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TRANSFER of DEVELOPMENT RIGHTS (TDR)

Description:

A Transfer of Development Rights (TDR) establishes a market for development rights; that is, TDR allows the transfer of zoning privileges from areas with low population needs (such as farmland) to areas of high population needs (such as downtown areas); these transfers, which occur on the open market, allow for the preservation of the open spaces, while giving urbanized areas a chance to expand and experience continued growth.¹

Through this zoning strategy, developers purchases the zoned, legal development rights from the landowners in areas that have been designated for preservation or conservation (referred to as the "sender district"), then transfer those development rights to areas designated for higher-density, urban-form development (referred to as the "receiving district"). This transference adds density to the existing zoning allowances in that "receiving district." The owner of the open space parcel retains the fee title interest and all other rights to the open space property, including the ability to use the land for non-intensive uses such as conservation, recreation, farming, or forestry. However, once a development right has been sold, a development restriction is recorded on the deed, thereby creating a permanent conservation easement on the land.

TDR is a creative land use strategy that a community can use to permanently protect natural lands or cultural/historic resources in one area of the community and, at the same time, increase the development and economic potential of other land areas in the community. Ideally, TDR protects vital open space and directs development toward areas better equipped to sustain and accommodate higher density—e.g., municipal centers, Main Streets, downtowns, industrial districts, business districts, etc.

TDR has also been used as an historic landmark preservation tool; the unused building height or density of an historic building or area can be purchased (leaving/preserving the historic nature of the building or area) and transferred to a targeted high-density growth area.

Reference:

¹ (March, 2009), *Field Guide to Transfer of Development Rights*. Chicago, IL: National Association of Realtors.

Benefits:

For residents:

- TDR is an effective means of allowing cluster development, multi-unit dwellings, and other housing types, which provides more available housing units; more creative housing alternatives, such as cottage neighborhoods and shared

housing alternatives; and more creatively in site development, such as walkable communities, transit-oriented development, and mixed-use communities—all of which more effectively respond to the needs of the variety of population groups that typify any community, including older adults, individuals with disabilities, young workers, and others.

For the community:

- Transfer of Development Rights is a market-based approach to development and zoning that does not require public subsidies and is less expensive than an outright land-purchase program.
- By preserving vital land resources, TDR supports traditional growth patterns directly by sending development to existing centers that are more appropriate for residential development.
- When used effectively, TDR can revitalize city/town centers, protect open space, and reverse the tendency to build sprawl on suburban or rural greenfields.
- When used appropriately, TDR is a tool that can support the livability of a community, with positive impacts on economic vitality and stability of the population base.

Impediments or barriers to development or implementation:

- TDR is a sophisticated land-management tool—complicated and labor-intensive, requiring professional and experienced staff to administer; thus, municipalities may not have the staff or resources to implement this strategy properly.
- It is often difficult for municipalities to find and to select a financial institution to handle the transfer of credits from the buyer/developer to the owners of the land to be preserved in the sending area.
- Because of the time- and labor-intensive nature of the TDR process, developers may simply choose to seek an "up-zoning" in the receiving district from municipal officials who may be willing to grant them in the scramble for development; such action may achieve a goal in the "receiver district" but does nothing to curtail development sprawl or protect a community's open spaces, rural green areas, or historic sites.
- TDR is most successful in states with county-level land use regulatory authority; with a larger geographic scope, there are a greater number of appropriate locations to send development rights. New York's multi-layered system of local governments makes TDR (already a complicated tool to administer) even more of a challenge to implement successfully.
- Municipalities must be certain that receiver areas have sufficient infrastructure to accommodate additional growth.

Resource—statutory authority:

- General City Law, §20-f;
- Town Law, §261-a;
- Village Law §7-701.

Resource—examples and ordinances:

- (August 6, 2008), *Transfer of Development Rights Program (draft)*, Article XXVII, Town of Lysander TDR Program Policy and Procedures. Town of Lysander, Onondaga County, NY:
[http://www.townoflysander.org/News/TDR%20Program%208-6-08%20-%20BW%20\(2\).pdf](http://www.townoflysander.org/News/TDR%20Program%208-6-08%20-%20BW%20(2).pdf).
- Central Pine Barrens Joint Planning and Policy Commission (January, 2010), *The Pine Barrens Credit Program: Transferable Development Rights in Central Suffolk County, NY*: http://www.pb.state.ny.us/pbc/pbc_overview.pdf.
- R. Johnston and M. Madison (1997), "From Landmarks to Landscapes: A Review of Current Practices in the Transfer of Development Rights," *Journal of the American Planning Association*, Vol. 63, No. 3, pp. 365-378. Transfer of Development Rights statute—Montgomery County, MD: Montgomery County Planning Department.

Resource—written and web:

- Robert Lane (March, 1998), "Transfer of Development Rights for Balanced Development," *Land Lines*, Vol. 10, Number 2. Cambridge, MA: Lincoln Institute of Land Policy: <http://www.lincolninst.edu/pubs/PubDetail.aspx?pubid=424>.
- Jill Clark (Director, Center for Farmland Policy Innovation, Ohio State University) (nd), *Preserving Resources and Property Rights: Transfer of Development Rights*. Ravenna, Ohio: Portage County Regional Planning Commission. Power Point presentation:
http://www.morpc.org/energy/green_region/Jill%20Clark%20TDR.pdf.
- (January, 2004), *Transfer of Development Rights: A Flexible Option for Redirecting Growth in Pennsylvania*, publication #001. Chadds Ford, PA: Environmental Management Center, Brandywine Conservancy. 84-page manual explains the legal framework for using TDR in Pennsylvania and defines a series of seven steps toward creating a successful TDR program, including a sample TDR ordinance, a model TDR restrictive covenant, and a sample TDR deed. May be purchased by contacting: Email: emc@brandywine.org, (610) 388-8326.
- Capital Region Council of Governments (nd), Chapter 3: "Transfer of Development Rights—Fact Sheet," *Best Practices Manual*. Hartford, CT: Capital Region Council of Governments.
www.crcog.org/publications/CommDevDocs/TCSP/Ch03_factsheet_TDR.pdf.
- Rick Taintor (April, 2001), *Transfer of Development Rights Report: South County Watersheds Technical Planning Project*. Providence, RI: Rhode Island State

Department of Environmental Management.

<http://www.dem.ri.gov/programs/bpoladm/suswshed/pdfs/tdrreprt.pdf>.