

NEW JERSEY'S EXPERIENCE WITH TRANSFER OF DEVELOPMENT RIGHTS

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Cook College and the Cooperative Extension Service of Rutgers University have in recent years initiated research and programs in land use and resource management especially with a view to preserving prime agricultural lands. At the same time the state created a Blueprint Commission on the Future of Agriculture in New Jersey which explored ways to preserve agriculture in the state.

The objective of these groups was to develop more rational land use control techniques and to preserve agricultural land, not merely for the production of food and its contribution to the economy, but to ensure the health and safety of citizens in the most densely populated state in the nation. Research is indicating that strategically located areas of agricultural lands and woodlands in an urban setting provide not only open space, with all its aesthetic values, but also a psychological uplift and an ecological balance. Furthermore, keeping open large land areas permits normal development in a less sprawling pattern and reduces, to some extent, costs of services such as utilities, schools, roads, and other transportation facilities. Moreover, and perhaps most important, our legacy to future generations would not be a completely developed state where the only choices would be living with past mistakes or creating open space at an extremely high economic, social, and political cost. Rather, we would leave future generations the option of what to do with the preserved agricultural lands as dictated by their needs.

It was in this context of urgency and need that we initiated almost three years ago efforts in applied research on the concept of transfer of development rights, which resulted in a legislative proposal currently being considered by the state.

THE NEW LAND USE MANAGEMENT CONCEPT: HOW IT WORKS

A development right is basically a creature of property law. It is one of the numerous rights included in the ownership of real estate. A mineral right, an air right, or the right to travel across another person's property are examples of the various rights of land owner-

ship. A development right is the right that permits the owner to build upon or develop his land; in an urbanizing region it is the land's greatest economic value and therefore the owner's most valuable right.

All rights of ownership of land are subject to reasonable regulation under the police power and are also subject to the governmental power of eminent domain. Rights of ownership in land may be separated from other rights and regulated by government or sold by the owner and transferred separately.

For example, an owner of land may sell his mineral rights or air rights and still retain ownership and use of the land surface. A common example involves an owner's sale of an access easement to a public utility so that utility lines can be installed and maintained on the owner's property. Similarly, an owner may sell all of his rights to develop his land, and these rights may be bought and sold by persons other than the owner who still retains the ownership of the land.

The transfer of development rights, as we have developed it, is essentially a system that identifies a right to develop and creates a market for such development rights.

TRANSFER OF DEVELOPMENT RIGHTS DEFINED

Very simply, transfer of development rights zoning is initiated when a municipality designates certain critical areas wherein development will be prohibited. Land owners would continue to own their lands, but the residential development potential of these areas, based upon existing zoning provisions, would be transferred to other districts in the municipality that can accommodate the additional density without doing any environmental damage. Sound principles of rational land use planning must be used in determining the latter districts in order to avoid incompatible land uses and undue strain upon the natural environment and existing public facilities. Land developers in the latter areas may build at the previous densities without purchasing development rights; however, if they wish to build at the new allowable higher densities, they must purchase the necessary development rights from owners of land in the preserved critical areas.

The net effect of transfers of development rights is the preservation of environmentally important areas with equitable compensation for the land owners in such areas. There is no cost to the taxpayers of the municipality; the only cost is the purchase of development rights by builders who will then be permitted to build more dwelling units on their current land holdings. In contrast, if a builder wished to build more dwelling units without a transfer of

development rights, he would have to, of course, purchase the necessary additional land.

SOME PLANNING IMPLICATIONS

The primary objective of the transfer of development rights as proposed here is the preservation of open space. However, the impact of this technique on the planning process cannot be ignored. More predictability, essential to effective planning, is promoted since all open space designations are identified and permanently locked in the master plan and in zoning regulations. Also, the desired number of people who will live in the community is clearly set forth through the emphasis on the density requirements necessary to guarantee value for development rights. And, in many instances, water supply can be more accurately predicted since the aquifers and recharge areas will be protected in the open areas and total population can be, to a major extent, related to the water supply. Once approximate total density is established, better judgments relating to the construction of capital improvements can be made because districts where development is permissible can be very effectively planned on a comprehensive scale and related to the tracts of permanently preserved open space. In this process the locations of more intense development are identified and public services and facilities can be geared to them.

Another important aspect of development rights is the probable interest and participation of many citizens of the community in the planning process. Many will have development rights to protect and will be very interested in the process which gives "value" to their development rights.

CONTINUING RESEARCH

With the funds from Title V of the Rural Development Act of 1972, a demonstration project is currently being conducted in South Brunswick Township, Middlesex County. The purpose of the project is to demonstrate, under simulated conditions but working with township officials and citizen groups, how a transfer of development rights zoning ordinance would be drafted and the problems that would be encountered. The project is in the early stages of delineation of the areas to be preserved, which will probably include prime agricultural lands, woodlands, aquifer recharge areas, and floodplains. Criteria, standards, and methodology for delineation are being developed. The project is scheduled for completion by July 1, 1975. If it is successful, we will then devote the next two years, again under simulated conditions, in testing the manner in which the marketplace responds to this new marketable "commodity."