

**PINELLAS PLANNING COUNCIL
AGENDA MEMORANDUM**

AGENDA ITEM: V A.

MEETING DATE: July 15, 2009

SUBJECT:

Transfer of Development Rights (TDRs) – Filing Form

RECOMMENDATION:

Council Recommend Approval of Accompanying Form to the Countywide Planning Authority (CPA)

I. INTRODUCTION

Last month, the Council staff provided to PAC and to the Council for review and consideration a draft copy of the TDRs filing form that is recommended to be forwarded to the CPA for their approval.

PAC, at their meeting on June 8, 2009, recommended delay of action on this item to allow time for review with city staff(s) and to place the item on the July PAC agenda with subsequent recommendation from PAC to the Council for its July meeting (vote 11-0).

The Council continued the item to the July 15, 2009 PPC meeting (vote 11-0).

II. BACKGROUND

Since 1989, the Countywide Plan Rules have required that the use of TDRs require written evidence of the transfer in a document to be recorded in the public records with the Clerk of the Circuit Court and a copy to be filed with the Pinellas Planning Council (PPC).

On the few occasions where the PPC staff has been made aware of projects approved at the local level using TDRs, the question has been raised, usually by the attorney for the property owner, as to the proper form for such recording document. Staff, with the assistance of legal counsel, has assisted in providing such a document on an ad hoc basis. This process typically required several attempts to satisfy all parties, and often resulted in

PINELLAS PLANNING COUNCIL ACTION:

COUNTYWIDE PLANNING AUTHORITY ACTION:

SUBJECT: Transfer of Development Rights (TDRs) – Filing Form

the suggestion by the attorney for the property owner that a standardized form be prepared and be pre-approved.

III. PROPOSAL

With this in mind, when the consistency ordinance amending the Rules was drafted, it included a provision for TDRs to be recorded in a form approved by the Countywide Planning Authority. The specific language included in Ordinance No. 09-9 reads as follows:

Any project utilizing transfer of development rights shall require the local government having jurisdiction to provide for a recording mechanism, in a form approved by the Countywide Planning Authority, which shall as a minimum, require written evidence of the transfer of development rights in a document to be recorded in the public records with the Clerk of the Circuit Court for Pinellas County, and a record copy of same to be filed with the PPC.

While the language in the Rules requires the local government to provide for a recording mechanism in a form approved by the CPA, staff has taken the initiative to draft a form that we recommend be forwarded to the CPA for their approval. Approval of this form by the CPA would not preclude a local government from preparing and seeking approval by the CPA of another, or for that matter various, form(s), but would at a minimum provide a pre-approved form should local government choose to use it.

The staff has modified the form, per PAC's comments below, to add references to the local Future Land Use Map (FLUM) and to accommodate signatures by the local government's attorney approving as to form and by the local planning director (or other authorized person) attesting.

A draft copy of the form that is recommended to be forwarded to the CPA for their approval is attached for your review and consideration.

IV. PLANNERS ADVISORY COMMITTEE (PAC)

PAC, at their meeting on July 6, 2009, recommended that the proposed filing form be modified by referring to the local government's future land use map under #2, the whereas clauses be modified to refer to the local government's future land use map, and the approval and attest be signed by local authorities. (Vote 11-0)

V. LIST OF ATTACHMENTS

Exhibit 1	Draft TDRs filing form
Attachment 1	Draft PAC minutes

NOTICE OF TRANSFER OF DEVELOPMENT RIGHTS

WHEREAS, the Board of County Commissioners, in its capacity as the Countywide Planning Authority (CPA), has adopted the Countywide Future Land Use Plan (FLUP) and accompanying Rules Concerning the Administration of the Countywide FLUP (Rules); and

WHEREAS, (*local government*) has adopted its Future Land Use Map (FLUM); and

WHEREAS, Pursuant to Section 4.2.7.2.1(J) of the Rules, the local government having jurisdiction shall, for any project utilizing transfer of development rights (TDRs), provide a recording mechanism to provide written evidence of such TDRs for filing in the public records of Pinellas County; and

WHEREAS, (*local government*) has approved (*project name*) at the local level, which project utilizes TDRs to accomplish the development consistent with the Countywide FLUP and Rules;

WHEREAS, (*local government*) wishes to memorialize the use of TDRs at (*project name*) in accordance with Section 4.2.7.2.1(J) of the Rules.

NOW, THEREFORE, in recognition of the above recitals, which are true and correct, (*local government*) asserts as follows:

1. (*Project name*) is located at (*physical address*) and is owned by (*property owner*). Its legal description is attached as Exhibit A. This property will hereinafter be referred to as the Receiving Parcel.

2. The Receiving Parcel is approximately _____ acres in size and is designated as _____ on the Countywide FLUP and _____ on the (*local government*) FLUM. This designation would allow development at a (density of _____ units/acre) and/or (intensity of _____ floor area ratio (FAR)) without benefit of TDRs.

3. The Receiving Parcel will have additional density/intensity transferred to it from property located at (*physical address*), which is owned by (*property owner*). This property will hereinafter be referred to as the Sending Parcel. The legal description of the Sending Parcel is attached as Exhibit B.

4. After density/intensity has been transferred to the Receiving Parcel from the Sending Parcel, the respective properties will have the following development potential:

- a. Receiving Parcel: (density of _____ units/acre) and/or (intensity of _____ floor area ratio) for a total (number of units of _____) and/or (floor area of _____)
- b. Sending Parcel: (density of _____ units/acre) and/or (intensity of _____ floor area ratio) for a total (number of units of _____) and/or (floor area of _____)

5. This document shall be recorded in the public records of Pinellas County, Florida consistent with section 4.2.7.2.1(J) of the Rules, with a copy provided to the Pinellas Planning Council.

Sending Parcel Owner

Receiving Parcel Owner

(Name)

(Name)

(Title)

(Title)

(Address)

(Address)

(local government)

(Name)

(Title)

(Address)

APPROVED AS TO FORM:

ATTEST:

(local government) Legal Counsel

(local government) Planning Director or Other Authorized Official

PPC Legal Counsel

Executive Director, PPC

Draft PAC Minutes

July 6, 2009

Transfer of Development Rights (TDRs) – Filing Form (continued from June PPC) – Mr. Crawford stated that this item was presented to the PAC at their June meeting, and that the Council agreed to allow an additional month for its consideration as requested by the PAC.

Discussion followed in which PAC members noted concerns about the required use of the form; that some cities have developed their own form and would not wish to have an added requirement. Discussion continued that typically attorneys file these on behalf of two property owners and they provide form and content of the instruments. It was also noted this could be recorded as covenant to run with the land.

Gordon Beardslee noted that item number 2., on the first page of the proposed form, refers to designation on Countywide Future Land Use Map will allow certain density. He stated that the local plan may be more restrictive and should be inserted here and the “whereas” clauses should be changed to include the local plan designations; and further, that signatures on the form from PPC legal counsel and the Executive Director should not be a requirement and that the county attorney is fine with those being removed. Mr. Crawford noted that this is a recording mechanism with no authority provided to the Executive Director.

Discussion continued with concern as to why the PPC legal counsel should approve as to form rather than local counsel. In addition, Dean Neal stated that the use of TDRs was a local decision and prerogative and that there was no need for the PPC to be involved. Mr. Crawford noted that the language in the Rules requires the local government to provide for a recording mechanism in a form approved by the CPA, and that staff has taken the initiative to draft a form that we recommend be forwarded to the CPA for their approval. Approval of this form by the CPA would not preclude a local government from preparing and seeking approval by the CPA of another, or for that matter various, form(s), but would, at a minimum, provide a pre-approved form should local government choose to use it. Also, in response to comments and objections concerning the need for such a form for recordation by local governments, Mr. Crawford stated that these comments should have been presented in 2008 when the Countywide Rules were amended to include such a form, not at this point when the item up for discussion is the form itself.

Gordon Beardslee moved that the proposed notice of TDR be modified as to item number 2 to refer to Local Government Future Land Use Map and the "whereas" clauses be modified to refer to Local Land Use Map; and that approval and attestation be done at the local level by the local government. The motion was seconded by Rick MacAulay and carried (vote 11-0).