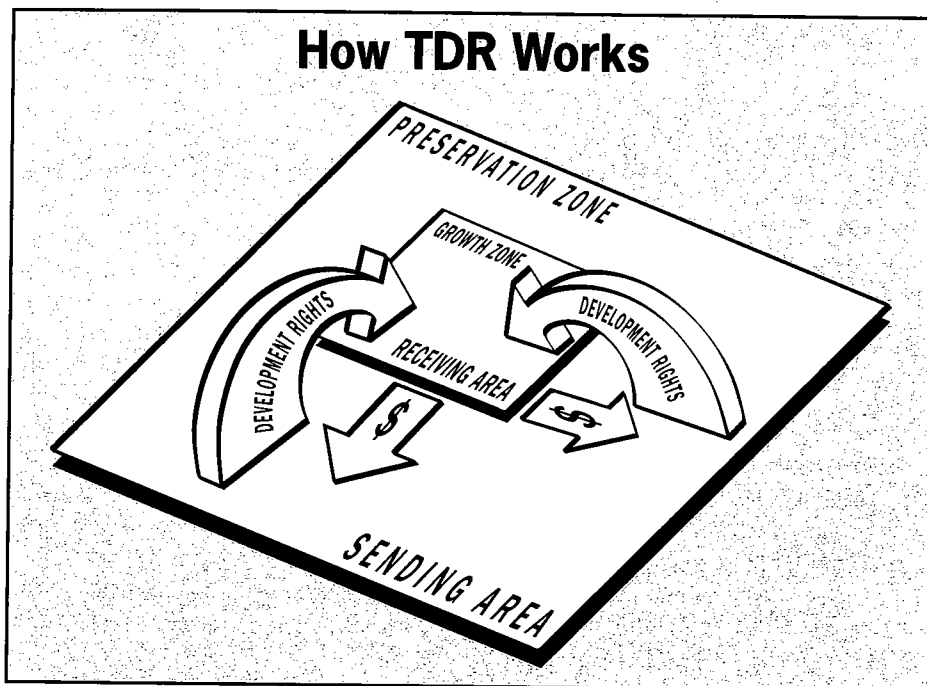


Transfer of Development Rights Our Most Powerful Smart Growth Tool Yet

Philip B. Caton



TDR is a market-based zoning technique in which growth (development) is transferred from places where a community would like to see less development called "sending zones" to places where a community wants to encourage development, called "receiving zones."

Before an enthusiastic crowd standing outside the State House in the brisk afternoon sunshine on March 29, 2004, Governor James McGreevey signed into law the "State Transfer of Development Rights Act," a planning concept the League of Municipalities has advocated for well over 25 years. In so doing, the Governor extended to municipalities throughout the state the authorization to utilize a key smart growth tool which has been available only to municipalities within Burlington County since 1989.

Transfer of Development Rights, or

"TDR" has also been prominently mentioned in relation to the Highlands preservation initiative which involves – in its most expansive iterations – over 780,000 acres of land in portions of seven northern New Jersey counties.

Considering the advance billing, TDR better have broad shoulders to carry the burden of reversing the well-established patterns of land development in New Jersey! Of course, no single technique is a solution for sprawl. Furthermore, TDR is not for the faint-hearted, being among the more complex approaches to municipal land use regu-

lation. Nonetheless, based upon its record both within the state and across the country, TDR should prove to be a very effective tool for municipalities with appropriate land use characteristics and a high level of commitment to see it succeed.

First of all, let's cover the basics. What is TDR? TDR is a market-based zoning technique in which growth (development) is transferred from places where a community would like to see less development (called "sending zones") to places where a community wants to encourage development (called "receiving zones"). The key concept here is transferred: TDR is not a device to stop development but rather a way to redirect it while being equitable to all affected landowners. The transfer is accomplished by separating the right to develop from a property in a sending zone and transferring it – for compensation – to another property in a receiving zone.

According to the state TDR Act, a sending zone is to be comprised of agricultural lands, woodlands, floodplain, wetlands, parklands and other environmentally sensitive areas or areas which should remain at low densities pursuant to local, regional or the New Jersey State Development and Redevelopment Plan. Also, although not typically used for this purpose, a sending zone may also be developed land which is aesthetically, architecturally or historically distinctive and thereby worthy of preservation.

TDR is not limited exclusively to municipalities which are predominantly rural and which intend to fashion comprehensive, municipal-wide transfer advances. It certainly can be used effectively in such a broad-based approach. However, the state TDR Act imposes no such

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requirement; municipalities may utilize it to protect portions of their land area which meet the statutory description of sending zones even if they are otherwise developed at suburban or even urban densities.

A receiving zone must be suitable for development and must be capable of accommodating all of the development potential intended to be transferred from the sending zone. The statute requires this development potential to

receiving zone and may include a method of distributing such costs among developers;

3. Utility Service Plan Element which addresses utility services needed within any designated receiving zone; and
4. Real Estate Market Analysis which examines the relationship between the development rights expected to be generated in the sending zone and the likelihood of their being uti-

as part of its 1981 Comprehensive Management Plan. The Pinelands Development Credit Program is one of the largest transfer programs in the country, with 36,750 acres protected through 2002. The development rights associated with these properties in the "Preservation, Agricultural and Special Agricultural Production Areas" are available to be purchased by developers for use in designated "Regional Growth Areas" throughout the Pinelands.

The mechanics of the transfer of development rights must be set forth in the TDR ordinance and documented by the municipal government. Rights may be sold privately by a landowner in the sending zone to a developer/landowner in the receiving zone. Alternatively, a TDR "Bank" may be established at the local or county level to facilitate the transfer of development rights. Under the statute the TDR Bank can serve as an intermediary between buyers and sellers so long as it does not impair the function of the private market for development rights.

Not surprisingly for such a novel land use technique, the State TDR Act requires elaborate oversight and monitoring of municipal TDR programs. This includes review by the applicable County Planning Board and County Agriculture Development Board as well as approval by the State Planning Commission of a petition for endorsement of any Master Plan which incorporates a TDR component. In addition to these pre-adoption requirements, the Planning Board and governing body must review the operation of the TDR ordinance three years

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be "realistically achievable" considering the following factors:

1. The availability of infrastructure (roads, water, sewer and other utilities);
2. the zoning standards (such as density restrictions) applicable to the receiving zone; and
3. the local land market conditions.

These proofs are to be documented by the Planning Board through a series of Master Plan Elements which must precede the adoption of a local TDR ordinance. These include the following:

1. Development Transfer Plan Element (a new element under the Municipal Land Use Law);
2. Capital Improvement Program which includes the location and cost of all necessary infrastructure in the

lized in the receiving zone "given current and projected market conditions."

For those readers who are familiar with municipal planning practice in New Jersey, the evaluation of the local real estate market and the integration of that analysis into the Master Plan may seem like uncharted territory. However, this aspect of the statute is modeled directly after the Burlington County TDR Demonstration Act. This trail has been blazed successfully by both Lumberton Township and Chesterfield Township with guidance from Burlington County.

In addition, the economic implications of TDR were also the subject of analysis by the New Jersey Pinelands Commission prior to the adoption of the Pinelands Development Credit Program



Horse farms, like this one in Chesterfield, are often the target of preservation efforts through TDR.



Smart Growth is Working in Chesterfield Township

Smart Growth is Working in Chesterfield Township, a sparsely-settled rural community in northern Burlington County enacted a Transfer of Development Rights (TDR) ordinance in 1998 which is channeling future growth into a new village designed according to neo-traditional planning principles.

Notwithstanding burgeoning growth in neighboring municipalities, Chesterfield – with 2,700 residents in 21 square miles – has retained much of its agricultural heritage. The New Jersey State Plan classifies the entire Township as Rural (Planning Area 4), a designation which indicates the presence of highly productive soils and lack of growth-inducing infrastructure.

field master planned Old York Village according to traditional neighborhood design concepts – the planning principles by which historic American settlements such as nearby Crosswicks Village evolved. Consequently, although the Receiving Area is being developed by different homebuilders, the plans for each tract must conform to the township's conceptual village plan in certain key respects, including the design of collector roads, recreational facilities, the natural open space network and stormwater management. Site planning and architectural design standards have also been adopted to ensure that the design of buildings and the relationship among them echoes traditional American building

obligation by integrating low and moderate income housing with market-rate housing construction throughout the Receiving Area.

At this point, 90 percent of the land in Old York Village is under contract to or owned by residential developers. Subdivision approvals have been granted for over half of the projected residential units and, most significantly, construction has commenced on the first neighborhood.

Chesterfield received critical financial and technical support from Burlington County and the State of New Jersey Departments of Community Affairs and Environmental Protection. This assistance was pivotal, particularly given Chesterfield's small tax base and limited resources. The state also provides sewage treatment to Old York Village through a contract between Chesterfield and a state correctional facility within the township. The township and the county continue to work together as the TDR program matures and are currently organizing an auction to facilitate the sale of privately-held development credits.

In Chesterfield Township, the interests of landowners, farmers, homebuilders and open space preservationists share common ground. Every house constructed in Old York Village represents the retirement of a development credit and the preservation of land in the balance of the township. Over 2,400 acres have been preserved since 1998 through the enrollment of credits. When Old York Village is fully developed, the preservation of the environs around it will also be complete. ▲

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landowners, farmers, homebuilders and open space
preservationists share common ground.

Prior to enacting TDR, the township had preserved over 30 percent of its land area (4,575 acres) through various conventional state and county programs.

Under the Burlington County Transfer of Development Rights Demonstration Act, Chesterfield provided for the transfer of development rights from the balance of its vacant land (the "Sending Area") into Old York Village, a new planned community on 560 acres in the northern part of the township (the "Receiving Area").

Rather than simply adopting zoning regulations and letting developers pursue their individual designs, Chester-

field styles and development patterns.

When fully developed, Old York Village will consist of up to 1,200 housing units in a wide variety of attached and detached models, a new elementary school adjacent to centralized recreation facilities, a network of neighborhood parks and a mixed-use village center with retail, professional office and convenience uses to serve local market needs. Under local ordinances the cost of constructing the collector roads and the common recreation facilities which serve the village is being distributed equitably among the developers. The township is also meeting its affordable housing

and again five years after adoption and assess its performance against statutory standards.

So, how to get started? The statute directs the Office of Smart Growth in the New Jersey Department of Community Affairs to provide technical assistance to municipalities and counties which are interested in pursuing TDR. The Act also allocates funds for match-

ing grants of up to \$40,000 to municipalities for the studies required for a TDR program. These grant funds will be administered by the New Jersey Department of Agriculture with collaboration from the Office of Smart Growth. The respective departments are preparing the rules and procedures at this time.

In the meantime, municipal officials

with an interest in TDR would be well-advised to review a copy of the State TDR Act (Ch.2, P.L. 2004) and to avail themselves of the information and experience on TDR in New Jersey. These include excellent resource materials compiled by New Jersey Future, the Burlington County Department of Resources Conservation and the New Jersey Pinelands Commission. ▲