

**Board of County Commissioners
Leon County, Florida**

**Workshop on:
Transfers of Development Rights (TDRs)**

**1:30 – 3:00 p.m.
Tuesday, December 13, 2005**

**Leon County Board of County Commissioner Chambers
Leon County Courthouse, 5th Floor**

This document distributed: December 7, 2005

Board of County Commissioners

Workshop Request

Date of Meeting: December 13, 2005

Date Submitted: December 7, 2005

To: Honorable Chairman and Members of the Board

From: Parwez Alam, County Administrator
Vincent S. Long, Assistant County Administrator
Wayne Tedder, Planning Department Director

Subject: Conduct Workshop on Transfers of Development Rights

Statement Of Issue:

Conduct workshop to further discuss the applicability of Transfers of Development Rights (TDRs) on floodprone areas and other environmentally sensitive lands in Leon County, such as the Southern Triangle and the Wakulla Springs watershed.

Background:

The Board of County Commissioners has requested a workshop to discuss whether Transfers of Development Rights are a useful means to foster development downtown while protecting floodprone and environmentally sensitive lands in Leon County.

The Board has previously requested assessments of Transfers of Development Rights as a means to protect environmentally sensitive lands and greenways. In these past workshops the Board discussed several less than fee-simple means of land acquisition (including TDRs) and evaluated the economic and administrative costs and benefits associated with each. The Board requested a more specific proposal and review of TDRs as a means to permit and encourage development in the urban core, while also protecting floodprone areas and sensitive environmental resources. [See Attachment 1, Map of Potential Sending and Receiving Areas.]

Analysis:

Leon County currently employs two primary strategies to protect environmental resources of the community, conservation easements as part of development approval and fee-simple land acquisition. The County's Land Development Regulations and choices regarding the locating of infrastructure are also factors in resource protection.

In the context of development approval, Sections 10-257 and 10-258 require the preservation of a minimum of 25 percent of the area of a development site, unless the criteria for the 'site design alternative' are met. [The site design alternative ensures that a minimum of 10 percent of the area is protected and specifies landscaping requirements in lieu of the 25 percent set-aside.] Generally, the area set-aside is placed under a conservation easement that provides Leon County with a partial legal interest in the land. The County incurs no direct costs for acquiring this interest. Under such easements, the property owner continues to hold title to the land, but surrenders the right to further develop the property. Management of the easement (e.g., trash and debris removal) is typically the responsibility of the property owner, although without regular

monitoring there are few assurances that the resources for which the easement was secured are preserved or enhanced.

The County also protects resources directly via land acquisition. Through its Greenways and its Parks and Recreation programs, the County has become the owner of over 2,000 acres of greenspace that protect resources and provide opportunities for passive and active recreation. The County has incurred direct costs for such acquisitions, although these have been offset significantly through state grants. Management for recreation and ecosystems enhancement of these sites is strictly a County responsibility. The County also has accepted long-term management responsibilities for lands acquired solely by the state, such as the Miccosukee Canopy Road Greenway and the Alford properties. Previously approved management plans for these sites, agreed to by both the County and the state funding partners, commit the County to an active approach to protecting important resources and restoring ecosystem function where practicable, as well as providing property security and public access including trails and related amenities.

As presented at past workshops, there are other approaches, of which TDRs are one, that have proven effective in terms of providing development options while preserving open space (including greenspace and agricultural reserves). TDRs are primarily a regulatory tool for modifying patterns of development. The Leon County Board of County Commissioners has considered the application of this tool on several occasions, but has not directed staff to initiate the next steps of preparing the necessary ordinance(s) and assembling the various elements of program administration and implementation. The following assessment is intended to clarify how TDRs work and to examine how a program could be implemented in Leon County to achieve the specifically targeted and simultaneous goals of encouraging development in the urban core while protecting floodprone and environmentally sensitive lands in the County.

The TDR Concept

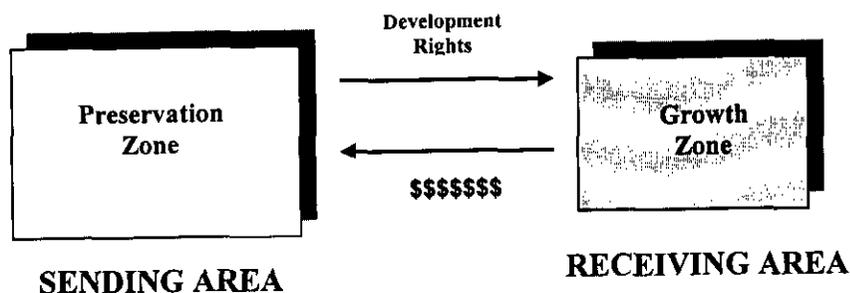
There are two general approaches to acquiring legal interest in real property: *fee simple* and *less-than-fee simple*. Fee simple acquisition means that the land and its associated "bundle" of property rights are obtained and retained by the buyer. Less-than-fee simple acquisition refers to obtaining or retaining *a portion* of the total rights of use of the property. TDRs are a form of this less-than-fee-simple interest or ownership of land and hinge on the presumed right to develop property. For the purposes of this review, the term "development" refers to either residential units or square feet of non-residential space.

TDRs are a mechanism to convey a portion of the total rights associated with property, specifically the right to develop subject to applicable codes (e.g., zoning). Other property rights are generally unaffected by the use of TDRs.

While TDRs require implementing regulations, the use of TDRs is not regulatory in nature, but is *voluntary* and *market-driven*. The basis of a TDR program is the specification of "*sending*" and "*receiving*" areas. These are the areas within which development is reduced or increased, respectively. *Ordinarily, there is no net change in the total development within the jurisdiction, but a change in location and intensity.*

The following picture indicates how development rights are transferred from the zone where resources are to be protected (the Sending Area) to the zone where growth is to be encouraged (the Receiving Area). There is no cost to property owners in the Sending Area as there is compensation for all rights transferred.

Figure 1. Transfer of Development Rights (from Platt, 1996)



In Figure 2a, the properties incorporated into the undeveloped sending area (oval) are zoned originally for up to 12 dwelling units (DU). Following implementation of TDRs, Figure 2b demonstrates the net transfer of 6 DU from the sending area to the receiving area (rectangle shown with roads and commercial uses), where some infill and an increase in density has occurred. The sending area is effectively downzoned from 12 DU to 6 DU and the property where the six units would have been developed remains open with development restrictions permanently in effect, perhaps under a conservation easement or other device.

Figure 2a. Example of distribution of units *PRIOR* to use of TDRs.

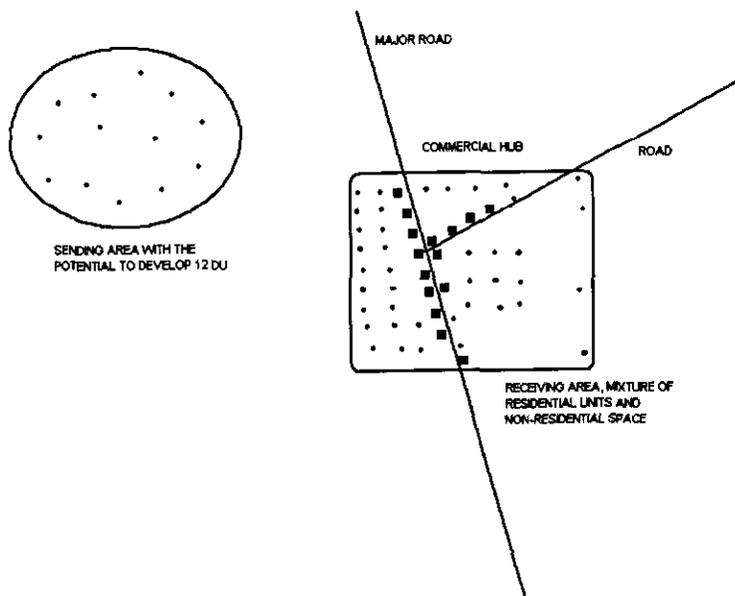
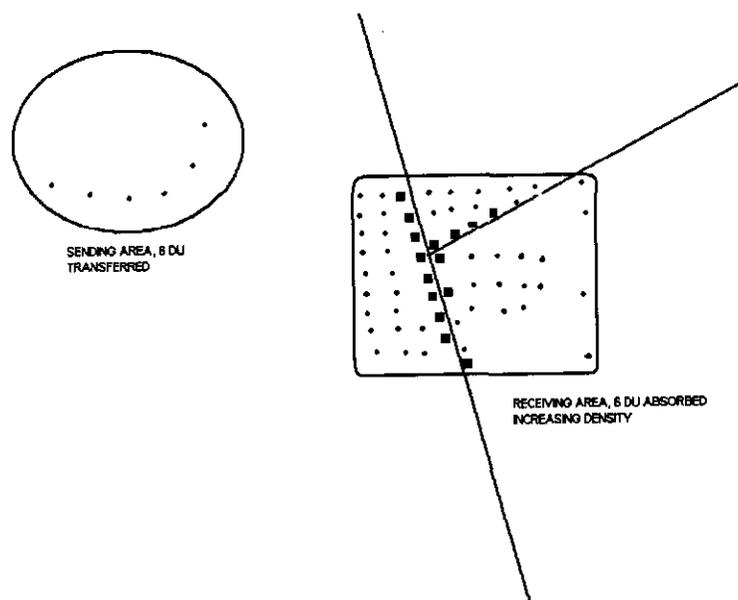


Figure 2b. Example of distribution of units AFTER use of TDRs.



In this example, there is no net change in the number of units ultimately developed, and the market value of the units built is assumed to be equal or greater than that which would occur without TDRs. The property owner(s) in the sending area are compensated for the value of the units transferred; the property owner(s) in the receiving area pay for the additional units allowed to be built. The market aspect of TDRs is governed in part by the supply of units in the sending area, but more importantly by the *demand in the receiving area*. If there is no demand, no units will be transferred.

In its simplest form, senders and receivers operate in a free TDR market and the value (price) of a unit will reflect current market conditions. In all known applications, however, the market is modified institutionally by either local government, a non-profit organization, or some form of dedicated authority charged with administering the program.

Obstacles to use of TDRs in Leon County

At the Board workshop of July 9, 2002 staff identified several economic and administrative obstacles unique to Leon County that would hamper successful implementation of a TDR program. These obstacles included the following:

- an absence of market gaps between what densities are typically built versus what would be built without zoning constraints;
- generous zoning densities and a history of upzonings (which obviate the need for TDRs);
- modest versus high rates of population and business growth;
- income tax benefits for granting conservation easements on large tracts that have outweighed potential returns associated with transferring development rights; and

- coordination with the City of Tallahassee regarding preferred receiving zones (e.g., Gaines Street, Downtown, Frenchtown, Central Urban Zoning District, and University Transition Zoning District) and the responsibility to track all transactions.

Since the 2002 workshop, some of the circumstances creating these obstacles have changed. For instance, development interest in the downtown area has increased dramatically, and is expected to continue to increase as the County and City's joint efforts towards downtown revitalization come to fruition. Consequently, the joint efforts of the County and City toward urban redevelopment create an obvious and mutually beneficial receiving area: the urban core. The other obstacles previously identified continue to exist, however.

Density Considerations: First, TDRs work best where there is a disparity between what the market would likely build, if unconstrained by zoning, and what is in place. This *market gap* makes the economics of TDRs feasible. While the Central Core makes a logical receiving zone from a long-term planning perspective, there is no evidence of a sustained market gap in this location. Except for a few unique projects, most new developments and redevelopments in the urban core still are built at densities below those provided for under existing zoning. *In sum, if the market is not testing the current density caps there is little incentive to transfer additional units.* There are other limitations to what can be built that derive from regulations related to setbacks, parking, height, and stormwater, but additional density can only exacerbate these limitations, it cannot bypass them.

Land Value Considerations: Separate from the raw numbers of units to be considered for transfer, TDRs operate efficiently as long as the prospective market value of the unit transferred to the receiving zone is greater than its value in the sending zone. Ordinarily, this is not an issue as urban land is almost always more valuable than the rural land from which units are typically transferred. However, the seller still must receive more value for the transferred unit than would be received simply leaving it in place while the buyer must acquire the unit for less than the market value of similar units in the receiving zone. *If the price differential between the units with and without TDRs is not large enough, there may be little room to find a market price that works to both seller's and buyer's advantage.* Any transaction costs must be factored into this equation as well.

The proliferation of expensive homes in the unincorporated area, i.e., a leveling of the economic playing field, hampers the success of TDR programs because the value of these residential units (house and land) in what would likely serve as sending areas may equal or exceed the value of such units in logical receiving areas. Even if there were a demand for additional units in the Central Core receiving zone, there would be little economic advantage to the seller and no units should be expected to be transferred. However, with the more narrow goal of preserving a specific range of properties, e.g., lower-value floodprone lands or land within the Wakulla Springs watershed, this potential obstacle may be avoided.

Pre-existing Conservation Easements: Many large rural tracts in the county that may have provided significant numbers of units to be transferred are already under conservation easements, with the development value of the land extinguished, primarily for Federal personal income tax reasons. In these instances, it can be assumed that the market value of rural units (as potential taxable income) was determined by the property owners to be less than the value of the claimed tax deductions, plus other intangible benefits. In any case, some of the largest sending areas have been rendered unavailable for the purpose of TDRs and the supply of units to be considered for transfer in the northern and eastern areas of the County should be assumed to continue to shrink.

Program Administration: TDRs are inherently difficult to administer. Most critical for this issue is that a record-keeping entity is needed to monitor the transfers. Such a clearinghouse may be established inside or outside of local government. Related roles of this body *may* include some or all of the following:

- ensuring that restrictive easements or covenants are imposed on the sending sites,
- verifying that such restrictions are routinely monitored and enforced, if necessary,
- tracking the total numbers of development rights (units) sent (or sold) and received (or purchased),
- establishing the value(s) associated with any rights to be transferred, and
- serving as a development rights *bank*, accruing units (development rights) in anticipation of market needs.

In this latter role, the bank is established to efficiently address fluctuating supply and demand for development rights. The bank then becomes the sole vehicle for purchase and sale of development rights; sellers and buyers need only deal with the bank, not each other. Ordinarily, there is no expectation of profit by the bank, but the sales price for rights can reflect all transaction, tracking, and management costs for the operation of the bank.

Thus, while the program is intended to be voluntary and market-driven, an explicit and formal process is required to ensure that such transactions achieve the desired ends. The program does not run itself, but likely needs an appropriately staffed and funded administrative unit. This is dependent, of course, on the details of the program and the amount of staff and funding can be greater or smaller depending on the nature and scope of the program.

TDR Implementation in Leon County: Despite the obstacles outline above, a TDR program can be implemented within Leon County but it may require governmental furtherance, beyond the crafting of enabling ordinances.

As indicated above, the County may specify the sending zone(s). Areas previously discussed by the Commission include floodprone properties in the southern part of the County. This includes a broad belt of land south of Lake Munson, between Crawfordville Highway and Old Plank Road. Much of this area is also targeted for a reconsideration of strategies to address the impacts of septic tanks within the Woodville Karst Plain and the Wakulla Springshed. In sum, transferring densities out of this corridor presents an opportunity to minimize future flood risks, further the goals of hazard mitigation, and reduce nutrient loading to Wakulla Springs.

Next, it is necessary to recognize that any TDR receiving zone needs to be established in an area which is capable of supporting higher densities, which has the full complement of urban services, and which has few to no limitations related to traffic concurrency, school concurrency (especially critical with the recent changes in State law), and stormwater requirements. It is imperative that the receiving zone be such that any transferred density can in fact be added to the currently allowable density and built.

These constraints dictate that a feasible receiving zone be within the Central Core, or more practically within in areas targeted for significant reinvestment, such as Gaines Street, Frenchtown, and the South Monroe Sector (e.g., the "Urban Central Business District"). These are areas where public investment is being made to stimulate and attract growth. Taking advantage of these emerging market centers would require both policy and regulatory coordination with the City.

TDR Mechanics within Leon County: Effecting a TDR program in Leon County can be accomplished along a spectrum of governmental involvement. At the minimum end of this spectrum local government would have no substantive role. In this simplest of cases a single property owner would hold land in both the sending receiving zone and would be permitted to transfer all or a portion of the development rights from the former to the latter. Here, government's role would be limited to record-keeping and imposition of the necessary transactional documentation to ensure that the sending area is adequately protected from future development.

A mid-point along the TDR program continuum would be where two or more private entities hold an interest in the development rights and/or property within the sending and receiving areas but the government sets the value for the rights to be transferred in addition to the ministerial role described in the first example above. At the far end of the TDR program spectrum, local government would not only perform these functions, but would also actually acquire the development rights or the property itself and create a "bank" from which developers in the receiving area could purchase the additional density and/or land use intensity needed. A TDR program of this scale would require considerable staff time and funding. [More typically, the local government accepts "deposits" of development rights into the bank for purchase by developers in the future.]

As an example of the one of the roles local government may fulfill, Leon County has already acquired a number of repeat damage properties (i.e., those that have filed multiple claims for flood insurance). As the owner of these properties the County could market the development rights it already possesses. Doing so would offset the past costs to the County for having acquired these structures and potentially allow the funds to acquire any remaining repetitive loss properties.

TDR Recommendations: There are several circumstances unique to Leon County and the City of Tallahassee in which TDRs may be feasible.

- (1) The City is currently considering ordinance changes to provide for expanded use of the Urban Planned Unit Development (Urban PUD) within the Central Core. Based on recent development proposals, staff believes that many new in-town developments may opt for the PUD to achieve "character" for project designs. Further, the City's Economic Development Department is encouraging responders to the recent RFP for redevelopment on Gaines Street to use the PUD process. The City could stipulate higher density (via a TDR) as part of any development approval.
- (2) The City has adopted its inclusionary housing ordinance, which provides for modest density bonuses where affordable housing units are incorporated into a development. An amendment to the Comprehensive Plan was submitted in the 2006-1 cycle to provide for site design flexibility where affordable housing units comprise a minimum percentage of a proposed development. Building upon this trend to make inclusionary housing more feasible, it may be possible to provide supplemental density bonuses or other site design incentives (e.g., reduced parking or landscaping requirements) where transferred units are involved.
- (3) The City is re-evaluating the Central Core zoning districts (DI and University Transition) with respect to design standards, densities and intensities, and is reconsidering the existing distribution of densities throughout the urban core. This adjustment of density could incorporate either (a) bonuses for transferred units or (b) de minimus reductions in density followed by a "bonus" in density for transferred units bringing the total density in line with current standards.
- (4) Via an amendment to the Comprehensive Plan, the County could implement a program that provides a density bonus on environmentally sensitive lands, commensurate with environmental or flood risk value, if and only if the bonus is employed within the framework of a TDR program. Otherwise, base zoning densities apply. This approach could work with any of the three adjustments to urban receiving areas described above.

Staffing Requirements: Staffs from the Planning Department, Growth and Environmental Management Department, County Attorney's Office and County Administrator's Office would need to participate in the implementation of any sort of TDR program.

The amount of staff time involved depends in part on the scale of the TDR program. For example, an amendment to the Comprehensive Plan would not be necessary to effect the simplest forms of the TDR program described but an ordinance would need to be crafted and taken through the adoption process. Staff estimates that ordinance preparation and adoption (including Planning Commission and the Board of County Commissioners) would require about 112 hours of various staff's time. Further, Planning Department responsibilities would be augmented by tasks involving coordination with parallel departments in the City, should a receiving zone be defined in accordance with the above recommendations. This would require an additional 48 hours of Planning Department time. Total project time would be six-seven months, including adoption.

However, a TDR program proposing receiving zones with densities above the limits imposed by the Future Land Use Map (i.e., a program that would allow densities in excess of current maxima in the various downtown zoning categories) would necessitate a change to the Comprehensive Plan. The staff time to process the Plan amendment would roughly double that indicated for the ordinance. The amendment itself and the corresponding staff analyses would not require significant time, but significant time would be expended in the various workshops, public hearings, and adoption and transmittal tasks.

Attachment #2 is the summary of Planning Department major projects that may require re-prioritization if the TDR ordinance is to be done within the next two years.

Options:

1. Do not proceed with implementing a Transfer of Development Rights program in Leon County.
2. Direct the Chair to bring the matter of implementing a Transfer of Development Rights program between the City and the County to the next Mayor-Chair meeting and to provide guidance to staff via the County Administrator and City Manager as needed.
3. Direct staff to further evaluate the feasibility of implementing Transfer of Development Rights and to develop a strategy for coordination between the City and the County, and submit a re-prioritized list of existing Planning Department projects.
4. Direct staffs from Planning, Growth Management, and the County Attorney's Office to draft ordinance language to implement a Transfer of Development Rights program, and submit a re-prioritized list of existing Planning Department projects.
5. Board direction.

Recommendation:

Option #1.

ATTACHMENTS

1. Map of Recommended Potential Sending and Receiving Areas.
2. Planning Department Major Projects List.

PA/WT/CD/RS/rs