

TRANSFER OF DEVELOPMENTAL RIGHTS

The transfer of developmental rights can encourage development and enhance value.

Scott Spinner

The transfer of development rights is not a new concept, but in New York City it has been taken to new heights.

A brief explanation of the general principles of transferable development rights (TDRs) and their current use is essential to understanding how they could be used to encourage development and enhance the value of land and buildings, while at the same time protecting the public health, general welfare and amenities within a community.

THE RIGHTS OF OWNERSHIP

Property ownership can be described as a bundle of individual rights. The ownership of land includes rights pertaining to minerals, timber, agriculture,

riparian rights, surface and ground water, air, and development, to name the most common. Use of these rights is not absolute. Governmental entities do have the right to constrain, to a certain extent, a property owner's use of these rights and, thus, the economic value that the property owner can derive from the property. The most commonly used restraint has been on the exercise of the individual's use of development rights primarily through zoning.

DEVELOPMENT RIGHTS ARE INDEPENDENT OF LAND OWNERSHIP

The concept of TDRs provides for financial compensation to property

owners while society imposes land-use regulations to control growth and development. The development right is independent of land ownership. It becomes a separate article of private property and can be shifted from one area to another and possess economic value.

BUYING AND SELLING RIGHTS, NOT LAND

Thus, TDR makes it possible for there to be a free exchange (buying and selling) of development rights without having to buy or sell land. In the instance of the down zoning of an area by a government entity, it does not necessarily reduce the economic value of the property within that area because the development rights re-

main in the landowners' hands and can be used on other properties of the owner's or sold to others for use elsewhere.

TWO TYPES OF TDR PROGRAMS

The most common TDR program allows the owner of the granting parcel to sell the development rights to an owner/developer of a receiving parcel, thereby increasing the floor area ratio of the developer's parcel which allows him to increase the size and height of his new building.

A second method allows a local government to establish a TDR bank to transfer development rights. In this method, the government is assured that development rights are transferred to builders and developers who are specifically dedicated to redeveloping areas of the city worth preserving and developing because of its historic and unique character.

New York City has areas created by special zoning resolutions known as Special Purpose Districts. One such area is the Special Lower Manhattan District and the South Street Seaport Subdivision.

Sutton Alliance has insured several transactions in the Special Seaport District. We have insured the transfer of excess development rights from JP Morgan Chase, acquired by them from the owners of certain designated granting parcels. Under the aforementioned zoning resolution, certain parcels have been designated as granting parcels and certain parcels have been designated as receiving parcels. By purchasing the TDRs, the owners of the receiving parcels were able to increase the horizontal dimension of their buildings and to increase the amount of floor area dedicated to residential use in building previously used solely for commercial purposes.

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