

PART II – GENERAL LEGISLATION

Chapter 128 – Land Use and Development – Reserved

[This chapter has not yet been adopted. It is inserted here to allow for its review by the Board of Trustees and its possible enactment, as well as integration into the Code as Ch. 128]

Article I	Incentive Zoning	Sections 128-1 – 128-15
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Article I Incentive Zoning

Section 128-1 – Statement of purpose – the purpose of this article is to provide for a system of zoning incentives for the provision of amenities or benefits that advance the village's specific physical, cultural and social policies in accordance with the Comprehensive Plan and other village planning mechanisms and land use techniques, as provided in the Code of the Village of Marcellus, New York.

Section 128-2 – Applicability of provisions – the provisions of this article shall be applicable to all use districts in the Village of Marcellus.

Section 128-3 – Designated amenities.

- a. The following are amenities eligible for consideration hereunder:
 - (1) Industrial and commercial development
 - (2) Elder care
 - (3) Child care
 - (4) Infrastructure improvements (e.g., roads, parking facilities)
 - (5) Parkland, open space
 - (6) Cultural or historic sites
 - (7) Senior housing
 - (8) Affordable housing
 - (9) Other facilities or benefits to the village residents
 - (10) Combination of the above and/or cash in lieu thereof
- b. Amenities may be provided on or off site
- c. Amenities otherwise required by law shall not be eligible for consideration hereunder

Section 128-4 – Designated incentives – As an incentive for the provision of amenities, the Village Board may offer the following incentives or any combination thereof:

- a. Increase of building and/or unit density
- b. Change of use

- c. Changes of height, setback and bulk requirements
- d. Change of floor area
- e. Any other changes in requirements of the Uniform Zoning Law

Section 128-5 – Incentive Zoning Review Committee – on request, the Village Board shall establish an Incentive Zoning Review Committee comprising, one member of the Zoning Board of Appeals, one member of the Planning Board and one member of the Village Board. Members of the Incentive Zoning Committee shall serve at the pleasure of the Village Board.

Section 128-6 – Initial review by Village Board

a. Applications for incentives in exchange for amenities shall be submitted to the Village Board. The applicant shall provide the following information with the request:

- (1) Description of proposed amenity
- (2) Cash value of proposed amenity
- (3) Exhibits containing:
 - (a) Description of benefits to the community of the proposed amenity
 - (b) Statement that there are adequate existing public facilities (including transportation, water supply, waste disposal and fire protection) to service the site if developed to full potential
 - (c) Statement that the proposed exchange of amenities for incentives will have no significant environmentally damaging consequences and whether mitigating or remediation measures are proposed
 - (d) Statement that the proposed exchange of amenities for incentives is compatible with the development otherwise permitted.

b. The Village Board shall consider the submission and determine whether further review is warranted. If the Village Board determines further review is warranted, it shall forward the submission to the Incentive Zoning Committee and notify the applicant that further submissions in accordance with this article should be made to the Incentive Zoning Committee.

Sections 128-7 – Review by Incentive Zoning Committee

a. The applicant shall submit two proposed plot plans for the site to the Incentive Zoning Committee

- (1) One plot plan shall be prepared showing development with the amenity, if it is on-site, and the incentive sought
- (2) One shall show development without any amenity or incentive

b. Each plot plan shall contain the following information, and such other data as may be requested by the Incentive Zoning Committee to permit a proper evaluation of the proposal:

- (1) An area map showing the applicant's entire holding, that portion of the applicant's property under consideration and all properties within 500 feet of the applicant's property

- (2) A proposed conceptual storm water plan showing sufficient detail for evaluation
 - (3) A Site map showing the following information:
 - (a) The title of the drawing, including the name and address of the applicant
 - (b) The North point, scale and date
 - (c) The boundaries of the property plotted to scale
 - (d) The existing watercourses
 - (e) The location, proposed use and height of all buildings; the location of all parking and truck loading areas, with access and egress drives thereto; the location of outdoor storage, if any; the location of all existing or proposed site improvements, including drains, culverts, retaining walls and fences; a description of the method of sewage disposal and the location of such facilities; the location and size of all signs; the location and proposed development of buffer areas; and the location and design of lighting facilities. In addition, the site plan must state the gross floor area and net floor area for each building and delineate and state the area of each use therein, including flex space, if any
 - (f) A tracing overlay shall be provided showing all soil areas and their classifications and those areas, if any, with a moderate to high susceptibility to erosion. For areas with potential erosion problems, the overlay shall also include an outline and description of existing vegetation
- c. The Incentive Zoning Committee may, in its discretion, waive such of the foregoing as may not be necessary for a proper review of the application.

Sections 128-8 – Action by Incentive Zoning Committee

- a. The Incentive Zoning Committee shall review a complete submission and report to the village board its opinion whether:
 - (1) The proposed amenity/incentive exchange is consistent with the Comprehensive Plan
 - (2) The proposed amenity/incentive exchange is suitable for the site
 - (3) The proposed amenity/incentive development is compatible with adjoining land uses and improvements
 - (4) The proposed amenity/incentive exchange is in the best interests of the village
- b. The Incentive Zoning Committee shall issue its report within 62 days after receipt of a complete submission, or such other time as the village board may determine.

Section 128-9 – Action by Village Board

- a. The Village Board shall review the report of the Incentive Zoning Committee for the purpose of determining whether further proceedings should be had thereon and shall notify the applicant of such determination.
- b. Should the Village Board determine a need for further proceedings, it shall:
 - (1) Comply with the provisions of the State Environmental Quality Review Act (SEQR)
 - (2) Evaluate the effects of potential incentives that are possible by reason of amenities, provided that the zoning district contains adequate resources, environmental quality and public facilities (including adequate transportation, water supply, waste disposal and fire protection)
 - (3) Consider whether there will be environmentally damaging consequences and that such incentives or bonuses are compatible with the development otherwise permitted
 - (4) Consider whether the offered amenities are a sufficient quid pro quo for the zoning incentives requested
- c. Prior to its final decision, and in conjunction with SEQR review and making the determinations specified in the preceding paragraph, the Village Board shall conduct at least one public hearing, and such other public hearings as it may deem advisable in fulfilling its responsibilities hereunder, each on notice published in the official newspaper of the village at least five days (or 14 days, if a draft environmental impact statement or supplemental impact statement was required) prior thereto
- d. Upon completion of the public hearings and termination of the SEQR process, the village board shall approve, approve with modifications or deny the proposed incentive zoning application. Such action shall include a statement of findings that:
 - (1) All requirements of SEQR have been met
 - (2) The proposed project, including the incentive, can be supported adequately by public facilities available or provided as a result of the project, including sewer, water, transportation, waste disposal and fire protection, without diminishing the availability of such services for projects permitted as a matter of course.
 - (3) The public benefit is compatible with the purpose and intent of this local law; that the project is sufficiently advantageous to make it appropriate for the grant of the requested incentive; and that the project will enhance the long-range asset-base of the village.
 - (4) The use of incentive zoning in the particular instance is consistent with the Comprehensive Plan.
- e. Should the Village Board grant a request for incentive zoning (either with or without modification), the Planning Board of the Village of Marcellus is authorized to entertain and act upon an application for preliminary site plan and/or subdivision approval pursuant to the Uniform Zoning Code and/or Uniform Subdivision Regulations of the Village of Marcellus.

Section 128-10 – Section 128-15 – Reserved

Article II – Inclusionary Zoning – Reserved – This zoning technique is a reserved part of the Zoning Code, included here to allow for its possible integration upon its future enactment, the subject of which will fall alphabetically into this part of the Code.

Inclusionary zoning is a type of incentive zoning (described earlier in this chapter) because it provides incentives to developers to provide affordable housing as part of a proposed development project. The incentive usually is a density bonus, which allows the developer to build at higher densities than, would normally be allowed. In exchange for the higher density, the developer must build a specified number of low and moderate income dwelling units.

Article III – Performance Zone – Reserved – This zoning technique is a reserved part of the Chapter, included here to allow for its possible integration upon its future enactment, the subject of which will fall alphabetically into this part of the Code.

Some communities have enacted zoning regulations that establish performance standards, rather than strict numerical limits on building size or location, as is the case with conventional zoning. Performance zoning, as it is commonly called, regulates development based on the permissible effects or impacts of a proposed use, rather than by the traditional zoning parameters of use, area, and density. Under performance standard zoning, proposed uses whose impacts would exceed specified standards are prohibited unless the impacts can be mitigated. Performance zoning is closely tied to the planning process because the local government must identify planning goals and then write regulations that specifically achieve those goals.

Performance zoning is often used to address municipal issues concerning noise, dust, vibration, lighting, and other impacts of industrial uses. It is also used by communities to regulate environmental impacts, such as storm-water runoff, scenic and visual quality impacts, and defined impacts on municipal character. The complexity and sophistication of these performance standards vary widely from one municipality to another, depending on the objectives of the program and the capacity of the locality to administer it. In some communities throughout the country, performance zoning has actually replaced traditional zoning districts and the dimensional standards of traditional zoning.

At times performance zoning is used in combination with a point system. Under such a scheme, a proposed project must amass a minimum number of points in order to receive a permit. In contrast to the self-executing nature of traditional zoning, where a landowner can determine if a

project is permissible by reading the zoning map and zoning text, point systems require case-by-case review to determine if a specific land use is permissible.

The appeal of Performance Zoning lies in its high level of flexibility, rationality, transparency and accountability. Performance Zoning avoids the arbitrary nature of the Euclidian approach, and better accommodates market principles and private property rights with environmental protection. However, performance zoning can be extremely difficult to implement and can require a high level of discretionary activity on the part of the supervising authority. For this reason performance zoning has not been widely adopted in the USA, and is usually limited to specific categories within a broader prescriptive code when found. New Zealand's planning system, however, is grounded in effects-based Performance.

Article IV – The Floating Zone – Reserved – This zoning technique is a reserved part of the Zoning Code, included here to allow for its possible integration upon its future enactment, the subject of which will fall alphabetically into this part of the Code.

Definition and Purpose – the purpose of this section is allow the Village of Marcellus flexibility in the location of a particular type of use and allow for a use of land that may not currently be needed, but which is desired in the future. The floating zone is also a way of scrutinizing significant projects for municipal impacts, as the Village Board of Trustees must approve floating zones. The standards and allowable uses for a floating zone are set forth in the text of the Village of Marcellus zoning regulations, but the actual district is not mapped; rather, the district "floats" in the abstract until a development proposal is made for a specific parcel of land and the project is determined to be in accordance with all of the applicable floating zone standards. At that time the municipality maps the floating zone by attaching it to a particular parcel or parcels on the zoning map. The Village of Marcellus may wish to provide for a future industrial park, or provide for affordable senior housing, or permit the establishment of a shopping center for example, and it may use the floating zone technique. Because the floating zone is not part of the zoning map until a particular proposal is approved, the establishment of its boundaries on the zoning map constitutes an amendment to the municipal zoning regulations, which requires the approval of the Village Board of Trustees. The following is an outline as to how the floating zone district guidelines should to be completed, relative to a use of land not currently needed, but which is desired in the future.

1. Statement of Intent – the _____ District is established to _____ in the Village of Marcellus. It is the intent of this section to encourage _____, to ensure that the development provides a minimum of services and facilities to accommodate the needs of Village residents and to minimize detrimental effects on surrounding properties.

2. Objectives. The specific objectives of this section are:

- a. To provide _____
- b. To provide _____
- c. To provide _____
- d. To provide _____
- e. To regulate _____

3. General Provisions

- a. A _____ District is a floating zone created by amendment of the Village's official Zoning Map through exercise by the Village Board of the procedures set forth in this section. The following zoning districts are eligible hosts for the floating zone: _____.
- b. In _____ District, no building, structure, premises or part thereof shall be used or occupied, and no building or structure shall be erected, enlarged, converted or altered except as provided in this section.

4. Permitted Uses

a. Principal uses. The following uses are permitted in a _____ District subject to site plan approval from the Planning Board:

- 1) _____
- 2) Exceptions. _____

b. Accessory uses. The following accessory uses are permitted in _____ District subject to site plan approval by the Planning Board.

- 1) Accessory uses, including buildings and facilities, which are reasonably necessary to meet the proper maintenance, administration, security, off-street parking, storage, fencing and utility system needs of the project.
- 2) The following accessory uses are permitted, provided _____:
 - a)
 - b)
 - c)

5. Restrictions. The following are prohibited uses in the _____ District.

- a.
- b.
- c.

6. Lot and Bulk Requirements. The following lot and bulk requirements shall apply to development projects within a _____ District:

- a. Minimum lot area. The minimum permitted lot area shall be _____ acres.

- b. Maximum density. The maximum permitted density requirements that apply in the zone underlying a _____ District shall be _____.
- c. Maximum impervious surface area. Impervious surface area shall not cover more than ___% of the lot area.
- d. Minimum lot depth. The minimum permitted lot depth shall be ___ feet.
- e. Minimum lot width. The minimum permitted lot width shall be ___ feet measured at the building setback line.
- f. Minimum front yard. The minimum front yard setback shall be ___ feet measured from the property line.
- g. Minimum side and rear yard. The minimum side yard and rear yard setbacks shall be ___ feet measured from the property line, subject to the requirements of *Section* _____.
- h. Except as they may be contrary to the standards set forth in this subsection, the bulk and lot requirements applicable in _____ Districts shall apply to a _____ District.

7. Supplementary Site Regulations

- a. Where not inconsistent with the regulations established in this article, a _____ District shall be subject to all the requirements of this chapter which apply to _____ Districts.
- b. Parking ratio. Parking spaces shall be provided at the ratio of 1.2 spaces per dwelling unit. The 0.2 fractional spaces shall be accumulated for staff and visitors. These spaces shall be properly arranged and identified by signage.
- c. Outdoor recreation. Usable outdoor recreation space shall be provided at the ratio of 50 square feet per dwelling unit. Such space shall consist of both active and passive recreation amenities such as patio areas, shaded sitting areas, walking or jogging trails.
- d. Miscellaneous.
 - 1) Utility service to the site shall be buried.
 - 2) Historic lighting shall be installed at the site.
 - 2) Sidewalks to the site shall be installed.

8. Dwelling Requirements – *if applicable*

- a. Where not inconsistent with the regulations established in this article, a _____ District shall be subject to all the requirements of this chapter which apply to _____ Districts.
- b. Parking ratio. Parking spaces shall be provided at the ratio of 1.2 spaces per dwelling unit. The 0.2 fractional spaces shall be accumulated for staff and visitors. These spaces shall be properly arranged and identified by signage.
- c. Outdoor recreation. Usable outdoor recreation space shall be provided at the ratio of 50 square feet per dwelling unit. Such space shall consist of both active and passive recreation amenities such as patio areas, shaded sitting areas, walking or jogging trails.

d. Miscellaneous.

- 1) Utility service to the site shall be buried.
- 2) Historic lighting shall be installed at the site.
- 2) Sidewalks to the site shall be installed.

8. Unit requirements – *if applicable*

- a. Unit size. The minimum permitted habitable floor area shall be _____ square feet.
- b. Unit density. The maximum number of _____ shall be _____.
- c. Unit amenities.
 - 1)
 - 2)
 - 3)
 - 4)
 - 5)

9. Procedure for establishment of a floating zone is critical for rezoning

- a. Application. Application for the establishment of a _____ District by amendment of this chapter shall be made, in writing, to the Village Board. Application shall be made by the owner(s) of the land(s) to be included in the district or by a person or persons possessing written contract or option rights to purchase the lands. In the event that an application is made by a person or persons holding rights to purchase the lands, the application shall be accompanied by a statement signed by all owners of such land indicating concurrence. Upon submission of a complete application, the Village Board may refer the application to the Planning Board for recommendation.
- b. Application materials. The applicant shall submit a preliminary plan in sufficient quantity as determined by the Village. The preliminary plan, to be complete, shall consist, at a minimum, of the following:
 - 1) Metes and bounds description of the proposed district.
 - 2) A survey of the parcel prepared and certified by a licensed land surveyor.
 - 3) A map drawn to scale showing existing conditions of the parcel, including:
 - a) The name and address of the owner of record and applicant, if different.
 - b) The name of the person or firm preparing the map.
 - c) The date, North arrow and scale.
 - d) The names, addresses and Tax Map parcel numbers of owners of all parcels within 500 feet of the subject property; also, mailing labels for all property owners of parcels within 500 feet of the subject parcel(s).

- e) The acreage of the parcel and the County Tax Map number.
 - f) The boundaries of the parcel plotted to scale.
 - g) The location and width of existing and proposed State, County, Town or Village highways or streets and rights-of-way abutting or within 200 feet of the parcel.
 - h) The location and outline of existing structures both on the parcel and within 100 feet of the property line.
 - i) The location of any existing storm or sanitary sewers, culverts, waterlines, hydrants, catch basins, manholes, etc., as well as other underground or aboveground utilities within or adjacent to the parcel.
 - j) The existing zoning and location of zoning boundaries.
 - k) The location and outline of existing water bodies, streams, marshes or wetland areas and their respective classification as determined by the appropriate governmental regulatory body.
 - l) The approximate boundaries of any areas subject to flooding or storm-water overflows.
 - m) The location and outline of existing vegetation clusters (for a distance of 50 feet onto adjoining property).
 - n) Freestanding trees with a caliper d.b.h. of 10 inches or greater located within the parcel.
 - o) Existing contours at an interval of five feet (or less) and extending no less than 50 feet onto adjoining property.
 - p) The identification of any other significant natural feature.
- 3) A proposed preliminary plan, drawn approximately to scale, clearly showing the following:
- a) The approximate location and dimensions of principal and accessory buildings on the site, their relationship to one another and to other structures in the vicinity, as well as the number of dwelling units by housing type and size, plus a calculation of the density, in dwelling units per acre.
 - b) The approximate location and dimensions of vehicular traffic circulation features of the site, including proposed roadways, internal driveways, parking and loading areas and proposed access to the site.
 - c) The approximate location and nature of pedestrian circulation systems, open space and outdoor recreation areas on the site.
 - d) The proposed source of water supply and method of delivery to the site.
 - e) A general plan for the collection and disposal of sanitary wastes from the site.

- f) A general storm drainage plan and how it is to be connected to the drainage systems of adjoining lands.
 - g) A preliminary site grading plan at intervals of five feet or less.
 - h) Preliminary identification of areas that will be disturbed and areas that will remain undisturbed by project implementation.
- 4) A vicinity map showing the proposed use in relation to adjoining uses, transit service, grocery stores, community facilities, social service facilities, medical facilities and pharmacy and religious institutions.
 - 5) Preliminary floor plans and building elevations.
 - 6) A description of any subsidy program relied on in development of the project and proposed rents or selling prices within a reasonable range.
 - 7) A statement as to the percentage and the location of dwelling units that are planned to meet affordable housing standards as defined in this article.

c. Initial Review by Village Planning Board

- 1) In its review of the application, the Village Board may, in lieu of rejection of the application, suggest such changes in the preliminary plans as are found to be necessary or desirable to meet the requirements of this article, to protect the established or permitted uses in the vicinity and to promote the orderly growth and sound development of the community. The Village Board may notify the applicant of such changes and may discuss the changes with the applicant. The suggestion of changes by the Village Board shall not constitute a waiver of its legislative discretion to reject or to deny the rezoning application. If it elects, the Village Board may delegate to the Planning Board, as part of its referral of the matter, this function of dialogue with the applicant on suggested modification to the preliminary plans.
- 2) The applicant may timely submit revised preliminary plans incorporating the changes requested. If timely resubmission is not made, the application shall be deemed abandoned.
- 3) The Planning Board shall make a recommendation on the application and shall report its findings to the Village Board on the merits of the preliminary plans unless the application is abandoned as provided in the preceding subsection. A favorable recommendation shall not constitute or imply an approval of any sort, nor shall it constitute a decision upon an action under the State Environmental Quality Review Act.
- 4) Criteria for rezoning to _____ District. In making findings and in determining whether or not to recommend approval, the Planning Board shall consider, together with the intent and objectives of this article, whether the proposed district and development meet the following criteria:

- a) The site shall be served by both public water and public sanitary sewer facilities, and said facilities shall be adequate to accommodate the additional demand placed upon them by the proposed development.
- b) The site shall be well drained, and stormwater generated by development of the site shall not place an undue burden on existing facilities or contribute to downstream flooding.
- c) The site shall be located in an area suitable for *its intended* purposes and shall be reasonably free of objectionable conditions, such as odors, noise, dust, air pollution, high traffic volumes, incompatible land uses and other environmental constraints.
- d) The site should be located within reasonable proximity to public transportation service, or, in the alternative, shuttle bus or other transportation service shall be available to the site.
- e) The site shall be located such that access to the site can be obtained from a public street which meets current engineering standards of the Village with respect to roadway width and alignment and acceptable sight distances can be developed at the site entry/exit and at intersections in the vicinity of the site.
- f) The architectural style of the proposed development, exterior materials, finish and color shall be consistent with existing community and neighborhood character.
- g) The development of the site shall not produce undue adverse effects on the surrounding neighborhood.
- h) The extent as to whether the scope and design of the project will establish a worthwhile asset for *this segment of the community and* the entire community.

d. Village Board review.

- 1) Upon receipt of a recommendation from the Planning Board, the Village Board may schedule and hold a public hearing. Alternatively, the Village Board may reject the application.
- 2) Following completion of the public hearing, the Village Board may act to approve, approve with modification or conditions, or disapprove the rezoning application in the exercise of its sole legislative discretion. Approval shall result in amendment of the Zoning Map established by this chapter.

e. Time limit on validity of rezoning. Any rezoning permitted by this *section* shall be null and void and the zoning of the parcel shall revert back to its original zoning classification by a ministerial re-designation on the official Zoning Map by the Village Clerk, when directed by the Village Board, unless actual construction, pursuant to a valid building permit, is commenced within two years from the date of adoption of the rezoning.

10. Site plan approval required. Following rezoning to create a _____ District, site development plan review and approval by the Planning Board, pursuant to the generally applicable standards and procedures found in *Article* ___ of this chapter, shall be required prior to the issuance of a building permit for development of any lot in a _____ District. Substantial changes to a previously approved site plan, as determined by the Building Inspector, shall also require site plan approval.

11. Conformity to preliminary plan required. The Planning Board shall not approve any site development plan within a _____ District unless said Board finds that the site plan is in substantial conformance with the preliminary plan which served as the basis for the zone change to a _____ District.

12. The Village may administer the _____ components of any approved _____ District by means of the administration and enforcement provisions set forth within.

Article V – Transfer of Development Rights – Reserved – This zoning technique is a reserved part of the Zoning Code, included here to allow for its possible integration upon its future enactment, the subject of which will fall alphabetically into this part of the Code.

Sustainable community development in most municipalities involves balancing resource preservation with a commitment to encourage development in appropriate areas. A technique called transfer of development rights can be used not only to encourage development in such areas but to compensate for discouraging or disallowing it in other areas, such as around viable vernal pools and other natural resources. New York statutes define transfer of development rights as "the process by which development rights are transferred from one lot, parcel, or area of land in a sending district to another lot, parcel, or area of land in one or more receiving districts." (Town Law § 261-a, Village Law § 7-701 and General City Law § 20-f). According to New York statute, the purpose of a transfer of development rights program is "to protect the natural, scenic or agricultural qualities of open lands, to enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value and to enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource."

1. Summary. The Village of Marcellus has determined that a transfer of development rights program is necessary to prevent adverse impacts due to inappropriate development, to facilitate the objectives of the Comprehensive Land Use Plan and to provide relief in cases of hardship. This is accomplished through a Transfer of Development Rights Program and Transfer of Development Rights Clearinghouse of

which the establishment and implementation of such is given in this chapter of Article XVI of the Village of Marcellus Zoning Code.

2. Purpose and intent. In order to prevent potentially significant and adverse impacts associated with inappropriate development and to assure the preservation of vital natural resources, open spaces, historically significant properties, to provide for the orderly growth and development of the Village and to facilitate development in accordance with the Comprehensive Plan, the Board of Trustees of the Village of Marcellus has determined that it is necessary and appropriate to establish a transfer of development rights program.

3. Transfer of Development Rights Program. The Board of Trustees recognizes that the goals and objectives of the transfer of development rights initiatives may not be fully achieved absent the establishment of a Transfer of Development Rights Program. Therefore, this chapter authorizes the establishment of a Transfer of Development Rights Program in order to facilitate the goals and objectives of said programs as well as those of the Comprehensive Land Use Plan and, further, to provide relief in cases of hardship.

4. The purpose of the Transfer of Development Rights Program shall include, but not be limited to, the following:

- a. To assist in creating and stimulating a market for the acquisition and disposition of development rights.
- b. To provide an available vehicle for the acquisition of development rights of land from property owners as a result of the application of the provisions of this article to their property.
- c. To promote and manage the orderly growth and development of land by the acquisition, holding and disposition of development rights or land.
- d. To facilitate achievement of the comprehensive planning goals of the Village of Marcellus, including the Village Code and Zoning Ordinance, by the acquisition, holding and disposition of development rights or land.
- e. To facilitate future planning of development and to maintain public land reserve with respect thereto by the acquisition, holding and disposition of development rights or land.
- f. To provide for open spaces and to preserve and protect vital natural resources by the acquisition and holding of development rights or land.

5. Transfer of Development Rights Clearinghouse.

- a. Purpose and intent. In order to achieve the goals of the Comprehensive Plan and to facilitate the orderly growth and development of the Village in addition to promoting the health, safety and welfare of the public, the Transfer of Development Rights Clearinghouse is established. The Board of Trustees

recognizes that in some instances some of the goals of the Comprehensive Plan may cause hardship for property owners affected thereby. In order to provide a form of relief in cases of hardship, the Transfer of Development Rights Clearinghouse may also serve to provide an available vehicle for the acquisition of development rights or land from property owners who demonstrate hardship as a result of the application to their property of the goals of the Comprehensive Plan and of provisions of the Zoning Code and to provide an available vehicle for the acquisition of development rights or land from property owners who make application pursuant to the provisions contained herein. The Transfer of Development Rights Clearinghouse may also serve to assist in creating and stimulating a market for the acquisition and disposition of development rights located throughout the Village (*or Town*).

b. Acquisition of interests. The acquisition of interests or rights in real property for the purposes of this chapter and the holding and disposition thereof for and in accordance with the purposes of this article are hereby declared to be for the public purpose of achieving the land policy and land planning goals and objectives of the Village of Marcellus, whether or not at the time of acquisition or expenditure of funds for acquisition or maintenance any particular future use, public or private, is contemplated for such real property. Appropriations for, issuance of bonds or notes for and taxation for such acquisition, holding and disposition are hereby declared to be for a valid public purpose. Such acquisition, holding and management and disposition are hereby declared to be for a valid public purpose.

6. Transfer of Development Rights (TDR) Clearinghouse Establishment.

There is hereby created a Village of Marcellus Transfer of Development Rights Clearinghouse to be used by the Village exclusively for the acquisition, holding and management and disposition of interests or rights in real property pursuant to this chapter. The Board of Trustees of the Village of Marcellus may from time to time make appropriations for said clearinghouse, provide moneys for said Clearinghouse by borrowing pursuant to the Local Finance Law and receive moneys for said clearinghouse from any other lawful source, including receipts resulting from management and disposition of such interests or rights in real property, all in accordance with applicable law. The Village Mayor may invest moneys received for said clearinghouse in accordance with and as permitted by law.

7. Implementation of TDR Program and TDR Clearinghouse.

a. The Board of Trustees of the Village of Marcellus is authorized to take any actions that it deems necessary and appropriate to implement and achieve the purposes of this chapter, including but not limited to the following:

- 1) Acquire by purchase, condemnation, exchange, gift, grant, devise, lease or otherwise interests or rights in real property situate in the Village for the purposes of this chapter. Such interest or rights in real property may consist of the fee or any lesser interest, development right, partial development right, easement, conservation easement, covenant or other contractual right necessary or desirable to achieve the purposes of this chapter.
- 2) Hold and manage such interests or rights in real property for and in accordance with the purposes of this chapter. The Board of Trustees of the Village of Marcellus may enter into a lease or other agreement for the purpose of maintaining such interests or rights and making appropriate use of such interests or rights while such interests or rights are held in a public land reserve or otherwise, provided that such lease or other agreement is consistent with the purpose of this chapter.
- 3) Establish monetary value of the transfer credits, may apply for and obtain grants and may dispose of such interests or rights in real property for and in accordance with the purposes of this chapter.
- 4) In conjunction with the Village Planning Board, the Board of Trustees may facilitate the implementation of overall development concepts, programs for development and development sections pursuant to this chapter.
- 5) Assemble building sites or other land areas suitable for use under the provisions of said chapter and then hold, sell, lease or otherwise make such sites or areas available for such appropriate use.
- 6) Appropriate restrictions on properties, which it proposes to dispose of as a condition of sale, lease or other agreement.
- 7) Adopt and amend rules and regulations with respect to procedures and policies to be utilized in implementing this chapter.

b. Planning Board authority. The Planning Board is hereby authorized and, at the direction of the Board of Trustees of the Village of Marcellus, may from time to time make investigations, maps, reports and recommendations with respect to the acquisition, holding and management and disposition of interests or rights in real property pursuant to this chapter. The Planning Board shall maintain records of such investigations, maps, reports and recommendations. The Planning Board may also make recommendations with respect to procedures and policies to be utilized in implementing this chapter.

8. Guidelines. The following guidelines shall govern the transfer of development rights associated with the Village of Marcellus Comprehensive Plan: *This must be completed, if we wish to use this zoning technique. The following is a model for such a program:*

(1) *A local government may adopt local land development regulations and amendments that include provisions for the transfer of development rights, in the manner prescribed in this Act.*

(2) *The purposes of this Act are to:*

- (a) preserve open space, critical and sensitive areas, and natural hazard areas;*
- (b) conserve agriculture and forestry uses of land;*
- (c) protect lands and structures of aesthetic, architectural, and historic significance;*
- (d) ensure that the owners of land that is so preserved, conserved, or protected may make reasonable use of their property rights by transferring their right to develop to other properties that can make use of it;*
- (e) provide a mechanism whereby development rights may be reliably transferred;*
- (f) ensure that development rights are transferred to properties that are in areas or districts that have adequate community facilities, including transportation, to accommodate additional development; and*
- (g) authorize the local government to create a TDR Bank, where development rights may be purchased and conveyed by the local government, in order to stabilize the market in development rights and to regulate or control the development of property that the local government intends to protect under subparagraphs (a) through (c) above.*

(3) *As used in this Act, and all other statutes where "transfer of development rights" is referred to:*

- (a) "Development Rights" mean the rights of the owner of a parcel of land, under land development regulations, to place that parcel and the structures thereon to a particular use or to develop that land and the structures thereon to a particular area, density, bulk, or height;*
- (b) "Receiving District" means one or more districts in which the development rights of parcels in the sending district may be used;*
- (c) "Receiving Parcel" means a parcel of land in the receiving district that is the subject of a transfer of development rights, where the owner of the parcel is receiving development rights from a sending parcel, and on which increased density and/or intensity is allowed by reason of the transfer of development rights;*
- (d) "Sending District" means one or more districts in which the development rights of parcels in the district may be designated for use in one or more receiving districts;*
- (e) "Sending Parcel" means a parcel of land in the sending district that is the subject of a transfer of development rights, where the owner of the parcel is conveying development rights of the parcel, and on which those rights so conveyed are extinguished and may not be used by reason of the transfer of development rights; and*
- (f) "Transfer of Development Rights" means the procedure prescribed by this Act whereby the owner of a parcel in the sending district may convey development rights to the owner of a parcel in the receiving district, whereby the development rights so conveyed are extinguished on the sending parcel and may be exercised on the receiving parcel in addition to the development rights already existing regarding that parcel.*

(4) *The legislative body of a local government may adopt a transfer of development rights program only by ordinance, in the manner for land development regulations pursuant to [relevant state statute], and an ordinance pursuant to this Act shall:*

- (a) be adopted by the legislative body only after it has adopted:*
 - 1. a local comprehensive plan; and*

2. *for a transfer of development rights program concerning critical and sensitive areas, a critical and sensitive areas element within the local comprehensive plan;*
3. *for a transfer of development rights program concerning natural hazards, a natural hazards element within the local comprehensive plan;*
4. *for a transfer of development rights program concerning agriculture or forest preservation, an agriculture and forest preservation element within the local comprehensive plan; and/or*
5. *for a transfer of development rights program concerning historic preservation, an historic preservation element within the local comprehensive plan;*

(b) be adopted by the legislative body only after a public hearing has been held on the proposed ordinance, with notice to all owners of property in the proposed sending and receiving districts. Any purported adoption contrary to this subparagraph shall be void;

(c) include a citation to enabling authority to adopt and amend the transfer of development rights ordinance;

(d) include a statement of purpose consistent with the purposes of zoning pursuant to [relevant state statute] and with paragraph (2) above;

(e) include a statement of consistency with the local comprehensive plan and with the applicable elements thereof, as listed in subparagraph (4)(a) above, that is based on the findings of a detailed comparison of the proposed ordinance with the local comprehensive plan;

(f) describe in detail both the sending and receiving districts and shall require the designation of both the sending and receiving districts on the zoning map of the local government;

(g) describe the development rights to be transferred in reasonable detail, preferably in quantifiable terms such as area, building coverage ratio, density, floor area ratio, height, or other forms of measurement;

(h) require that the owner of a sending parcel execute, and record with the county [recorder of deeds], a deed or instrument creating a conservation easement, describing the released development rights in reasonable detail and preferably in quantifiable terms, with the sending parcel as the subservient estate and the local government as the holder of the easement; and require that before any such easement is recorded that the instrument be submitted to the [local planning agency] for its approval;

(i) require that, before any transfer of development rights from a sending parcel to a receiving parcel or parcels may be completed, that the [local planning agency] shall approve the transfer. The only bases for rejecting a proposed transfer are that:

1. *the development rights released by the instrument vary significantly from the development rights that the sending parcel is supposed to be releasing pursuant to the transfer of development rights, or there is some other significant error in the instrument;*
2. *the proposed receiving parcel is not in a receiving district; or*
3. *the transfer would increase the density or intensity of development on the receiving parcel to a degree that violates one or more of the provisions of paragraph (8) below.*

(j) require that, once a transfer is approved, the [local planning agency] issue to the owner of a receiving parcel, and record with the county [recorder of deeds], a certificate assigning to the receiving parcel, and all present and future owners thereof, the development rights that the receiving parcel is to receive through the transfer of development rights. Such certificate shall describe the development rights in reasonable detail and refer to the instrument creating the conservation easement, and the certificate shall have a copy of the instrument attached.

(5) Any instrument purporting to convey a conservation easement pursuant to this Act but that the local government has not indicated its approval on the instrument is void, and shall not be recorded or accepted by the county [recorder of deeds] for recording.

(6) No district shall be designated as a receiving district unless the local legislative body finds, before enacting an ordinance authorized by this Act, that the district has or will have adequate community facilities and other resources to accommodate the increased development authorized by the transfer of development rights from the sending district.

(7) No district, or portion of any district, designated as a receiving district, shall be downzoned to the degree that no reasonable use can be made of a parcel of property, either after an ordinance pursuant to this Act has been adopted or before such adoption in anticipation of adoption.

[Note: This paragraph is intended to prevent the takings problem discussed above, whereby, to encourage the use of TDRs in a receiving district, the local government downzones the district to the degree that owners cannot make a reasonable use of their property in the district unless they purchase TDRs.]

(8) Any other provision of local land development regulations to the contrary, the density or intensity of development of a receiving parcel may be increased by the transfer of development rights so long as the increase in density or intensity:

(a) is consistent with the local comprehensive plan; [and]

(b) is not incompatible with the land uses on neighboring lots or parcels; [and]

[(c) is not more than [20] percent greater than the development rights of the receiving parcel without the transfer of development rights.]

[Note: No increase in density or intensity may contravene the plan or be inconsistent with surrounding land uses. However, some states may prefer a clear, numerical, limitation on the increase, and therefore subparagraph (c) is provided as an option. Note that the 20 percent figure can be altered at the state's preference.]

(9) The local government shall notify the county [property tax assessor] of a transfer of development rights within [30] days of:

(a) The issuance of a certificate pursuant to subparagraph (4)(j) above;

(b) the condemnation or purchase of development rights by the local legislative body or the TDR Bank, pursuant to subparagraphs (10)(a) or (b) below;

(c) the receipt by the TDR Bank of a donation of development rights pursuant to subparagraph (10)(e) below; or

(d) the sale or conveyance of development rights by the TDR Bank pursuant to subparagraph (10)(c) below;

(e) and the [assessor] shall adjust the valuations for purposes of the real property tax of the sending parcel and of the receiving parcel or parcels, if any, appropriately for the development rights extinguished or received.

(10) The local government may, by ordinance, establish a transfer of development rights bank, otherwise referred to as the "TDR Bank." The TDR Bank may be operated by the [local

planning agency] or by any other existing or new agency designated by the ordinance, including a [regional planning agency] or the [state planning agency].

(a) The TDR Bank shall have the power to purchase development rights, subject to the approval of the local legislative body.

(b) The TDR Bank shall have the power to recommend to the local legislative body properties where the local government should acquire development rights by condemnation.

(c) If the local government itself does not have the power under the state eminent domain enabling statute to condemn development rights or a conservation easement (which is the same thing), that statute must be amended to give the local government that power, so that it can then be delegated pursuant to this paragraph.

(d) The TDR Bank shall have the power to sell or convey any development rights it may possess, subject to the approval of the local legislative body.

(e) The TDR Bank may, for conservation or other purposes, hold indefinitely any development rights it possesses.

(f) The TDR Bank may receive donations of development rights from any person or organization, public or private, subject to the approval of the local legislative body.

(g) Except for any funding provided to the TDR Bank from the [general or other] fund of the local government treasury, the purchase or condemnation of development rights by the TDR Bank shall be funded from the proceeds of the sale of development rights by the TDR Bank, and a separate account in the local government treasury shall be established for such purpose.

[Note: The local government could simply make an appropriation from the general fund, or it may earmark revenue from a particular tax or fee for the funding of the TDR Bank.]

(11) Two or more local governments may enter into an intergovernmental agreement, pursuant to [relevant state statute], whereby transfer of development rights may occur between a sending parcel in one local government and a receiving parcel or parcels in another local government. All relevant provisions and terms in ordinances pursuant to this Act in all local governments that are parties to the agreement shall be substantially identical, and this may be provided by including with the agreement a common ordinance to be adopted by all parties to the agreement.

(12) This Act, or any provision thereof, shall not invalidate any completed transfer of development rights pursuant to any earlier statute, ordinance, or regulation, if said transfer was valid at that time.

[Note: Paragraph (12) is a "savings clause," preserving the validity of earlier transfers of development rights, even if performed contrary to the requirements of this statute, as long as they were legally proper at the time.]

** This model statute was prepared as part of the Growing SmartSM project. Growing SmartSM is a multi-year initiative of the American Planning Association to develop the next generation of model statutes for planning and land development regulation. The result of the project will be a Legislative Guidebook containing a comprehensive model planning and land use code ready for adoption by state legislatures and including in-depth commentary. Phases I and II (of three eventual phases) of the Growing SmartSM Legislative Guidebook have already been published and are available through APA. Some of the model Sections in Phases I and II have already been proposed as bills in and adopted as statutes by various state legislatures.*