

City of Fitchburg Planning Department

Transfer of Development Rights / Purchase of Development Rights

March 12 / 13, 2008



Presentation Overview

- Review the public questions
- Transfer of Development Rights
 - Review TDR questions
 - Hypothetical example of TDR
- Questions on TDR
- Purchase of Development Rights
 - Review PDR questions
 - Hypothetical example of PDR
- Questions on PDR

Why does the City want to see a TDR/PDR Program installed?

- Preserving farmland and open space was a major component that residents of the City stated in the Land Use Survey as an amenity. The City is currently preserving farmland and open space through zoning, however the city would like to provide some additional equity to a rural landowner who is unable or has no desire to sell their land for development purposes.

Would a TDR and PDR policy apply to existing Lands within the current urban service area?

- NO

Are TDR and PDR rules locked in forever?

- This is based on the program that is adopted. As of date, the city knows of no temporary or sunset TDR/PDR programs. To be effective in maintaining the priority goal for TDR/PDR's the rules are locked in perpetuity to preserve the farmland for all generations to come.

How are property taxes affected by this program?

- A PDR program will have a larger role in raising taxes, because the city would actually be purchasing the development rights. A TDR program would have little or no affect on the property taxes. Administrative services would be covered by city staff.
- Regarding tax assessments, currently ag land is being assessed at ag use assessment. This assessment would not change if a preservation program is adopted and landowners would pay approximately the same taxes if the development rights were sold or not.

How are the profits (gains) taxed when sending area rights are sold?

- If a landowner transfers or sells development rights, the proceeds of the sale are first used to reduce basis of the affected land. To the extent the proceeds exceed the basis of the land; they must be reported as gain on the seller's income tax return (Philip E. Harris, Kinney & Urban, Attorneys at Law).

What happens if the city needs to expand into A TDR/PDR area for economic growth?

- Currently the city has established growth boundary areas that will accommodate growth out to 2060. Land outside of this boundary is categorized as preservation areas. Economic growth is able to be met with redevelopment and infill programs.

How would a combination of offering TDR/PDR rights work?

- If no banking of rights occurred, the city would have to define a specific sending area to set a consistent sending and receiving area ratio. Property owners within the sending area would only be able to sell their rights to developers. In addition, the city would have to specify an area in which only a PDR program would be used. Property owners within the PDR program area would only be able to sell their rights to the city.
- If banking of rights occurred, the city and developer would be purchasing rights from the designated sending area. The city would be purchasing rights to be placed in a bank when supply of rights exceeds demand. These rights in the bank would be for sale to developers needing to buy rights or the developers could seek rights from land owners that have not sold their development rights.

If a third party holds development rights could they be returned to the landowner or city?

- No, it is the third party's responsibility to legally protect these rights from being returned and to prevent development on areas that have been preserved.

What operations can be on the conservation easement property?

- Operations would be restricted based on the program that is established. Usually all ag related farm operations can occur on conservation easement property. The restrictions usually apply to building and restricting impervious surfaces.

How do mortgage lenders perceive TDR/PDR if land is collateral for the bank?

- Banks would also need to sign off on the purchase of conservation easements if they still have a financial interest on the land. The property owner could use the money they are receiving for the development rights towards their mortgage payments.

What is a development bank and how would it be set up?

- A development bank is used for a TDR program. The city participates in purchasing development rights from willing landowners to increase the amount of acres being preserved. These development rights are placed in the development bank and can be purchased by developers. Development banks are a benefit to property owners during times that developers are not purchasing development rights and a benefit to developers when property owners are not selling their rights.

Would ETJ land be included for preservation?

- This would affect the TDR ratio. If boundary agreements are established these lands could be included in the TDR sending areas.

How will TDR promote higher density development?

- Developers will have to purchase development rights increasing the land cost of their development. The developers could pass this added expense off to the consumers or increase the density and equally spread the added cost to the additional units.
- The Comprehensive Plan (Land Use Section) will be the primary implementation tool for increasing density.

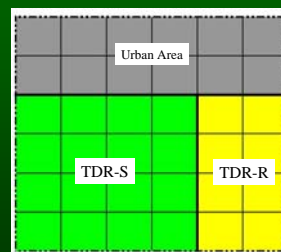
How will a County TDR program interact with a Fitchburg program?

- The two programs are currently incompatible.

Transfer of Development Rights

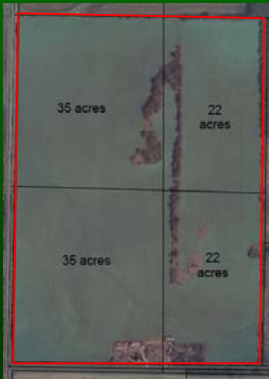
- Allows conservation easements to be purchased and transferred to a designated receiving area.
- This is a market transaction between a landowner and developer.
- Developers pay the cost for the conservation easements.

Transfer of Development Rights



- Sending and receiving areas would be designated by an overlay zoning district before development occurs.
- Ex: TDR ratio is set at 2 conservation easements to 1 acre developed.

Hypothetical TDR Example



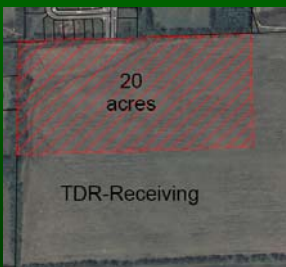
- Total acreage is 114 acres, including the homestead.

Hypothetical TDR Example



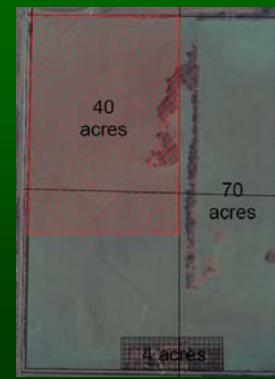
- The homestead is exempt from the transferring of development rights.
- There are 110 acres of conservation easement to be purchased by a developer.

Hypothetical TDR Example



- A developer wants to develop 20 acres within the receiving area.
- The TDR ratio is set at 2 conservation easements to 1 acre developed.
- The developer would need to “shop around” and purchase 40 conservation easements from the sending area.

Hypothetical TDR Example



- The developer and landowner negotiate a price for the conservation easements from 40 acres.
- The transaction occurs and a deed is recorded to state that a conservation easement has been placed on the 40 acres.
- The conservation easement is held by the city and/or a private land trust.

Hypothetical TDR Example



- The developer needs to supply proof of conservation easements via a TDR certificate or a letter of intent for the City to begin review of the area.
- Before final plat recording or building permit issuance, TDR certificates in the developer's name would be required.

TDR Questions

Purchase of Development Rights



How would appraisals in preservation areas be set up?

- PDR – an appraiser determines the fair market value of the conservation easement. The first appraisal is a traditional appraisal of the land as it would sell on the open market. The second is an appraisal of the land value with the restrictions placed on the land with the conservation easement. The difference between the two appraisals is the value of the conservation easement.
- If a landowner disputes the appraised value, the owner could hire another independent appraiser. The two appraised values would be compared and an offer made. The landowner has every right to reject offers.

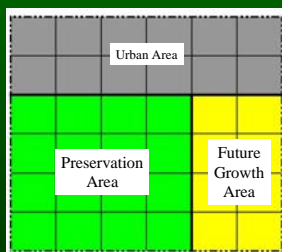
Can PDR be used now and the city purchase the land in the future for a park?

- The land would still be required to follow the restrictions placed on the land, which probably will be buildings and impervious surfaces. This could restrict the city from placing shelters, bike paths, and other impervious park uses on the property.

Purchase of Development Rights

- Development Rights are purchased by a local agency, non-profit land trust or a historic preservation organization.
- The City pays the cost for the conservation easements.
- Private or Public organizations can assist in the costs, but their funds are usually capped at a maximum purchase price.

Purchase of Development Rights



- A Preservation Area would be designated as to where the City would like to see conservation easements purchased.

Purchase of Development Rights

- An Application Process would be setup with a points based criteria.
- The criteria could include:
 - the size of the area,
 - the ag and ecological quality of the area,
 - water quality benefits,
 - other source funds,
 - landowner donation,
 - pressure of development,
 - proximity to other protected land.

PDR Application Process

- Landowner submits PDR application
- City staff and applicable committees review the application and site assessment for eligibility and ranking among other applications.
- Common Council authorizes final priority for PDR applications
 - Applicants will be notified about the CC decision.

Easement Acquisition Process

- Commitment of Interest Form
 - Approved Applicants could be asked to sign an interest form and submit a deposit that would only be refunded if a successful transaction occurs.
- Appraisal Process
 - The City would hire a qualified appraiser to determine the fair market value.
 - The landowner may also hire an appraiser to provide an independent property value, at their own cost and at the same time as the city's hire.

Easement Acquisition Process

- Appraisal Process
 - For the sale of a conservation easement, the appraiser determines a "before" and "after" value.
 - First the appraiser determines the value of the land "as is" in its unrestricted condition, before an easement is placed on the property.



The market value of 110 acres would sell for \$5000

Easement Acquisition Process

- Appraisal Process
 - The appraiser then determines the value of the land after the easement restrictions are in place.



The market value of 110 acres with easement restrictions is \$2000

Easement Acquisition Process

- Appraisal Process
 - The difference between the two values is the value of the conservation easement.



Market Value	\$5,000
Market Value with easement	<u>\$2,000</u>
Conservation Easement Value	\$3,000
Paid to landowner	

Easement Acquisition Process

- Negotiation
 - After the appraisal is complete and reviewed by staff a meeting with the landowners will begin the negotiations.
 - A summary of the appraisal will be reviewed detailing the number of acres and types of land appraised, including the designation of permanent buffers, any special elements of value, and the final conclusion of value.

Easement Acquisition Process

- After negotiations, the transaction occurs and a deed is recorded to state that a conservation easement has been placed on the land.
- The conservation easement is held by the City and/or a private land trust.
- Payment for the sale of the conservation easement can take a variety of forms:
 - Lump-Sum Payment
 - Lump-Sum Payment with a donation
 - Installment sale option
 - Like-kind exchanges

Stay Informed

Website:

www.city.fitchburg.wi.us/planning_zoning/PDRTDR.php

Staff Contact:

Jason Schmidt, Asst. City Planner
Fitchburg City Hall
270-4258
Jason.Schmidt@city.fitchburg.wi.us

PDR/TDR Survey

Surveys will be mailed to landowners having greater than 35-acre parcels outside the current USA.

Surveys will accepted until March 31, 2008

They can be dropped off or mailed to the City of Fitchburg Planning Department

PDR Questions