



# Transfer of Development Rights: A Real Policy Option for Ohio?

- A Workshop Report -

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## ***Introduction***

Local governments throughout Ohio are seeking ways to guide development and protect open land, including working farmland. The most recent addition to the list of policy instruments is the Agricultural Easement Purchase Program administered by the Ohio Department of Agriculture. The program allows the State to provide matching grants for communities or land trusts to purchase agricultural easements from willing landowners. The program has provided real substance to the farmland protection effort throughout the state. Purchasing agricultural easements is effective, but expensive. While the program forms a starting point for Ohio farmland policy, it is not enough on its own to resolve the conflicting demands for development and farmland protection. Other available options in the Ohio package include rural zoning, whose application has been spotty at best, and the Current Agricultural Use Value Assessment program, which helps farmers avoid the tax burden of speculative increases in land value. CAUV is important, but hardly adequate to significantly alter the pattern of rural land use change.

The Transfer of Development Rights (TDR) is a policy option for land protection that deserves serious attention in Ohio. The basic idea with TDR is that the “right to develop” is severed from land having important agricultural, open space or ecological value and made available for sale to landowners in an area where higher density development is encouraged. Thus, those who propose new development are encouraged to develop in certain areas, and purchase the right for that development from an owner in an area where development has been discouraged. There is no public funding needed for the transaction, thus TDR is relatively inexpensive for the public treasury. But TDR does require leadership and public resolve to redirect development pressure.

Some have argued that TDR programs are not possible in Ohio because the local government’s authority to transfer development rights is not expressly authorized by state statute. Others have observed that TDR is “practically legal” and with a little leadership can be legitimately employed by local governments under many conditions. The purpose of the workshop “Transfer of Development Rights: Can TDRs be an Option for Local Government in Ohio?” was to “flesh out” the concept of TDR for Ohio, subject it to scrutiny by professionals, and thereby improve the quality of debate on this topic. We feel that TDR deserves more thoughtful attention in Ohio than it has had thus far.

The ideas presented in this report are drawn from presentations by workshop speakers and from discussion with the 70 participants in the session held on December 5, 2002 in Columbus, Ohio, agenda attached (Appendix C).

## ***Transfer of Development Rights: The Basic Idea***

Land is a bundle of separable rights that create opportunity and obligation for the owner in fee. These rights, including the right to develop, may be severed from the bundle and individually sold or transferred to others in some way. The whole bundle can include mineral rights or other sub-surface rights, the right to lease or to use as collateral supporting a loan.

The right to develop is often the *most* valuable right in the bundle. It reflects the current value of income to the owner from a more intensive future use of the land. That right may be transferred from a parcel with desirable open land amenities, thus keeping it open, to another parcel where greater development density is in the public interest. Generally, areas having open land amenities and areas for increased development are established through land use planning and zoning by the community.

The value of a parcel's development right reflects the value of additional density to the "receiving" parcel owner in an area permitting development, and the present value of possible future development to the "sending" owner in the open space area. The market for the development right may be private or public. In the former, landowners in the sending and receiving areas negotiate the deal, agree on a price, and the transfer is accomplished. In the latter, a public entity (county commission, special farmland board, e.g.) will broker the deal or even buy development rights from the sender, bank them for awhile if needed, and sell them to an eligible developer. In either case, though, public oversight is necessary to assure that the transfer is consistent with the public interest. The big advantage of TDR is that it is market-oriented, demanding little of the public treasury except some administrative structure. Sending areas can include prime farmlands, environmentally or ecologically sensitive areas, historic/archeological sites, groundwater recharge areas, affordable urban housing-- basically any area where greater development density would not be in the public interest.

Transfer of development rights *within* a political jurisdiction is usually easier to accomplish, with one government and set of rules. Transfer *between* political units takes some coordination, and usually a formal agreement of some kind. It also takes more creative leadership to get it done.

Some TDRs are completely voluntary, where senders and receivers simply want to participate. Other programs begin with down-zoning the allowed density in the sending area, thus requiring the owner of open land to sell development rights or just live with the loss of economic value.

### ***History of TDR***

The New York City Landmarks Preservation Law of 1968 is usually cited as the first TDR. Leaders there were worried about development pressure on historic buildings and created a means for owners of historic buildings to sell development rights to developers needing additional density rights in another part of town. Senders in this case lost the right to develop their parcels through a zoning change, but were compensated for the loss by the receiving developers who were obligated to buy additional density rights to meet their goals.

About a dozen municipalities around the country enacted their own TDR programs in the 1970s. State-wide enabling proposals were debated in New Jersey, Maryland and

Virginia in that decade as well. The concept was emerging as a serious option for land use planning.

Montgomery County, Maryland enacted the nation's leading farmland protection TDR in 1980, following the 1974 down-zoning of significant farmland areas. More than 38,000 acres of strategic farmland have been protected through TDR in that county. The New Jersey Pinelands Commission protected 13,000 acres of ecologically significant land in the 1980s as well. Now about 25 states grant specific authority for 125 local TDR programs, 47 of them in cities, 30 in counties and the others some mixture of the two (Pruetz, 1997). Urban applications are common -- the Seattle TDR was enacted to protect low income housing from the gentrification process.

### ***Steps for Creating a TDR Program***

First, sending and receiving areas within the relevant jurisdictions must be defined through a planning process. All interests must have the opportunity to learn about and help shape the program. Areas for higher and lower development density must make sense in the overall planning perspective of the area.

The number of development rights available for sale must be defined, based on allowed density in the sending area. In the Montgomery County Maryland case, for example, allowed density on target farmland was reduced from one unit per 5 acres to one unit for every 25 acres. That meant that for every 25 acres, the owner had 4 rights to sell. Then the county may add bonus density rights as additional incentive for the sending owner. Allocation of sending rights may also consider differences in land value throughout the area, with farmland forgoing high development value receiving more rights to sell.

The number of rights required in the receiving area should depend on factors such as the type of development expected (single family/multi-family, detached/condo), infrastructure capacity and square-footage requirements for commercial facilities.

The next step, for multi-jurisdictional programs, is to get the cross-jurisdictional agreements in place.

### ***Economic Considerations***

There are both equity and efficiency aspects to TDR. Equity considerations always swirl around the question of who should pay for the public purpose of protecting open land and guiding development. Strict regulation through zoning or urban growth boundaries implies that those losing development opportunities pay the cost; in theory, gains to society far out-weigh losses to the few owners of open land, so the change is a net improvement. That is faint comfort for those asked to pay. TDR helps to eliminate this "windfall/wipeout" syndrome (see Hagman, 1974) by requiring those who gain from added development opportunity to compensate those asked to have less development opportunity, all in the public interest. If these trades can be made, the change meets the efficiency test and seems to be a fairer sharing of the cost.

A successful TDR program requires that the right for added density is worth something to the developer. If the developer can already build all he/she wants within the current allowed density, an additional density right has no value. And the owner of open land must feel that the offered price of a development right is equal to or greater than the present value of *possible* future development, given the market trends and growth management rules. These are the calculations of rational buyers and sellers in any market. Further, there must be transparent and consistent development rules. If a developer feels that rights can be granted through zoning changes or other adjustments, there is less incentive to negotiate with a sending owner.

Several TDR programs have publicly operated “development rights banks” that help adjust for the uncertainties of time and market. A public entity will buy rights from eligible receivers, hold them, and sell to eligible receivers when conditions are right.

The major economic question with TDR seems to be what is the development right really worth? The answer to that is unique to the market and institutions in a particular place. Development rights being purchased under Ohio’s Agricultural Easement Purchase Program averaged close to \$2,500 an acre the first time around. The development rights in the Boulder, Colorado program are going from \$20,000 to \$50,000 apiece. In Santa Fe, New Mexico the price in their voluntary program averaged \$4,000 for each right. The price depends on scarcity of open land, the number of rights per acre in the sending area and demand for housing or other development in the receiving zones. Economists can estimate the feasibility for a particular place (Small *et al* 1978; Chavooshian, *et al* 1976; Voget 1999). There is no substitute for site specific analysis in discussing the possibilities for TDR.

### ***Recent Examples of TDR Programs***

**King County, Washington** enacted a TDR program in 2001 (King County Office of Regional Policy 2002). It is a voluntary program, but requires that sending areas be specifically certified as contributing public benefit to the county. Receiving sites may be unincorporated parts of the county or municipalities with a cooperative agreement with the county and adequate development infrastructure. The number of rights that an owner in a sending area may sell depends on the local zoning and certain “bonus density” rights added by the county to sweeten the deal. The buyer of rights has the discretion to exercise them right away, hold them for future use, or sell them to another eligible user. The county has created a development rights bank to hold rights if necessary. The sender may also bank rights by accepting a development rights easement in return for a development rights certificate to be redeemed when the severed rights are finally used or sold. The county also provides “amenity funds” for receiving zones to help them handle additional density. These funds may be used for cultural or community facilities, community art, parks, trails, roads, parking facilities and other worthy activities.

Clearly, King County is an active participant in their voluntary program in which buyers and sellers of rights contact each other directly and negotiate a price. The county helps the process along with incentives and information.

**Dane County, Wisconsin** is in the early stages of considering TDR, further along than Ohio, but not much. The key term in Dane County seems to be “transfer of splits” from farmland in townships with 35 acre minimum lot agricultural zoning to receiving areas able to handle greater development density (Dane County WI, 2002). Transfers *within* a jurisdiction are considered fairly simple to accomplish within existing law, but transfers contemplated *between* the 60 or so units within Dane County will likely require state enabling legislation. The latter may be the more difficult to accomplish, but would also be the most effective with urban and rural areas involved.

### ***What About Ohio?***

There are some problems with Ohio planning law that contribute to a general sense of frustration about land use change at the rural-urban fringe. These problems may actually set the stage for innovation with TDR and other mechanisms.

- Comprehensive planning is completely voluntary in Ohio. Some places plan, others don't, and planning is not a legal pre-requisite for land use zoning.
- Subdivision review is required only for lot splits of less than 5 acres. If the parcel is greater than 5 acres, no oversight is exercised, except for health regulations. The result has been a profusion of 5+ acre home sites throughout the state.
- Local governments often compete with each other for development opportunities. There is little cooperation among local units.
- Regional planning is not truly regional in nature, but is based on the county, with little county-wide oversight of local action.
- Developers are responsible for on-site infrastructure costs only, leaving the off-site and regional impacts to local governments.
- Most communities are “over-zoned” for future development, the wishful thinking approach to growth management. For TDR to be successful there must be a demand for greater density.
- Community taxpayers are often left with two unappealing options, to finance the infrastructure shortfalls created by new development or live with the consequences of inadequate roads, schools, fire protection, etc.
- Planning law is old in Ohio, in desperate need of resuscitation. It may be time for a comprehensive land law review commission to examine the whole bundle of statutes affecting the pattern and pace of development, identify gaps and inconsistencies, and recommend change based on that analysis.

There is interest in Transfer of Development Rights throughout rural Ohio.

- Thirteen counties and one tri-county group recommended TDR as part of their farmland preservation task force report in 1999-2000.

- The first round of the Agricultural Easement Purchase Program under the Clean Ohio Fund produced 442 applications by rural municipalities, counties or land trusts. This response far exceeded expectations, far out-stripping the state and federal dollars available for the program.. There is “pent-up demand” for transfer of development rights to some public or other private entity in return for permanent restriction on development in these “sending” areas. The second round of applications for this purchase program will begin in April, 2003.
- Three state level farmland preservation summits at the Ohio Department of Agriculture auditorium in Reynoldsburg averaged 180 attendees over the past three years. People want to know more about TDR.

There are immediate possibilities for voluntary transfer of development rights within a single Ohio jurisdiction. It takes leadership and the political will to get it done. Municipalities and Ohio’s only charter county (Summit County) could likely proceed now.

Cooperative Economic Development Agreements among communities sharing a common vision are possible now, and in fact are in place for other purposes in several areas. These CEDAs could presumably be adapted for TDR programs among several jurisdictions. Again, leadership and community support are the keys.

### ***An Application – Fairfield County, Ohio***

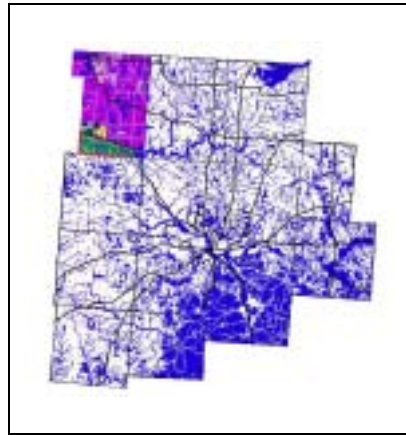
Fairfield County is among the ten fastest growing counties in Ohio, with pressure from Columbus some 20 miles away. The county totals 325,000 acres, of which 56% is farmed. As with the rest of Ohio, farm size has increased and number of farms has decreased in the past decade. Some 77% of developed land was previously considered “prime” farmland under the USDA definition. Rural parts of the county are feeling the pressure on existing roads.



***Fairfield County, Ohio***

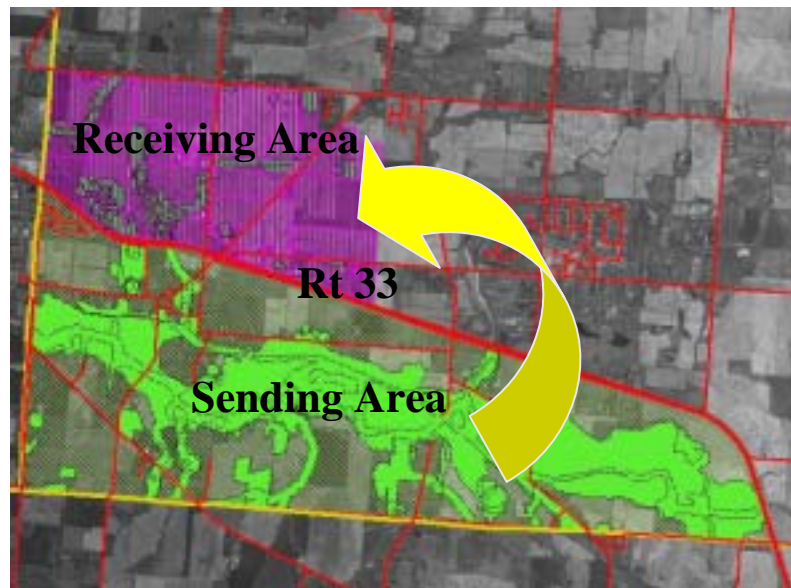
A CEDA is in place for the Village of Canal Winchester and Violet Township, including both a small municipality and agricultural countryside. Thus, the basic structure for

considering a TDR program *may* exist in that part of the county. The CEDA agreement makes it possible for the development standards preferred by the municipality to apply throughout the area and for the township to retain its full size and tax base. The agreement establishes the basis for the municipality to share income tax revenues with the township to accommodate the transferred development rights. The combined area has an incentive to market itself as a location for various economic activities, with critical open areas protected. The apparent need to annex to the municipalities is diminished.



*Violet Township – Fairfield County, Ohio*

The area contains viable sending and receiving areas for implementing a TDR program. Included as possible sending areas are some working farmlands but primarily environmentally sensitive areas.



*Sending and Receiving Areas*

Possible receiving areas in this part of Fairfield County have adequate infrastructure and existing development, opportunities for increased density.



***Proposed Receiving Area***

The potential sending area has 1,500 acres of critical environmental resources, socially valuable in an undeveloped state. With the general ratio of one development right for every 5 acres, that generates a total of 300 development rights to be “sold” to developers desiring higher density in the designated receiving area, a 300 acre area planned as “Suburban Residential” in the recently enacted comprehensive plan. With a TDR program, allowed density could be increased to 4 units per acre rather than the current 2 units. Planned Unit Development (PUD) overlays would be used for both the sending and receiving areas.

There may also be opportunities within Fairfield County, and other Ohio counties for that matter, for unincorporated hamlets in the midst of working farmlands to upgrade their sewage treatment systems and develop capacity to handle added density for receiving development rights from surrounding farmland.

***Discussion of TDR Potential in Ohio***

Discussion with the workshop panel and the audience focused on whether or not TDR might work in Ohio. There seemed to be a definite, “Yes, but ...” tone to the discussion. Seasoned participants in state and local policy debates on land use and related matters seem skeptical based on what Larry Long dubbed the “Mother may I?” approach to local policy action. Local governments feel they must have specific legislative authority to act or to try new things. But there was also considerable optimism that governments could innovate with TDR when there is strong local leadership and the political will.

***Remarks of Don Brosius, Attorney***

There are several hurdles to successful local action on TDR. First, authority for township and county zoning talks about regulation for purposes of promoting the “... public health, safety and morals.” It is generally considered difficult to make the case that open land or rural zoning is essential to health, safety and morals. So the type of rural zoning useful

for a TDR program might be hard to defend against a legal challenge. Municipalities and home rule townships or counties have explicit authority to promote public health, safety and general welfare, which is more appropriate to establishing a TDR program.

A second hurdle is home rule itself. Only 15 townships and one county have established themselves as home rule units under Ohio Revised Code §504. Thus only municipalities and the few home rule units have the clear ability to enact regulations which do not follow statutory schemes. Non-home rule units have only those powers granted by state statute or powers necessarily implied by statute.

Thirdly, zoning enabling legislation for counties and townships requires that regulations be “uniform” within districts.

Fourth, with both counties and townships having zoning authority, local structure may be fragmented. And if TDR is going to work, the unit or units involved must be willing to control development and have the courage to make it stick. If development is possible anywhere and everywhere with amendment or other change, TDR simply won't work.

But there are also solutions to these problems. Counties and townships can rely on a Planned Unit Development (PUD) device, but must cope with the fact that the sending area may be an off-site dedication.

Cooperative Economic Development Agreements (CEDA) and annexation agreements can enable units to cooperate for joint interest in something like a TDR program. The new annexation law specifically mentions “land use” as a permissible subject for an annexation agreement.

Ideally, specific enabling law should be enacted to address TDR, probably on a voluntary basis. Until such legislation is available in Ohio, local units will have to be creative and adventuresome. While there will always be some risks, the benefits of TDR will likely outweigh the hassles.

Remarks of Lynne Erickson, Director, Portage County Regional Planning Commission

Portage County is eager to get a TDR program in place. The county has seen rapid growth in residential units in the recent past (8,500 new units between 1990 and 1999). Most of that is on road frontage in the townships. This sprawling pattern of development fragments the farms, is inefficient use of land, makes farming more difficult, both physically and fiscally. Loss of 161 farms between 1992 and 1997 led citizens to press for policy action to impact the pattern of land use change.

The Portage County Farmland Preservation Committee was formed in 1997, and later received matching funds from the Ohio Department of Development to develop a farmland preservation plan. Transfer of Development Rights was recommended as a technique to help implement that plan by establishing areas of increased density (receiving areas) and protection for farmland areas.

A Portage County Farmland Preservation Advisory Board was then established to implement the farmland plan, with particular attention to TDR. Several communities within the county have designated sending and receiving areas in their land use plans, so they are serious about using TDR. In another case, the village and township are cooperating in the effort to guide growth and protect farmland. Townships are desperately looking for methods to save open land and concentrate growth – they hope TDR will work. They are certainly ready to try.

We see challenges to the use of TDR in Portage or any other county. The number of development rights generated per acre in the sending area and relationship to density levels in receiving areas will be crucial to success. The number must be high enough to be attractive to farmers, but not out of line with development demand. There must be demand for greater density.

Then there is always the fear of the unknown. There is no Ohio experience with TDR in Ohio and landowners are always cautious about their development rights. There is not even much rural zoning in northeast Ohio. Everyone seems to hope they will be the one able to sell land for the high development price. There will have to be commitment to zoning for more development in some areas and less in others if it is going to work.

Finally, we badly need state level leadership on this topic. Someone must step forward to set the stage for local action. And there is a strong need for public education on land use policy and specifically TDR.

*Remarks of Fred Maier, Chairman, Randolph Township Zoning Commission and Farmer*

Randolph Township in Portage County is historically a farming area, within 60 miles of Cleveland and 25 miles of Akron. We have had an increase in housing starts in the past few years. We have also had an active zoning commission in the township, and a comprehensive plan updated in 1997. The zoning commission has been unanimous in the determination to preserve the rural heritage as much as possible while recognizing the need for guided growth. It is crucial in these deliberations to include the township trustees.

It seems to us on the zoning commission that TDR makes a lot of sense, for several reasons. It is practical, it requires few public dollars and we know that it works from the experience in other states. TDR can help us protect farmland, to assure adequate groundwater recharge and cleaner surface waters, to foster a stronger sense of community within the township when sending and receiving areas see the relationships between them, and to foster an alternative to expensive “sprawl.” We see the importance of farming as a land use and a local food source and a counterpoint to corporate food giants. We have evolved from a culture of growers and preparers of food, to a culture of preparers of food, to a culture of consumers of prepared food in about four generations!

We are dedicated to protecting farming in Randolph Township and feel that TDR is the way to do it.

Remarks of Larry Long, Executive Director, County Commissioners Association of Ohio

The use of Transfer of Development Rights (TDRs) has the potential to become an additional important tool that can be used by local governments in Ohio to encourage better planned development, protect valuable resources, and contain urban sprawl.

Clearly, municipalities and home rule counties have adequate legal authority to develop TDR programs within municipal boundaries. While it could be argued that the current county and township zoning enabling legislation may allow the use of TDRs, this legal question has not been definitively answered. In the case of counties and townships, it appears that current enabling statutes may need to be changed or new ones enacted to specifically authorize the use of TDRs.

While some argue that the use of current statutes allowing Cooperative Economic Development Agreements (CEDAs) and Annexation Agreements may provide some authority for the selective use of TDRs, these statutes provide only for a very limited use of this tool.

Since county and township zoning may only be enacted for the purpose of the “public health, safety, and morals”, and not for the purpose of promoting the “general welfare”, counties and townships may desire to obtain a ruling from the county prosecutor on the legal authority to develop TDR initiatives.

Some states have granted counties specific enabling authority to utilize TDRs. Included in the appendix of this report are statutes from Georgia and Idaho which could serve as a model for the enactment of specific enabling legislation in Ohio.

TDRs can be viewed as an additional “tool in the toolbox” that will allow counties and townships to control **where, when, and under what conditions** development will occur. It should not be viewed as a mechanism that will be used to totally stop development or promote “no-growth strategies. Some of the other “tools in the toolbox” that need to be to be addressed by the General Assembly include:

1. Authority to enact zoning for the purpose of promoting the general welfare and to encourage the preservation of agriculture and agri-business. Authorizing zoning for the purpose of promoting the general welfare may be all that is needed to authorize the use of TDRs in the unincorporated area of the county.
2. Authority to require development proposed within areas designated as agricultural security areas in a county plan to develop pursuant to planned unit development regulations. If this authority is granted, it would be easier to encourage increased density development under a sending and receiving area concept.

3. Changes to the subdivision law to allow counties to address problems that occur as a result of the current state law definition of subdivisions, such as "bowling alley lots" and "flag lots."
4. Changes to the subdivision law to ensure that, prior to the approval of "lot split" subdivisions, the health department will approve the proposed parcel for home sewage disposal.
5. Changes to the subdivision law permitting counties to limit the number of "lot splits" permitted without a recorded plat to a specified number from a date when such provisions are included in county subdivision regulations.
6. Authority for planning commissions to require a preliminary plan review before a final plat and improvement drawings are submitted.
7. Enhanced urban sediment and erosion control authority.
8. Authority to impose impact fees on new development to assure the general taxpayer does not pay for the entire cost of expanded infrastructure needed as a result of new development.

Even when the question of basic legal authority is clarified, there are considerable challenges to make the use of TDRs effective and meaningful, including:

1. There is a need for more definitive and detailed comprehensive plans. These plans should probably include a designation of sending and receiving areas.
2. As an alternative, sending and receiving areas could be included as an overlay on a county or township zoning map.
3. The use of TDRs is probably more effective if coordinated on a countywide basis. The challenge of cooperation between counties, townships, and municipalities in designating sending and receiving areas will require a degree of cooperation and leadership that is often difficult to achieve.
4. In some cases, it may be necessary to form regional alliances on a multi-county basis if the program is to meet policy objectives. The challenge, however, of local government cooperation becomes more difficult with more governmental entities involved.

In summary, the use of TDRs has great potential in Ohio. It may be necessary to obtain legal clarification prior to proceeding. In addition, local elected officials, planning commissions, and development interests need to have a better understanding of the benefits of such a market-driven program that can promote needed development by channeling it in directions that will benefit the entire community.

### *Questions and Comments from Workshop Attendees*

Attendees of the workshop raised the following questions and comments during the workshop session. See Appendix B for results of an informal survey of workshop attendees.

- What research has been done on pricing models for development rights?
- Is one “unit” of density the typical way to quantify a development right?
- It seems that the real challenge is to establish a value for the right; need to educate appraisers on this issue.
- Does a developer typically have a location for the increased density identified?
- Does a development right run with the land?
- How does the buying and selling of rights between private individuals interplay with governmental rights?
- Why did Fairfield County designate the floodplain as a sending area, since it couldn't be developed anyway? What happens if the floodplain changes after the TDR is established?
- Is CEDA a good fit with TDR, since purpose of CEDA is for jobs and economic development, and there is no incentive to have a residential development within a CEDA?
- Do you have to build in a growth rate when establishing a program and zones?
- What is the incentive for TDR for cities like Columbus?
- Do municipalities have the authority to do TDR?
- What is “low growth”?
- Are there any experiences with the NIMBY reaction in receiving areas?
- Can you provide reasons why TDRs have failed?
- There's a sociological issue here: what does it take for us to want higher density? Urban living needs to be attractive to many people.
- What do the people moving to Randolph Township want? Why do they move there?
- Does Randolph Township or Summit County worry about having the authority to do what they're proposing?
- Does a receiving area always have to be a vacant site, or can it be an industrial site?
- Are there any pockets of resistance to TDR in Summit County or Randolph Township?
- Can TDR be used to obtain farmland as a resource for water purposes?
- The State needs to set a general policy at the state level, then allow local governments to dictate the details.
- What TDR does is create a commodity. Enabling legislation must establish where the commodity is, or levels, as in wetlands legislation.
- Are there any studies that compare mandatory versus voluntary TDR programs?
- How permanent are TDRs, and can a TDR accommodate future change?
- What political support is there for TDR in Ohio?

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## **APPENDIX A**

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## APPENDIX B

### Survey of Workshop Attendees

Workshop attendees received a written survey, which 30 attendees completed. A review of the survey responses suggests that attendees considered TDRs an appealing option for Ohio. Attendees were most concerned with the issue of local authority to establish TDR programs. Many noted that TDR would be a viable instrument and communities would be more willing to consider TDR if the State would clearly enable local governments with authority for TDR programs.

The following are informal summaries of a few questions presented on the survey.

- **QUESTION:** *Do you think the concept of TDRs has potential application for local governments in Ohio? Why or why not?*

Most answered “yes” (25 of 30 responses), but many commented that TDRs would have stronger application if state enabling legislation were enacted.

One response of “no” suggested that government fragmentation and weak real estate markets in metro areas would prohibit TDR application. A second “no” response stated that TDR “needs to accommodate change”.

Two responses were “not sure”, explained by “not knowledgeable enough to say” and “not sure we have the perceived need or political will.”

- **QUESTION:** *Do you believe policy and/or legal changes are needed to implement TDR programs in Ohio?*

29 of the 30 responses answered “yes”. Other than the need for enabling legislation, which was the most common response, attendees stated that the following policy or legal changes are needed:

- Leadership
- Public education
- Incentives for zoning and comprehensive planning
- Re-examination of the entire body of land use and zoning law
- Statewide recognition of critical resources as sending areas

- **QUESTION:** *What do you think are the most pressing policy or legal issues for rural-urban communities in Ohio?*

Many of the responses to this question related to frustrations at the local level—lack of planning requirements and updated planning and zoning laws, limited authority of local governments and negative impacts of the statewide exemption

of local oversight for five acre lots, for example. The following ranks responses according to frequency.

- Lack of mandatory and meaningful comprehensive planning (7)
- The 5-acre subdivision review exemption (5)
- Limited powers of counties and townships (3)
- Open space and farmland protection (3)
- Regional cooperation (3)
- Knowing how to develop without negatively impacting a rural area (2)
- Lack of “smart growth” planning (2)
- Impact fees (2)
- Incentives to favor in-fill development
- Understanding the total costs of development
- Exurban residential development
- Poor leadership from elected officials
- Perpetuating sprawl via public policy
- Growth boundaries
- Lawyers that say “you can’t do that”
- Agricultural security areas
- Down-zoning

## APPENDIX C



### *A Special Workshop on*

# **Transfer of Development Rights: Can TDRs be an Option for Local Governments in Ohio?**

When: Thursday, December 5, 2002

Where: The Fawcett Center  
The Ohio State University  
2400 Olentangy River Road

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### Agenda –

- |                      |   |  |
|----------------------|---|--|
| 1:00 p.m.            | Convene –<br><b>Introduction to Workshop Theme</b>  | <b>Larry Libby</b> , Swank Program<br>The Ohio State University  |
| 1:15 to<br>1:45 p.m. | <b>TDRs in Context</b> – A brief introduction<br>to the technique, history of its use in other<br>states, strengths and limitations; open<br>discussion | <b>Larry Libby</b>   |
| 1:45 to<br>2:45 p.m. | <b>The Untapped Potential of TDRs in<br/>Ohio</b> – Open discussion   | <b>Tim DeWitt</b> , Bennett and<br>Williams Environmental<br>Consultants; Columbus, Ohio   |
| 2:45 to<br>4:15 p.m. | Reactor Panel –<br><b>Perspectives on TDR</b>   | <b>Don Brosius</b> , Loveland and<br>Brosius; Columbus, Ohio<br><b>Fred Maier</b> , Farmer and<br>Chair of the Randolph<br>Township Zoning Commission;<br>Portage County, Ohio<br><b>Karen Doty</b> , Director,<br>Department of Law;<br>Summit County, Ohio<br><b>Larry Long</b> , Executive Director,<br>County Commissioners<br>Association of Ohio |
| 4:30 p.m.            | <b>Adjourn – Reception</b>  |  |

*Sponsored by the C. William Swank Program in Rural-Urban Policy  
OSU Department of Agricultural, Environmental, and Development Economics  
<http://aede.osu.edu/programs/Swank/>*

## **APPENDIX D**

### **Examples of Current TDR Legislation**

#### ***I. Georgia's TDR Statute***

O.C.G.A. § 36-66A-1 (2002)

##### *§ 36-66A-1. Definitions*

As used in this chapter, the term:

(1) "Development rights" means the maximum development that would be allowed on the sending property under any general or specific plan and local zoning ordinance of a municipality or county in effect on the date the municipality or county adopts an ordinance pursuant to this chapter. Development rights may be calculated and allocated in accordance with factors including dwelling units, area, floor area, floor area ration, height limitations, traffic generation, or any other criteria that will quantify a value for the development rights in a manner that will carry out the objectives of this Code section.

(2) "Person" means any natural person, corporation, partnership, trust, foundation, nonprofit agency, or other legal entity.

(3) "Receiving area" means an area identified by an ordinance as an area authorized to receive development rights transferred from a sending area.

(4) "Receiving property" means a lot or parcel within which development rights are increased pursuant to a transfer of development rights. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the transferable development rights of the sending property without substantial adverse environmental, economic, or social impact to the receiving property or to neighboring property.

(5) "Sending area" means an area identified by an ordinance as an area from which development rights are authorized to be transferred to a receiving area.

(6) "Sending property" means a lot or parcel with special characteristics, including farm land; woodland; desert land; mountain land; a flood plain; natural habitats; recreation areas or parkland, including golf course areas; or land that has unique aesthetic, architectural, or historic value that a municipality or county desires to protect from future development.

(7) "Transfer of development rights" means the process by which development rights from a sending property are affixed to one or more receiving properties.

HISTORY: Code 1981, § 36-66A-1, enacted by Ga. L. 1998, p. 1678, § 1; Ga. L. 2001, p. 1219, § 2.

§ 36-66A-2. *Procedures, methods, and standards for transfer of development rights*

(a) Pursuant to the provisions of this Code section, the governing body of any municipality or county by ordinance may, in order to conserve and promote the public health, safety, and general welfare, establish procedures, methods, and standards for the transfer of development rights within its jurisdiction.

(b)(1) Any proposed transfer of development rights shall be subject to the approval and consent of the property owners of both the sending and receiving property and shall be subject to a separate vote of approval or disapproval by the local governing authority.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, an ordinance enacted by the governing authority of a consolidated government may, but is not required to, provide that any proposed transfer of development rights shall be subject to a separate vote of approval or disapproval by the governing authority.

(c) Prior to any transfer of development rights, a municipality or county shall adopt an ordinance providing for:

(1) 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. These instruments shall be executed by the affected property owners and lienholders;

(2) The preservation of the character of the sending property and assurance that the prohibitions against the use and development of the sending property shall bind the landowner and every successor in interest to the landowner;

(3) The severance of transferable development rights from the sending property and the delayed transfer of development rights to a receiving property;

(4) The purchase, sale, exchange, or other conveyance of transferable development rights prior to the rights being affixed to a receiving property;

(5) A system for monitoring the severance, ownership, assignment, and transfer of transferable development rights;

(6) The right of a municipality or county to purchase development rights and to hold them for conservation purposes or resale;

(7) The right of a person to purchase development rights and to hold them for conservation purposes or resale;

(8) Development rights made transferable pursuant to this Code section shall be interests in real property and shall be considered as such for purposes of conveyancing and taxation. Once a deed of transferable development rights created pursuant to this Code section has been sold, conveyed, or otherwise transferred by the owner of the parcel from which the development rights were derived, the transfer of development rights shall vest in the grantee and become freely alienable. For the purposes of ad valorem real property taxation, the value of a transferable development right shall be deemed appurtenant to the sending property until the transferable development right is registered as a distinct interest in real property with the appropriate tax assessor or the transferable development right is used at a receiving property and becomes appurtenant thereto;

(9) A map or other description of areas designated as sending and receiving areas for the transfer of development rights between properties; and

(10) Such other provisions as the municipality or county deems necessary to aid in the implementation of the provisions of this chapter.

(d)(1) Prior to the enactment of an ordinance as provided in subsection (c) of this Code section and prior to any action to approve or disapprove a proposed transfer required by paragraph (1) of subsection (b) of this Code section, the local governing authority shall provide for a hearing on the proposed ordinance or transfer. At least 15 but not more than 45 days prior to the date of the hearing, the local governing authority shall cause to be published in a newspaper of general circulation within the territorial boundaries of the political subdivision a notice of the hearing. The notice shall state the time, place, and purpose of the hearing. Any proposed transfer of development rights requiring approval or disapproval of the local governing authority shall be subject to any signage requirements required by law for rezonings.

(2) Prior to any changes in an area designated in an ordinance as a sending or receiving area, the local governing authority shall provide for notice and a hearing as provided in paragraph (1) of this subsection.

(e) Proposed transfers of development rights shall become effective upon the recording of the conveyance with the appropriate deed-recording authorities and the filing of a certified copy of such recording with the local governing authority of each political subdivision in which a sending or receiving area is located in whole or in part.

(f) Municipalities and counties which are jointly affected by development are authorized to enter in to intergovernmental agreements for the purpose of enacting interdependent ordinances providing for the transfer of development rights between or among such jurisdictions, provided that such agreements otherwise comply with applicable laws. Any ordinances enacted pursuant to this subsection may provide for additional notice and hearing and signage requirements applicable to properties within the sending and receiving areas in each participating political subdivision.

HISTORY: Code 1981, § 36-66A-2, enacted by Ga. L. 1998, p. 1678, § 1; Ga. L. 2001, p. 1219, § 3.

NOTES: The 2001 amendment, effective April 28, 2001, rewrote this Code section.

## ***II. Idaho's TDR Statute***

Idaho Code § 67-6515A (2002)

### *§ 67-6515A. Transfer of development rights*

(1) Any city or county governing body may, by ordinance, create development rights and establish procedures authorizing landowners to voluntarily transfer said development rights subject to:

(a) Such conditions as the governing body shall determine to fulfill the goals of the city or county to preserve open space, protect wildlife habitat and critical areas, and enhance and maintain the rural character of lands with contiguity to agricultural lands suitable for long-range farming and ranching operations; and

(b) Voluntary acceptance by the landowner of the development rights and any land use restrictions conditional to such acceptance.

(2) Before designating sending areas and receiving areas, a city or county shall conduct an analysis of the market in an attempt to assure that areas designated as receiving areas will have the capacity to accommodate the number of development rights expected to be generated from the sending areas.

(3) Ordinances providing for a transfer of development rights shall not require a property owner in a sending area to sell development rights. Once a transfer of development rights has been exercised it shall constitute a restriction on the development of the property in perpetuity, unless the city or county elects to extinguish such restriction pursuant to the provisions of this chapter.

(4) A city or county may not condition an application for a permit to which an applicant is otherwise entitled under existing zoning and subdivision ordinances on the acquisition of development rights. A city or county may not condition an application for a zoning district boundary change which is consistent with the comprehensive plan on the acquisition of development rights. A city or county may not reduce the density of an existing zone and thereafter require an applicant to acquire development rights as a condition of approving a request for a zoning district boundary change which would permit greater density.

(5) A person may not acquire a development right without the intent to exercise that right within a receiving area within ten (10) years of the date of acquisition. Upon a showing

of good cause, a city or county may extend the right to exercise the development right for an additional period not to exceed five (5) years. If the development right is not used before the end of the time period herein provided and any extension thereof, the development right will revert to the owner of the property from which it was transferred.

(6) No transfer of a development right, as contemplated herein, shall affect the validity or continued right to use any water right that is appurtenant to the real property from which such development right is transferred. The transfer of a water right shall remain subject to the provisions of title 42, Idaho Code.

(7) (a) Ordinances providing for the transfer of development rights shall provide that no transfer of development rights may occur without the written consent of all lienholders and other parties with an interest of record in the property from which development rights are proposed to be transferred. Transfers of development rights without such consent shall be void.

(b) A development right which is transferred shall be deemed to be an interest in real property and the rights evidenced thereby shall inure to the benefit of the transferee, his heirs, successors and assigns. An unexercised development right shall not be taxed as real or personal property.

(8) For the purposes of this section:

(a) "Development rights" shall mean the rights permitted to a lot, parcel or area of land under a zoning or other ordinance respecting permissible use, area, density, bulk or height of improvements. Development rights may be calculated and allocated in accordance with such factors as area, floor area, floor area ratios, density, height limitations, or any other criteria that will effectively quantify a value for the development right in a reasonable and uniform manner that will carry out the objectives of this section.

(b) "Receiving area" shall mean one (1) or more designated areas of land to which development rights generated from one (1) or more sending areas may be transferred and in which increased development is permitted to occur by reason of such transfer.

(c) "Sending area" shall mean one (1) or more designated areas of land in which development rights may be designated for use in one (1) or more receiving areas.

(d) "Transfer of development rights" shall mean the process by which development rights are transferred from one (1) lot, parcel or area of land in any sending area to another lot, parcel or area of land in one (1) or more receiving areas.

HISTORY: I.C., § 67-6515A, as added by 1999, ch. 363, § 1, p. 958.