing TDR Credits and retaining those credits for sale at a later time. The following questions have been raised with regard to this issue:

1. Can a property owner sever TDR Credits from his or her property prior to selling the property?

2. If the property owner retains a portion of or his or her property, will the property owner be permitted to continue the existing use on the property or to construct a new structure?

Under the Township's TDR program, landowners in a designated sending area may transfer their right to develop land in exchange for preserving their property for agricultural uses, farmland, conservation land, open space, or public areas. In order to preserve property for these uses, a landowner's property must be deed restricted in perpetuity. See TDR Ordinance § 203-51.

When property is deed restricted for TDR, the TDR Credits are severed from the property in which the TDR Credits are held. The landowner is then able to sell or assign credits to a receiving area property for development in the receiving area. Once the credits are used by the developer in the receiving area, the TDR Credits are extinguished and are no longer eligible for use.

A landowner must file an application to enroll his or her property in the TDR program, whereby the property is deed restricted and the TDR Credits are held by said landowner. TDR Ordinance § 203-54C. However, nothing in the TDR Act or the Township's TDR Ordinance expressly prohibits the landowner, after the severance of TDR Credits from the sending property, from selling the deed restricted property and retaining the TDR Credits for sale at a later date. Therefore, a property owner may transfer a portion of his or her property to another party and retain the TDR Credits, so long as the property is used for deed restricted purposes, such as agriculture, open space and/or recreation. The property will be transferred with the deed restriction, which runs with the land and is binding upon the property owner and ever successor in interest thereto. See N.J.S.A. 40:55D-147.

A property owner may wish to sell a portion of his or her property for an agricultural or conservation use such as open space, and retain the remaining portion. In order for the TDR Credits to severed from the transferred property for sale at a later date, the property must be enrolled in the TDR

program and permanently deed restricted. Once a property is deed restricted, the use of said property is restricted to those uses and structures permitted by the TDR Ordinance and the deed restriction. Under the Township's TDR Ordinance, land in the sending area is restricted to the limited uses permitted under an Agricultural TDR Easement or Conservation TDR Easement. See TDR Ordinance § 203-54G(1); 54G(2). These uses are limited primarily to agricultural uses, agriculture structures and conservation uses. Some income producing recreational activities are also permitted on deed restricted land. See TDR Ordinance § 203-54G(1); 54G(2).

If an existing use on the property is not permitted under the current Ordinance, the use will be allowed to continue even though the property will be deed restricted for an agricultural or conservation use. The TDR Ordinance allows for all non-conservation and non-agricultural uses existing on the Property at the time of deed restriction to continue, and any existing structures may be restored or repaired in the event of partial destruction. See TDR Ordinance § 203-54G(1)(d); 54G(2)(c).

However, "no new structures, except as permitted [by the Ordinance], or the expansion of pre-existing structures for non-conservation [or non-agricultural] structures are permitted." Id. Based on these provisions of the TDR Ordinance, a property owner with a pre-existing non-conforming use may continue that present use, but he or she may not construct new structures or expand the prohibited use once the property has been deed restricted.

If the property owner wishes to construct a new structure before TDR Credits are severed and the property is deed restricted, any development or new construction is subject to the Township's underlying zoning regulations.