

9/26/07 DRAFT

Proposal for System of Transferable Development Rights

This proposal sets forth a concept for a system of Transferable Development Rights for the City of Fitchburg. It is intended to serve the following purposes:

- Compensate owners of land outside of the Urban Growth Boundary (UGB) by allowing them to share in the growth and development of Fitchburg by selling development rights when they wish at prices they negotiate.
- Maintain agricultural values of land by separating agricultural values from development values, thereby reducing incentives for land speculation.
- Equalize the value of land outside of the existing Urban Service Area (USA).
- Remove the burden of purchase of development rights from City taxpayers by creating an open market for these rights.

Development rights would be issued on a per acre basis to property owners with greater than forty contiguous acres of developable land currently outside of the USA. Farms of forty acres or less without a dwelling unit would not be issued development rights, but would be deemed buildable parcels. The number of rights issued would coincide with the number of rights deemed to be needed to develop all land outside the current USA but within the UGB. Development rights could only be utilized to develop land within the UGB. Development would remain subject to the Land Use Plan, and would continue in an orderly fashion. In other words, ownership of land within the UGB coupled with ownership of sufficient development rights would not guarantee immediate right to develop.

Example

Assume that there are 3500 developable acres outside the current USA but within the UGB. Further assume there are 10,500 developable acres outside the UGB. (Developable land is defined as buildable land, excluding wetlands, buffers and land already developed.) One development right would be issued for each of these 14,000 total acres. For each acre within the UGB, but outside the current USA, four development rights would be needed to develop the land. A prospective developer would negotiate the purchase of land to be developed, each acre of which would already carry one development right. The developer would negotiate separately with other landowners who wish to sell their development rights, to purchase the other three development rights needed per acre.

For simplicity's sake, let's assume that typical farmland in Fitchburg is worth \$3,500/acre for strictly agricultural purposes. Let's assume that developable land within the UGB has a market value of \$83,500/acre. The market might then dictate that the purchase of the acreage to be developed would occur at the rate of \$23,500/acre (\$3,500 for the agricultural value of the land plus \$20,000 for the development right that comes with each acre). The developer would then negotiate to purchase three additional development rights per acre from a land owner outside the UGB, presumably at the rate of \$20,000/right.

In this example, if a landowner within the UGB held out for more than \$23,500/acre and the developer could not make up the difference by purchasing additional development rights at less than \$20,000/acre, the market would dictate that the developer would look elsewhere for land.

Note: The preceding example is intended to illustrate the concept and is not purported to accurately portray the prospective circumstances that may develop in Fitchburg.

In this system, there would be less incentive to purchase land for speculative purposes. Instead, a speculative market might develop for the development rights themselves, allowing farmers to potentially "cash in" their development rights by selling them to speculators. Those land owners who hold out may be rewarded, as the last development rights to be sold would presumably benefit from the scarcity of available rights, plus the inflation of land values over time.

Development rights would be issued in certificate form. As such, they could be sold with the land or separated from the land and sold separately. The City would maintain a register of ownership and would charge a small fee to record transfers, to offset the cost of maintaining the register. The City could also consider creating a "TDR bank" to purchase rights, hold them, and re-sell them to developers to facilitate orderly development.

If a UGB is established it is assumed to be permanent. Nevertheless, we must allow for the possibility that the UGB could be expanded in the future or subject to a "sunset" date. In the event that the UGB is expanded, additional development rights sufficient to allow for development of the additional land could be issued in a similar manner. One example of a possible expansion would be the Lakeview Neighborhood identified in the draft UGB as a "special study area".

Questions to be Answered

- Can the initial issuance of development rights be structured such that it does not create a taxable event for the landowner?
- Would a gain on sale of development rights be treated as a capital gain by the IRS?