Transfer of Development Rights

Development rights are "transferred" from one parcel and placed on another. This transfer protects the "sending" parcel, from further development and causes the "receiving" parcel to carry the new density in the form of more building area, more units, or a combination of the two. It can apply to residential, industrial, and /or commercial development. The development rights allow the developers to exceed a baseline level provided in the zoning code and supported by the community's comprehensive plan. **TDRs** allow us to save the land we want – rural economy uses, wetlands, vistas, farmland, etc., without paying for it, and put development where you want it. TDRs have the advantage of using the free market to implement and finance the redistribution of development rights in ways that planning and zoning cannot.

Sending Areas

Likely sending areas include the AR-1 and AR-2 zones of the Rural Policy Area. According to Envision (Loudoun 2040 Draft May 7, 2018; 2-76), there are approximately 11,643 residential units under current policy with zoning entitlements. This is a long-term liability to the County since they would have to educate approximately 6,750 students (2.9 people per household and 20% students per household) with no additional proffers. TDRs would allow the County to pick up addition proffer money related to new development while reducing this liability. Also under current policies, there are 6,170 acres available for development (Ibid., 2-62) in the Transition Area. As transition from low density residential occurs, TDRs would be a valuable tool to accommodate any up-zoning. There are areas in the Suburban Areas that could be designated as sending areas to promote establishment of parks and trails in that area.

Receiving Areas

A likely receiving area includes the Silver Line Metro stations. The proposed Comprehensive Plan calls for increased density to support this special tax district where good transportation linkages will exist. Another area or use that could benefit from TDRs is data center development. Wherever they are located, they would benefit from rezoning and/or higher FAR. Another potential receiving area is the Transition Area if indeed it is planned for higher density and/or commercial / industrial / data center development. Many legitimate questions exist about the wisdom of selecting any of these areas for additional development at present. Policy decisions of the BOS will be required before any of them could serve as receiving areas.

TDR Bank

A TDR "bank" could be initiated by the County. It would issue and register TDRs, keep track of their use in "receiving" parcels, and monitor the deed restrictions placed on "sending" parcels. The bank could act as an intermediary to broker TDRs between buyers and sellers. The revenue generated by the program would pay the costs of staffing. The bank would be a type of revolving fund arrangement whereby the County would set a price for TDRs, purchase them from willing sellers and resell them to developers at a profit. It could be initially financed by bonds in order to "jumpstart" the program.

Legislation & Precedent

Pursuant Code of Virginia 15.2-2316.2, localities may provide for transfer of development rights. (see attached). Frederick County, VA has enacted a program, Prince William County has a proposal and is considering it, and Montgomery County MD has had a program in place for years.

Q&A:

Virginia already has a good Conservation Easement program, why should we also do TDRs?

1) The cost of an Easement is somewhat high and cost effective mostly for larger properties. A TDR program will give smaller land owners an alternative way of exchanging their vested development rights for cash
2) A TDR program eliminates any risks that might be involved with audits of donation and tax credits on personal tax returns

Who will benefit from the program?

1) The land owner will receive a onetime payment from a developer who is buying the TDRs to rezone property to commercial or industrial use as well as higher residential densities
2) The developer will purchase the TDRs from a pool of volunteer donors at a competitive market price. The developer would be able to obtain a discount for his proffer based on the free market forces of supply and demand
3) The County could charge a transfer tax to cover overhead and administration of the program

Who would be able to sell TDRs?

1) Farmers and land owners in the designated "Sending Areas."

Where would the TDRs be transmitted to? If you just transfer the density, how does that save money overall? The East is interested in getting dumped upon!

1) The Envision 2040 Draft calls for high density, mixed-use development around the Silver Line Metro stations. This is a perfect opportunity to help create incentives to rezone these areas as described therein.

How would the County benefit?

1) According to the 1040 Envision, there are 11,643 (page 87 Chapter 2-76 Envision final draft) entitled residential units in the Rural Policy Area. That means over 30,000 more residents that will need public services, such as schools, law enforcement, safety centers, roads, etc. without any additional revenue to the County. It is a well-established fact that property taxes from residents do not pay their share for services they receive. The County depends on tax revenue from the commercial and industrial sectors to subsidize the residential needs.
2) The County has financial obligations to support the Silver Line. The revenue comes from the Silver Line District's special tax district. These mixed use centers need to grow in order to support this financial obligation.