



Guide to Transfer of Development Rights in Town Plans

FEBRUARY 11, 2021

NUMBER 7

PLANNING NOTES

Overview

On March 22, 2010, Dane County Ordinance Amendment 45, 2009-2010 became effective. This amendment created a legal and administrative framework to support town-initiated Transfer of Development Rights (TDR) programs. TDR allows willing landowners to trade potential development rights (a.k.a. "splits") available under town density policies (see [Planning Notes #3](#)). To facilitate TDR, OA 45 created two new zoning overlay districts:

- TDR-S, used to designate TDR sending areas (areas to be protected from development), and;
- TDR-R, used to designate TDR receiving areas (areas where development is encouraged).

This edition of *Planning Notes* provides a summary of the two new districts and provides policy guidance to towns interested in incorporating TDR into their comprehensive plans.

TDR-S Overlay Zoning District ([s.10.158, DCCO](#))

The TDR-S overlay can be applied to the A-1EX(Exclusive Agriculture) or CO-1 (Conservancy) zoning districts.

Unlike many overlay zoning districts, the TDR-S district does not limit any permitted or conditional uses allowed in the underlying zoning.

Instead, the TDR-S district *adds* a new permitted use allowing landowners to transfer development rights away from their property by recording a conservation easement with the county Register of Deeds.

Transferred development rights must be consistent with adopted town and county comprehensive plans. Depending on adopted plan policies, development rights may be transferred to a receiving area in the same town, or to another town, city or village. Development rights may also be sold to a public conservation agency or nonprofit land trust and extinguished. Landowners in the TDR-S district may choose to sell some, all or none of the development rights allocated to them under the town density policy, and may negotiate whatever price they feel is fair.

A-1EX (TDR-S) zoned parcels will remain eligible for state farmland preservation tax credits.

As long as they have not already transferred all their development rights, landowners with land zoned A-1EX(TDR-S) may still rezone and divide their land to create new residential lots, consistent with density and other policies in the adopted town/county comprehensive plan.

TDR-S overlay zoning is appropriate for areas in adopted town/county comprehensive plans that:

- Are designated for long-term or permanent agricultural, conservation or natural resource use;
- Allow non-farm development at a density of one unit per 35 acres or fewer, and;
- Are specifically identified as TDR sending areas.

TDR-R Overlay Zoning District ([s.10.159, DCCO](#))

The TDR-R overlay can be applied to the A-1(non-exclusive), and all the A-2 (Agriculture), R (Residential), and RH (Rural Homes) zoning districts.

The TDR-R overlay requires that any change of use (such as a zoning permit or conditional use permit) that would increase residential density must be accompanied by a transferred development right from a parcel in the TDR-S district.

Before obtaining zoning permits for property in the TDR-R district, developers must present recorded deed notice documents on both the sending and receiving parcels that:

- track the number of rights transferred,
- the location of the sending parcel, and;
- reference a recorded conservation easement on an appropriate TDR-S-zoned parcel.

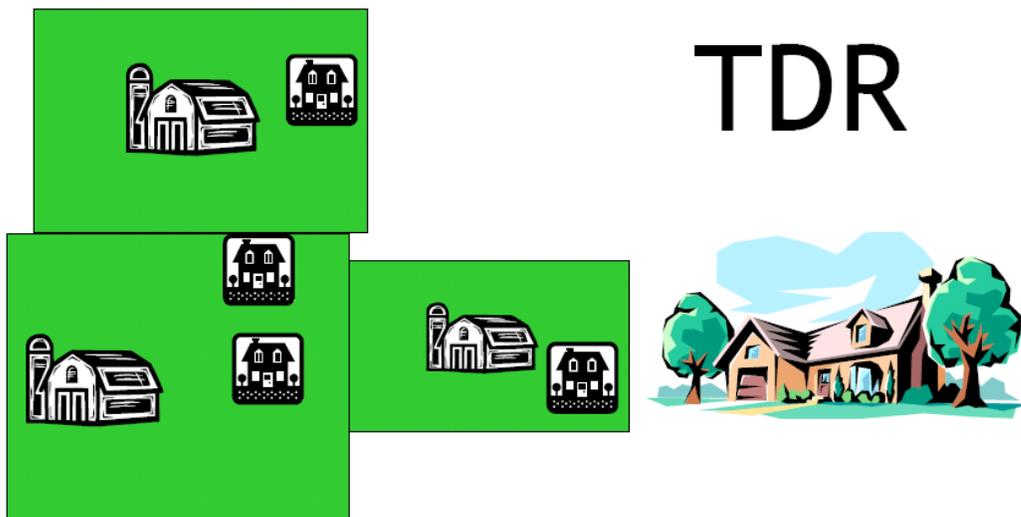
Transferred development rights must be consistent with adopted comprehensive plans. Development in TDR-R districts must comply with any adopted siting criteria, development standards, environmental protection requirements, zoning setbacks or other land development regulations.

TDR-R zoning is appropriate for areas in adopted town/county comprehensive plans that are designated for residential development at a density greater than one unit per 35 acres. Within the Extra Territorial Jurisdiction (ETJ) of a city or village, the town and municipality must comply with adopted intergovernmental cooperation (and if necessary, dispute resolution) procedures in all applicable comprehensive plans before rezoning lands to the TDR-R district.

Town Implementation

At a minimum, town boards would need to do four things before either the TDR-S or TDR-R overlay districts could apply in their town:

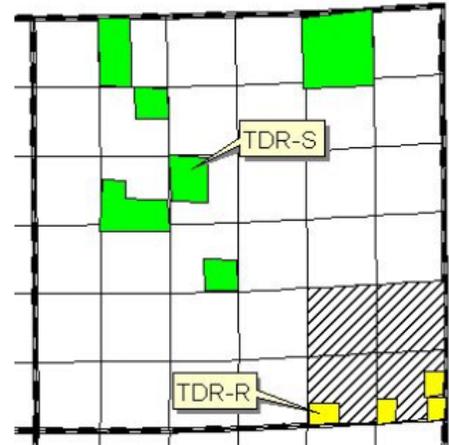
- Adopt a resolution saying they wish to apply the TDR ordinance within the town;
- Amend, if necessary, the land use section of their comprehensive plan to establish appropriate TDR policies;
- Have the town comprehensive plan amendment adopted by the county board as part of the *Dane County Comprehensive Plan*, and;
- Rezone individual parcels (either on a case-by-case basis as TDR proposals are made, or by a town-initiated "blanket rezone") to the TDR-S district, TDR-R district, or both.



Implementation Examples

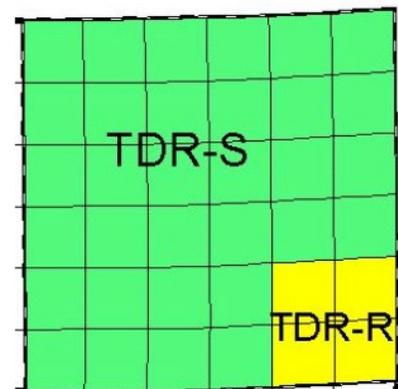
Case-by-case example

- (1) Town A has adopted a plan that will allow TDR on a case-by-case basis.
- (2) Cooperating landowners in sending and receiving areas apply jointly for a rezone petition.
 - (a) The landowner in the sending area proposes to rezone at least 35 acres from the A-1(EX) zoning district to A-1(EX), with a TDR-S overlay.
 - (b) The landowner in the receiving area proposes to rezone 2 acres to the RH-1 zoning district, with a TDR-R overlay.
- (3) Town A and county staff each review the petition for consistency with adopted comprehensive plans, including applicable TDR policies, and make appropriate recommendations to the county board and county executive.
- (4) The county board could require recording of a conservation easement to complete the TDR transaction either:
 - (a) Within a delayed effective date period, or;
 - (b) At the time of application for a zoning permit (see below).



Blanket rezone example

- (1) Town B has adopted a plan that has mapped sending and receiving areas, and wishes to complete a blanket rezone petition to implement the plan. This will make it as easy as possible for willing landowners in sending and receiving areas to participate in the TDR program.
- (2) Town B submits a petition to rezone:
 - (a) All of the parcels in the designated sending area from the A-1(EX) zoning district to A-1(EX) with a TDR-S overlay, and/or;
 - (b) All of the parcels in the designated receiving area to an appropriate R or RH zoning district (depending on the planned density of the receiving area), with a TDR-R overlay.
- (3) Town B and county staff each review the petition for consistency with adopted comprehensive plans, including applicable TDR policies, and make appropriate recommendations to the county board and county executive.



Questions and alternatives to consider when amending the town comprehensive plan to establish a TDR program.

- (1) Will the plan allow development rights to be transferred from a sending area in the town to a receiving area in another town or community?
 - (a) No, transferred development rights must stay within the town.
 - (b) Yes, to a community with which the town has a specific cooperative plan and/or intergovernmental agreement.
 - (c) Yes, to any community willing to accept them.
- (2) Will the plan allow development in a town receiving area if development rights are transferred in from a sending area in another town or community?
 - (a) No, transferred development rights must come from within the town.
 - (b) Yes, from a community with which the town has a specific cooperative plan and/or intergovernmental agreement.
 - (c) Yes, from any community.
- (3) If development rights can be transferred across town lines, how will the plan(s) make sure that bonuses, sending and receiving area criteria and other policies are consistent across community lines?

- (4) How are sending areas (areas eligible for TDR-S zoning) determined in the plan?
- (a) Mapped as planning districts in the "Planned Land Use Map" for the town.
 - (b) Text criteria (such as soil productivity, proximity to other protected lands, etc.) for types of lands that are eligible.
 - (c) Both of the above.
 - (d) No sending areas in the town.
- (5) How are Receiving areas (areas eligible for TDR-R zoning) determined in the plan?
- (a) Mapped as planning districts in the "Planned Land Use Map" for the town.
 - (b) Text criteria (such as soil productivity, proximity to other development, urban services, etc.) for types of lands that are eligible.
 - (c) Both of the above.
 - (d) No receiving areas in the town.
- (6) How will TDR-S and TDR-R overlay zoning be applied?
- (a) All at once, as a "blanket" rezone by the town and county.
 - (b) Landowner by landowner, as individual TDR transactions and rezones occur.
 - (c) Some of both.
- (7) Will the plan allow "bonuses" or special TDR ratios to encourage:
- (a) Protection of sending area lands with special environmental, recreational, scenic, historic or agricultural value (A.K.A "Super Sending Areas.")?
 - (b) Development in receiving areas that meets particular objectives for affordable housing, special needs housing, mixed-use, higher density or specific design standards?
 - (c) A combination of both?
 - (d) No special ratios or "bonuses."

Planning Notes

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