

**PINELLAS PLANNING COUNCIL
AGENDA MEMORANDUM**

AGENDA ITEM: IV D.

MEETING DATE: October 21, 2009

SUBJECT:

Proposed Amendments of the Countywide Rules Re: TDRs and Density/Intensity Averaging

RECOMMENDATION:

Council Review, Discuss As Appropriate, And Authorize Public Hearing For The November PPC Meeting

I. BACKGROUND

At their meeting on April 3, 2007, the Board of County Commissioners, in their role as the Countywide Planning Authority (CPA), adopted the resolution approving the report entitled Review of Local Government Future Land Use Plans and Land Development Regulations for Consistency with the Countywide Rules (Consistency Report). In follow up to the Consistency Report a significant number of amendments were made to the Countywide Rules. However, after a discussion by the Council of the consolidated regulations addressing transferable development rights (TDRs) and density/intensity averaging, the Council recommended removing the item dealing with density/intensity averaging from the final ordinance adopted by the CPA in February of this year, and asked that further research be conducted and brought before the Council for consideration at a later date.

The amendments we brought to the Council in September attempted to further differentiate between TDRs and density/intensity averaging, as well as place a limitation on the amount of density or intensity that could be averaged across plan categories. However, the problem that kept arising and that proved difficult to resolve was that as currently provided in the Rules, density/intensity averaging from one plan category to a different category is essentially the same as a TDR, and with no limitation on the amount that could be averaged, the integrity of the Countywide Plan Map could be compromised.

This confusion is born out in the examination of local government land development regulations. While several communities use the term "transfer of development rights," it is either not clear how it is to be used or is employed in a manner more comparable to density/intensity averaging.

PINELLAS PLANNING COUNCIL ACTION:

9/16/09: The Council continued this item to the October PPC meeting (vote 12-0).

COUNTYWIDE PLANNING AUTHORITY ACTION:

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To better differentiate and clarify between these two concepts, the PPC staff is proposing a simple solution to this issue - to consider all reallocation of density or intensity that cross plan category boundaries as TDRs, regardless of the distance or relationship between two distinct plan categories. Density/intensity averaging or clustering would occur only within the same plan category and essentially be subject only to the provisions of local land development regulations.

With the proposed 25% limitation on TDRs and the requirement that this activity be recorded in the public records of Pinellas County, the integrity of distinct Countywide Plan Map categories involved will be maintained. The remaining question regarding density/intensity averaging or clustering within or from one plan category to another identical map category, regardless of geographic location, could then occur without limitation to the amount averaged or clustered and be left to regulation at the local level as each local government sees fit.

II. PROPOSED REVISIONS

To accomplish this, staff proposes that a number of changes be made to the current transfer of development rights and density/intensity averaging provisions as follows:

- Increase the current 20% limitation on TDRs for receiving parcels and replace it with a 25% cap;
- Clarify density/intensity averaging and clustering occurs only on property of the same Countywide Plan Map category, without limitation that requires the parcels to be adjacent or contiguous, and subject to the maximum permitted density/intensity of the Plan Category for the property or properties involved as regulated by local government;
- Include the proviso that applies to TDRs such that density/intensity averaging cannot utilize density or intensity from existing developed uses;
- Amend the definition of TDRs and add definitions for density/intensity averaging and clustering and development rights.

III. RECOMMENDATION

Staff recommends the Council authorize the Countywide Rule amendments, as set forth in Attachment 1, be advertised for public hearing for the November meeting.

IV. PLANNERS ADVISORY COMMITTEE (PAC)

The PAC members discussed this case at their October 12, 2009 meeting and recommended continuation to the November PAC meeting; and in the event the item is not continued: Support the change from 20 percent to 25 percent in Sec. 4.2.7.2.1 (D); Retain the existing language in Sec. 4.2.7.2.2; Oppose the proposed language in new Sec. 4.2.7.3; Oppose the new definitions in Div. 7.2 for "density intensity averaging or clustering" and "development rights"; and in Div. 7.2, retain the existing definition of "transfer of development rights." (vote 9-0).

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V. LIST OF ATTACHMENTS

Attachment 1 Underline/Strike-through Version of Ordinance
Attachment 2 Draft PAC Agenda Action Sheet

ORDINANCE NO. _____

AN ORDINANCE AMENDING PINELLAS COUNTY ORDINANCE NO. 89-4, AS AMENDED, THE COUNTYWIDE PLAN ADOPTION ORDINANCE, BY AMENDING THE "RULES CONCERNING THE ADMINISTRATION OF THE COUNTYWIDE FUTURE LAND USE PLAN," AS AMENDED; AMENDING THE TRANSFERABLE DEVELOPMENT RIGHTS AND DENSITY/INTENSITY AVERAGING REGULATIONS; ADDING DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR MODIFICATION THAT MAY ARISE FROM CONSIDERATION OF THE ORDINANCE AT PUBLIC HEARING.

WHEREAS, the Board of County Commissioners acting as the Countywide Planning Authority has adopted a Countywide Comprehensive Plan by adoption of Ordinance No. 89-4 on January 31, 1989 and subsequently amended said Countywide Plan by Ordinance Nos. 95-55 and 05-32; and

WHEREAS, as part of Ordinance 89-4, the Board also adopted the Rules Concerning the Administration of the Countywide Future Land Use Plan (Countywide Rules) and subsequently amended said Countywide Rules by Ordinances Nos. 89-66A, 91-5, 92-4, 92-51, 93-112, 94-20, 94-55, 95-78, 96-17, 96-32, 96-47, 96-55, 96-87, 97-71, 98-41, 99-22, 99-76, 00-60, 01-16, 03-23, 04-5, 05-49, 06-52, 06-61, 07-13, 07-50, 08-43, 08-81, 09-3, and 09-9; and

WHEREAS, Chapter 88-464, Laws of Florida, as amended requires local government comprehensive plans and land development regulations (LDRs) be consistent with the Countywide Future Land Use Plan and Countywide Rules; and

WHEREAS, the Pinellas Planning Council, pursuant to Section 5(7)(b), Chapter 88-464, Laws of Florida, as amended, is authorized to develop rules, standards, policies and objectives that will implement the Countywide Future Land Use Plan; and

WHEREAS, the Pinellas Planning Council pursuant to Section 10(4)(a) of Chapter 88-464, Laws of Florida, as amended, is authorized to initiate amendment to a rule, standard, policy or objective of the Countywide Future Land Use Plan, as determined necessary by the Council to establish effective countywide planning; and

WHEREAS, the Board of County Commissioners, in their capacity as the Countywide Planning Authority (CPA), directed the PPC to review all of Pinellas County's twenty-five comprehensive plans and LDRs for consistency with the Countywide Future Land Use Plan and the Countywide Rules; and

WHEREAS, the PPC staff has undertaken an extensive analysis and comparison of each local government's comprehensive plan and LDRs in relationship to the criteria for consistency as set forth in the Countywide Rules and have determined that amendments to the Countywide Rules are necessary in some instances to further and maintain consistency between the local governments' comprehensive plans and LDRs and the Countywide Rules; and

WHEREAS, the procedures of Chapter 88-464, Laws of Florida, as amended, and the County Charter have been followed by the Pinellas Planning Council and the Board of County Commissioners acting as the Countywide Planning Authority, concerning this proposed amendment of the Countywide Rules, as amended; and

WHEREAS, the notice of public hearings and advertisements have been accomplished as required by Chapter 88-464, Laws of Florida, as amended; and

WHEREAS, the Board of County Commissioners of Pinellas County, Florida, acting in their capacity as the Countywide Planning Authority, desires to amend the Countywide Rules, as amended, for Pinellas County, Florida, as set forth herein.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY, FLORIDA:

SECTION 1. The portions of Article 4. Plan Criteria and Standards, are hereby amended as set forth below. All other portions of Article 4 not included in this ordinance are preserved, remain as previously set forth in the Countywide Rules, and will be renumbered as necessary. (Note: Proposed changes are denoted by underline/~~strike thru~~).

4.2.7.2 Transferable Development Rights—~~and~~—Density/Intensity Averaging.

4.2.7.2.1 Transfer of development rights shall be as provided for in the applicable local government comprehensive plan and land development regulations, subject to the following:

- A. The land use characteristics within any given Countywide Plan Map category shall be consistent with those land use characteristics enumerated for each Countywide Plan Map category, and no transfer of development rights shall be permitted which is inconsistent with the use characteristics of a given Countywide Plan Map category.
- B. There shall be no transfer of development rights from existing developed property, irrespective of whether or not that property has been developed to the maximum density/intensity permitted under the Countywide Plan and Countywide Rules, except for archaeological, historical, architectural preservation, or Leadership in Energy and Environmental Design (LEED) building certification purposes, pursuant to the enumerated policies and locations as set forth in the local government comprehensive plan and LDRs, which shall have been determined to be consistent with these Rules.
- C. Transfer of development rights is permitted between all Countywide Plan Map categories except for transfer to the Preservation and Recreation/Open Space categories.
- D. The maximum permitted density/intensity of the Countywide Plan Map category for any parcel of land to which development rights are transferred shall not exceed twenty-five (20) (25) percent of the otherwise maximum permitted density/intensity allowed for each respective Countywide Plan Map category applicable to such parcel, except as specifically provided for parcels within an area designated CBD, CRD, or PR on the Countywide Plan Map. Transfer of development rights within these categories shall be in accordance with the terms for transfer of development rights and permitted maximum density/intensity of the approved special area plan.
- E. Where development rights are transferred from a sending parcel, that property shall only be used in a manner and to the extent specified in the transfer and recording mechanism. Any parcel from which development rights are transferred will be limited to the use and density/intensity that remains after the transfer. In particular:

1. The residual development rights on the sending parcel will be limited to the remnant use and density/intensity available under the Countywide Plan Map category, and not otherwise transferred.
 2. Determination of available remnant use and density/intensity for any mixed use, or combination of distinct uses, shall be in accord with the consistency criteria as set forth in Sec. 4.2.3 and 4.2.4 of the Countywide Rules.
 3. Neither the use nor density/intensity of a sending parcel shall be double-counted and the transfer of development rights shall not result in any combination of use or density/intensity above that which was otherwise permitted under the applicable Countywide Plan Map category for each the sending and receiving parcels, when taken together.
 4. A sending parcel from which all development rights are transferred shall not thereafter be available for use except consistent with the use characteristics and density/intensity standards of the Recreation/Open Space category, except for sending parcels classified as Preservation or required to be classified as Preservation as a function of the transfer, in which case such parcels shall be limited to the use characteristics and density/intensity standards of the Preservation category.
- F. Where all development rights have previously been transferred from a sending parcel through a local government approved or Countywide Plan Map approved process, no additional development rights shall be transferable from that sending parcel.
- G. There shall be no transfer of development rights from or to submerged land, or from outside the coastal high hazard area into the coastal high hazard area.
- H. Where development rights cannot otherwise be determined for the Preservation or Recreation/Open Space category based on local government provisions for transfer of

development rights, such categories shall be assigned a maximum density/intensity of one (1) dwelling unit or five (5) percent floor area ratio per acre, or both, as is applicable based on the use characteristics to be utilized in the receiving parcel for any transfer of development rights under the Countywide Plan Map and these Countywide Rules.

- I. Where an entire parcel of property is located in a Preservation or Recreation/Open Space category, and the development rights of such parcel have not been and cannot be transferred, such property shall be permitted a minimum beneficial use subject to the various provisions of these Countywide Rules and the Countywide Plan Map, but private property shall not be taken without due process of law and the payment of just compensation.
- J. 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.

~~4.2.7.2.2 — Density/intensity averaging is permitted between all Countywide Plan Map categories except Preservation, Recreation/Open Space, Central Business District and Community Redevelopment District. The entire area under consideration must be considered as one project by the local government in which the property is located, must be under master site plan or unity of title, and the total dwelling unit count, floor area, and impervious surface, shall not exceed what is otherwise allowed under the Countywide Plan Map for the total area under consideration.~~

~~All uses for projects involving density/intensity averaging shall be consistent with the use characteristics permitted within the respective Countywide Plan Map categories involved in the density/intensity averaging.~~

~~Mixed uses shall not exceed, in combination, the respective number of units per acre, floor area ratio, and impervious surface ratio~~

~~permitted, when allocated in their respective proportion to the total lot area.~~

~~Any project utilizing density/intensity averaging shall require written evidence of the averaging 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 shall be filed with the PPC.~~

4.2.7.3 **Density/Intensity Averaging or Clustering**

4.2.7.3.1 Density/intensity averaging or clustering shall be permitted in accordance with these Rules, and any other specific requirements of the local government with jurisdiction.

4.2.7.3.2 Density/intensity averaging or clustering shall occur only on property within the same Countywide Plan Map category, and no density/intensity averaging or clustering shall be permitted between or among property(ies) in different Countywide Plan Map categories.

4.2.7.3.3 There shall be no density averaging or clustering from existing developed property, irrespective of whether or not that property has been developed to the maximum density/intensity permitted under the Countywide Plan and Countywide Rules.

SECTION 2. The portions of Article 7. Terms and Definitions, are hereby amended as set forth below. All other portions of Article 7 not included in this ordinance are preserved and remain as previously set forth in the Countywide Rules.

DIV. 7.2 **DEFINITIONS.**

Density/Intensity Averaging or Clustering - The aggregation of the otherwise permitted density and/or intensity of a parcel or parcels of land in a non-uniform or consolidated manner on a portion of such parcel(s) within the same Countywide Plan Map category.

Development Rights - A property owner's entitlement to develop land in accordance with the local jurisdiction's comprehensive plan and land development regulations and these Countywide Rules.