

## Virginia Local Government Law

### Transfer of Development Rights Help On the Way

By: Andrew McRoberts. *This was posted Tuesday, November 17th, 2009*

For many years, localities were without authority to adopt a TDR ordinance. The Attorney General made clear that while a TDR program might be constitutional, a statute would have to be adopted to authorize a locality to adopt a TDR ordinance. Opinion to the Honorable Robert T. Andrews, 1985-86 Va. A.G. op. 112.

In 2006, such statutes were adopted. [2006 Acts of Assembly ch. 573](#). However, the authority was little utilized in part because of the requirement that the severance of the development rights and the attachment of the development rights occur simultaneously. In 2009, this was addressed and other changes made to the statutes with an intent to make them more attractive to local governments and landowners. [2009 Acts of Assembly ch. 413](#). That statutory amendment took effect July 1, 2009.

For the last few months, a workgroup made up of representatives from local governments, realtors, homebuilders, agriculture and environmental groups has met at the Virginia Association of Counties Office on Richmond's Main Street with one goal: To make it easier to implement Transfer of Development Rights (TDRs) in Virginia.

With special kudos to Chairman John G. "Chip" Dicks, who facilitated the discussions, and Ted McCormack, who organized the meetings and arranged the details, a group of attorneys, lobbyists, planners, assessors, staff and other real estate professionals from varying perspectives wrangled over the details of the current TDR statutes, found in Virginia Code sections [15.2-2316.1](#) and [15.2-2316.2](#). The workgroup is nearly ready to release a model ordinance with extensive commentary, form deeds and transfer documents. I will certainly update this blog with the materials when they are finalized, which should be before the end of 2009.

The end product is one that we reached by consensus, and one that we believe will make the implementation of TDRs easier and more likely in those localities that choose to adopt some version of it. The end product is NOT approved by any locality, organization or employer, but is intended as a resource. Of course, any model will require significant review and revision by local staff and the local government attorney, as well as amendment of existing local ordinances and the comprehensive plan to make it work. But the end result may be another way to make good planning work for growing localities.

Our meetings were all very cordial, and disagreements were seldom and professional. The comments reflect some of the legitimate disagreements that occurred, and are intended to allow local governments and others to

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consider issues the workgroup discussed. My compliments go to every member of the workgroup for your professional demeanor and positive attitude. All of us truly seemed to want to make TDRs work for the benefit of all.

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