Transfer of Development Rights

In a Nutshell

Local governments can enact voluntary transferable development rights programs that allow the private marketplace to assess development feasibility while also preserving areas targeted for conservation. Zoning regulations authorize a certain level of development measured by the three dimensional aspect of the regulations (bulk, height and use). Transfer of development rights (TDR) is a technique for preserving a lower level of development density on one site by transferring unused development rights to another site.

A local community may prefer to protect certain areas from future growth, such as farmland, environmentally sensitive areas, ground for open space and parkland, historic districts, or residential areas. The primary benefit to the receiving property is being permitted additional density in an already developed area. The benefit to the sending property owner is receiving cash value and/or tax credits for transferring their development rights to another property owner. The community benefits by achieving a public benefit, such as those listed above.

The “How To”

Establishing Transferable Development Rights is a legal, procedural, legislative, and regulatory action taken by a unit of local government. There is a fairly extensive process in establishing such a program, which typically includes a robust public education campaign.

The American Planning Association offers a brief, general explanation of transferable development rights in their growth management introduction. King County, Washington, has a program to transfer development rights. The two most important technical terms to understand are the *sending* property (selling rights) and the *receiving* property (where the transferred rights will actually be constructed). Rutgers University offers a fairly detailed although still easily understandable discussion with FAQ about exactly how such a system works. The sending property is preserved through a conservation easement, clearly explained by King County, Washington on their website. There can also be a deed restriction that records the easement as well as property covenants.

Planning & Zoning

The central piece to creating Transferable Development Rights is establishing municipal/county code. King County offers an example of such code language.

Limited Opportunities in St. Louis Region for TDRs

TheIllinois state statutes (ILCS) provide the enabling legislation for Metro East communities, but only for historic preservation purposes (65 Ill. Comp. Stat. Ann. ss5/11-48.2-1 to 48.2-7). Missouri state law does not currently enable municipalities or counties to use transferable development rights. While there may be some opportunities for the use of local home rule powers, any such deliberations should be evaluated by your city or county attorneys. If your local government is particularly interested in pursuing these strategies, you should contact your state legislators and discuss the topic. Ultimately, statewide legislation is likely required prior to taking action.

Dollars & Cents

Local Government Cost

The costs to initiate a TDR program is mainly staff time, including legal fees. The first major cost is the feasibility assessment of the regional real estate market. The TDR creation itself, a legislative and legal set of procedures and government actions, carries nominal cost. However, upon launching the program, units of local government will need to evaluate their management strategies. Some jurisdictions have added personnel and dedicated resources to their TDR programming. This allows the program to be more pro-active and more dynamic. In smaller jurisdictions it may be manageable within existing budgets. With more robust programs in larger areas it could cost tens of thousands to staff and manage an active program. Those costs are dependent on the decision-making by local government leaders.

Cost-Benefit to Real Estate Market

The economic benefit to TDR programs is complex and varied - to some degree the cost-benefit analysis of such programs is dependent on the values and goals established by local communities. For example, some areas use TDRs to stimulate redevelopment in their existing communities, whereas other areas have used them to better manage rapid growth and expansion. When designed appropriately, TDRs can achieve either of these seemingly opposite goals.

The *Measuring Success* tab on this tool has more information and links to the types of reviews and assessments undertaken to evaluate the economic, conservation, and net-benefits of TDRs in jurisdictions who have been using them for years.

Measuring Success

The American Planning Association identified the complexity surrounding the evaluation of whether or not TDRs "work". The most difficult first step in evaluating the effectiveness of TDRs and defining success is the very different ways in which TDRs are designed and implemented. In 2009 the APA published a study in the Journal of the American Planning Association (JAPA) that identified Ten Factors that make TDRs successful - analyzing this criteria in twenty (20) actual cities that have TDRs. The author of that study, Rick Pruetz, has also published a full-length book on TDRs that discusses the tool comprehensively, as well as methods to evaluate their success and effectiveness. A critical part of these evaluations is the balance between economic investment and the conservation of farmland/open lands.

How to Ensure Local Success

Right now the only consideration for St. Louis metropolitan area communities is Metro East cities in Illinois. Under state law, TDRs can only be used for historic preservation. Currently, tracking success is as simple as noting when development rights are transferred away from a historic property in your community to a new development site. The two simplest metrics are (1) the number of historic properties saved and (2) the dollar amount of new real estate investment elsewhere that is directly tied to the TDR program. A counter-metric would be the number of historic structures that were demolished. A city or county may want to investigate the reasons surrounding such demolitions to identify if the program needs adjustment.

Discover More

King County, Washington, offers a simple two-page fact sheet that has very clear introductory information on

TDRs.

The Pennsylvania Land Trust Association hosts ConservationTools.org, which provides information that demonstrates the success of both stimulating economic development and new real estate investment, as well as preserving acres of farmland in Pennsylvania. Their resources also include multiple step-by-step guides for establishing TDR programs.