



In the Loop

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Transfer of Development Rights: An Opportunity for Growth and Economic Development

October/November 2014

Local government organizations have implemented a variety of mechanisms for the preservation of the natural environment. In fact, many local governments have collaborated with the development community to establish programs that consider all vantage points on such matters. In response to sprawling conditions of the post-World War II suburbanization movements, many communities find it more desirable to allow larger numbers of units in smaller spaces than to have fewer units spread out over a larger space, increasing density in certain areas while preserving nature in others. The desirability of increased density stems from its promotion of a healthier and walkable lifestyle through the attraction of mixed use facilities. This results in reduced infrastructure costs due to the compactness of development, which promotes higher property values because of its proximity to urban centers. As more Millennials migrate to vibrant urban environments rather than sprawled suburban neighborhoods, the market demand for city centers and high density developments will only increase.

A Transfer of Development Rights (“TDR”) program is an example of a land management tool that considers the interests of the development and environmental communities. Indeed, a TDR is a market-oriented tool that facilitates the preservation of a community’s rural character and resources, while simultaneously protecting property values and accommodating growth and density. In a sense, these programs allow local governments to direct growth in a manner that is fair to landowners and consistent with an overall development strategy. Effective TDR programs have the potential to create a market that compensates property owners whose development rights have been altered, while concurrently preserving certain areas.

TDRs: How They Work

According to Doug Dillard, Seth Weissman and Jill Skinner Arnold in *Zoning and Land Use Law in Georgia*, “TDRs are an innovative, market-based planning tool, enabling the preservation of open spaces, historical sites or buildings, and farmland by shifting the development rights of those parcels, called ‘sending areas,’ to other parcels more suited for higher density, called ‘receiving areas.’” Generally, a TDR Bank is created to assist with the buying and selling of TDRs, as well as managing and keeping up with their appraised values. The bank can be a public, quasi-public, private, or non-profit organization.

In short, “the TDR concept is based on the principle that some locations are better suited for growth than others. TDR works as a mechanism for preserving certain parcels, designated as “sending areas,” by transferring the right to develop that land to other parcels located in “receiving areas.” Instead of suing the City or Commission for a takings claim, as would be typical in Euclidian zoning, the property owner can give up the right to develop their land and receive developmental credits in return. This is a way local governments can compensate property owners for land use restrictions that may reduce a property’s market value. The credits can be sold or traded to anyone, as if the land itself were being sold. The price of the credit is left up to the participants and the free market. Once the credits are sold, a permanent conservation easement is placed on the site, legally restricting development there.

The success of TDR programs depends, in large part, on local governments. Specifically, local governments must (1) develop a formula for the allocation of TDR’s between buyers and sellers; (2) determine when and how credits may be used; and (3) police the program to ensure that once a property owner sells their development rights the sending parcel is permanently restricted from development. Generally, developers purchase credits that allow them to expand development beyond current restrictions and limitations in the receiving areas, and thereby increase density in urban centers. Local governments must provide for a robust *continued on page 3...*

President's Message



This has been a busy Fall for the Council with many programs and important initiatives underway.

Most importantly, the 2014 Four Pillar Tribute Honoring Steve Selig on October 2, at the Georgia World Congress Center was an overwhelming success. With over 1,400 guests in attendance this was the largest Tribute to date. As the 25th Anniversary Tribute Event it was fitting and a great privilege to be able to honor Steve for his lifelong contributions to the community and for his deep commitment to the City and the region as a visionary of growth. A recap of the night can be found by clicking [HERE](#).

The Council is taking nominations for the 2015-2016 term of the Board of Directors. We are interested in hearing from members who would like to nominate someone who would be committed to advancing the Council and our mission. Nominations are due by October 31st. Please click [HERE](#) for more information.

Amanda Crater, Director of Membership and Programs and Members Services Manager Mallory Johnson will soon be in touch with you as the 2015 membership campaign kicks off on November 1st with Brent Reid as Chair of the Campaign. We have exceeded our goal for 2014 and we look forward to another great year next year.

Please keep an eye out for your renewal packages and I urge you to consider upgrading your membership and signing up for a discounted package that can include your membership and sponsorships.

We are looking forward to the close of the year with numerous exciting programs including our 5th Annual CID Recognition Event on November 12th and our Annual Meeting on December 8th. Please check your Priorities of the Week for more details.

Thank you all for your support and your commitment to the Council and please do not hesitate to call on me or anyone on the Council staff for assistance at any time.



UPCOMING EVENTS

To Register, Go To
www.councilforqualitygrowth.org
and click on the event tiles for these events

Or Contact Mallory Johnson at 770-813-3370, mj@councilforqualitygrowth.org



COUNCIL
for **QUALITY**
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UPCOMING
EVENT

5th Annual CID Recognition Event



Wednesday, Nov. 12
Loudermilk Center
7:30 AM
[Click here to register now.](#)



COUNCIL
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UPCOMING
EVENT

Annual Meeting & Economic Forecast with President and CEO, Federal Reserve Bank of Atlanta Dennis Lockhart



December 8
11:30 am
Westin Atlanta
Perimeter North

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and competitive marketplace for these programs to succeed.

TDRs in Georgia and the Metro Region

In 1998, the Georgia General Assembly enacted legislation that allowed for local governments to create TDR programs. See GA ST § 36-66A-2. The "Transfer of Development Rights Act" was amended significantly in 2003, making adaptation procedures considerably easier for local governments. For a TDR program to be implemented in Georgia, local governments must pass an ordinance which provides for all of the following:

- The issuance and recordation of the instruments necessary to sever development rights from the sending property and to affix development rights to the receiving property;
- The preservation of the character of the sending property and assurance that the restrictions will bind the TDR-selling landowner and every successor in interest;
- A system for monitoring the severance, ownership, assignment, and transfer of the TDRs;
- Provision for a TDR bank;
- Provisions that will allow private investors to purchase the TDRs;
- A map "or other description of areas" as sending and receiving areas; and
- "Such other provisions as the municipality or county deems necessary to aid in the implementation of the provisions of this chapter."

Additionally, local governments must advertise and hold a hearing and notice on the proposed ordinance to ensure due process.

Fulton County became the first area in the southeastern United States to create a TDR Ordinance in 2003, with the goals to "promote the conservation of natural, agricultural, environmental, historical, and cultural resources and to encourage smart growth in appropriate areas."

City of Atlanta

The City of Atlanta TDR program is outlined in the Atlanta City Code § 16-28.023. The legislative intent states that "this ordinance allows and controls the severance of development rights from a sending property and the transfer of development rights to a receiving program." Three criteria must be met in order to qualify as a "sending area": (1) Residential sending areas: A lot or combination of contiguous lots which are partly zoned for single-family or two-family residential (R-1 through R-5) and partly zoned for multiple-family residential (RG or General Residential) but used exclusively for single-family or two-family residential; (2) Properties designated as a landmark building or site or as a historic building or site by the Atlanta Historic Preservation Ordinance; and (3) One or more parcels suitable for greenspace and preserved as greenspace either by conservation easement or by City acquisition.

Chattahoochee Hill Country

Chattahoochee Hills is a great example how governments may craft the TDR programs to fit their unique needs and development goals. The Chattahoochee Hill Country Alliance, formed by South Fulton landowners in partnership with The Nature Conservancy, developed a 40,000 acre master plan for part of South Fulton County in 2002. The master plan was adopted by the Fulton County Board of Commissioners unanimously as part of the 2015 Comprehensive Land Use Plan. A major focus of the implementation of the comprehensive plan was the implementation of a transferable development rights program. Fulton County was required to approve the TDR ordinance before Chattahoochee Hill Country could move forward with their plan.

A non-profit TDR bank was established, which protects priority green space parcels, identified by the master plan, and focuses new development in selected areas where it will not disrupt the local character of the area. The bank keeps track of properties as well as their potential value. Unfortunately, the downturn in real estate development affected the demand for TDRs since 2006, and as the sale of TDRs is entirely based on market value and demand, the bank has not been very active. Currently, the bank controls TDRs covering 22 acres on two parcels.

City of Milton

The City of Milton established a TDR program, implemented within the form-based codes (FBCs) of two receiving

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continued on page 4...

...continued from page 3

areas - Crabapple and Deerfield - in 2012 and 2013, respectively. Within the FBCs, sending site landowners can voluntarily offer their property as either an "Open Space TDR Sending Site" or a "Parks/Greenway TDR Sending Site". Open Space Sending Sites remain under private ownership, subject to a conservation easement which would permanently limit future development on the site once the TDR credits are sold. Parks/Greenway Sending Sites are transferred from private ownership to the City of Milton and secured for public access, to be turned into public parks or civic space, and are issued TDR credits in return for this transfer of title. Parks/Greenway Sending Sites receive TDR credits at a higher rate than Open Space Sending sites because the property has a higher potential as a community asset.

Owners of TDR credits may retain them, transfer them directly to receiving area developers, or transfer them to a third party that could also either retain or transfer them to developers. The City itself may also buy, hold and sell TDRs. Once transferred to a receiving site, two bonus building units may be granted per each TDR credit in Crabapple, and four units may be granted per each TDR credit in Deerfield. For example, if a one acre site is allowed five (5) building units without TDR's, a purchase of one TDR credit in Crabapple would allow for seven (7) building units on the site, and nine (9) units on a similar site in Deerfield. Sites are subject to a maximum density limit within the zoning code.

"The purpose of the TDR program in Milton is to help preserve our green space. Accordingly, the City Council is very interested in utilizing any and all viable tools that will help us achieve this goal. We look forward to seeing the TDR program grow in the future as development demand in our Crabapple and Deerfield areas increases" said Kathleen Field, Community Development Director for the City of Milton. **"We've done a lot of work on this program to date: from establishing a methodology for determining value for the TDR credits to providing samples of legal documents that can be used to close the transactions. We would be honored to mentor any interested community who has an interest in formulating a similar program. We feel that this program is a win – win for everyone!"**

TDRs: Opportunity for Urban Development and Natural Preservation

Governments are encouraged to embrace quality and responsible growth as our region continues to expand. TDRs are an innovative land management tool that local governments can add to their toolboxes in when reaching decisions about such issues. As the development industry and market continue to recover, the demand for TDRs should increase as a means of balancing both the market demands for development in urban centers and the local government necessity of preserving our natural environment.

Thanks to our Premier Members

