

Transfer of Development Rights (TDR) Program

Summary: In a Transfer of Development Rights (TDR) program, the rights to develop are removed from a particular piece of land, sold to an owner of another parcel of land that is slated for development, and transferred to the land facing development. The land from which the rights were sold (sending property) can no longer be developed, because its severed development rights are now attached to a different property (receiving property). The receiving property now has additional rights and is capable of having greater density (typically in the range of 30-50% more units) than normally allowed by the local government's comprehensive plan. A developer would be interested in such an arrangement because higher unit densities become possible, equating to more overall profit. Local governments use TDRs because they are a way to fund open land preservation without outlays by the local government body. It should be noted that developments resulting from a TDR program must still fit in with land use plans, zoning, and capital improvement projects of the region.

Qualifying Lands: Land must exhibit significant natural, scenic or agricultural value in the foreseeable future, and must not have restrictions that are difficult for the prospective easement holding organization to enforce. Proximity to another protected area, plant and animal species present, and water resources on site are examples of factors used to evaluate a property in consideration. These factors are used to obtain an overall score for the parcel, and this score is then considered amongst any other concerns regarding the property.

Important Details: The TDR program must respond to countywide planning policies as well as both county and municipal comprehensive plans. Additionally, TDR programs respond to growth management objectives by focusing growth in urban areas where services such as sewer, water and transportation exist or can be readily provided. A TDR program is voluntary, but sending sites must typically be certified for eligibility. These sending sites must also meet certain criteria that are set up in the system and provide a public benefit in categories such as agricultural lands, forest lands, regional trails and open space areas, as well as habitat for threatened and endangered fish and wildlife species. Within guidelines, density may be transferred to unincorporated urban areas, incorporated cities, and sometimes even rural areas. There must be interlocal agreements between incorporated areas that are receiving the development rights and the county that is sending the development rights. A permanent conservation easement is then placed on the sending site before density may be transferred off of it. This ensures the sending property will be maintained in forestry, farming or other uses consistent with the policy goals of the TDR program. The development rights may be transferred through private party transactions, or under limited circumstances may be purchased by a TDR Bank.

Status in Lake County: As of this writing, there are no true TDR programs in Illinois. However, in the early 1970's, Chicago designed a TDR program for areas and buildings within the city. This system never came to fruition due to political issues within the city, but the State of Illinois adopted TDR legislation based on the Chicago model, and this is still in effect.

Benefits to Landowner: There are two sets of landowners who benefit. The receiving property owners benefit in gaining additional units for construction, while the sending owners know their land is preserved into the future, and also receive money for selling their development rights. Both of these benefits combine to provide communities with more efficient use of space and infrastructure.

Tax Incentives: The tax incentives are generally for the sending property owner, who now has a lower property value and, as a result, will have lower property and estate taxes.