BCD NEMO PROGRAM

In recent years a concept known as Transfer of Development Rights, or TDR, has received much attention from open space preservation advocates. TDR preserves open space by shifting development potential from one part of a town to another. This is accomplished by allowing developers to build at greater densities in one area provided they reduce development rights in another. Once the development rights to property have been sold, that land cannot be developed and is preserved for open space or agriculture.

Ownership of land entails a number of rights, including mineral rights, the right to drill a well or make a road, and the right to develop. These rights may be bought or sold, and no one's land rights can be restricted without "just compensation." In a TDR program, a “preservation zone" is created. Landowners are compensated for this development restriction by the issuing of development rights certificates that they can sell. The buyers are developers, for whom the purchase of development rights will allow them to increase the density of their developments in a designated "receiving zone." The great attraction of TDR is its use of private sales in the market.

If based upon a sound local comprehensive plan, TDR can provide for a more desirable pattern of growth in a community. The technique does not increase the growth potential of a town, it only shifts that potential from open space “preservation areas” to locations where greater development can be supported, “receiving areas”.

TDR, however, is more complicated than many other land preservation techniques. It requires accurate assessment of a community’s present level of development and careful planning. For TDR to work, a town or county needs an area suitable for high-density development. Adequate public utilities and roads must exist in this receiving zone. When used to protect farmland, the preservation zone should have a strong existing farmland base, should be large enough to maintain the "critical mass" necessary for farm-related services, and farmers in this zone should be committed to continuing their operations.

Assuming that a locality's physical situation is right for a TDR program, and preservation and receiving zones have been carefully designated, market considerations must also be addressed. The ultimate success of TDR depends upon an active and fair market for development rights. If landowners in the restricted preservation zone cannot sell their development rights, the legal issue of "unfair taking without just compensation" arises. Low prices for development rights will similarly shake confidence in the program. Developers will purchase development rights only if they perceive a demand for the type of high-density development allowed under TDR. Good prices will only be offered if the increased density provides a good return on development rights purchase. Conceivably, the local government could serve as an intermediary in the marketplace. A town or county could buy and sell development rights, serving as a development rights "bank." While this would provide a guaranteed market, it creates an administrative burden.

The mechanics of administration are an important consideration in any proposed TDR program. Local governments must decide how to issue development right certificates, taxdevelopment rights, maintain records, assure a fair and active market, and assess transaction costs

The Transfer of Development Rights is potentially a very useful open space preservation tool. Communities should proceed carefully with TDR, however. Existing levels of development, open space acreage, development potential, market and administrative questions all must be addressed. Once this is done, your community may find TDR an effective land preservation technique.