LAND USE PLANNING TOOLS

INTRODUCTION

The following summary addresses a menu of typical land use planning tool sand techniques that may be considered for implementing some of the recommendations of the Route 29 corridor study. Listed below are the specific tool, pros and cons in its application and potential enhancements to enabling legislation or authority to modify the tool for application.

URBAN DEVELOPMENT AREAS

Overview:

As part of the Transportation Act of 2007, Section 15.2-2223 of the Code of Virginia was expanded to include new requirements for preparation of comprehensive plans. The most significant new provisions, outlined in Section 15.2-2223.1, require that certain fast growing localities must include at least one Urban Development Area (UDA). According to the new legislation, a UDA is an area located close to a city, town or other developed area that is designated as appropriate for higher density development due to its proximity to transportation facilities and to public or community sewer and water systems. The language further states that development within the UDA shall provide for reasonably compact development with residential densities of "at least" four units per gross acre and commercial densities of "not less than" 0.4 F.A.R (floor area ratio) per gross acre. Finally, the UDA or UDA's must be of sufficient size to accommodate projected commercial and residential growth for at least 10 years but not more than 20 years. Comprehensive plans may include incentives for development in UDA's and state and local funding for transportation improvements, housing and economic development shall be directed to UDA's to the extent possible. Localities subject to the new legislation are now also required to incorporate new urbanist design principles such as pedestrian friendly roads, interconnected road and pedestrian networks, stormwater management, preservation of natural areas, mixed use neighborhoods with a mix of housing types and reduced yard setbacks and street widths in their comprehensive plans.

Localities have until July 1, 2011 to come into compliance with Section 15.2-2223.1 either by amending their current comprehensive plan or by adopting a resolution that their current comprehensive plan "accommodates growth in a manner consistent" with the new requirements. To date, few, if any localities have specifically amended their plans to address the new legislation; however, some have indicated that the new provisions will be considered through routine updates or their normal five year review cycle. Localities do have the option of certifying that their current plans already meet the requirements of the legislation but, it is not clear is this provision means that the general intent of the legislation must be met, or the specific requirements laid out in legislation. Several localities, including Fauquier and Goochland, have expressed concern about the implications of the new UDA requirements. As a result, in March 2008, the General Assembly established a joint subcommittee to study development and land use tools. In particular, the joint subcommittee "shall examine and monitor the transition to channeling development into Urban Development Areas, and determine if additional legislation is needed to help localities as they transition to Urban Development Areas." The study is scheduled for completion on November 30, 2009.

TRANSFER OF DEVELOPMENT RIGHTS

Overview

The Commonwealth of Virginia has recently provided a potentially significant new planning tool to localities: Transfer of Development Rights (TDR). TDR programs are designed to conserve farmland and open space while reinforcing the concept of urban growth areas. The TDR concept operates under the principle that the right to develop a property can be transferred or sold, similar to the way a landowner might sell or lease mineral rights, drilling rights or grazing rights. TDR programs have existed in the United States since at least the late 1970s. Over 140 programs are operating in several states including Maryland, California, Florida, Washington, and New Jersey with varying degrees of success.

A TDR program allows landowners who do not wish to develop their property to sell their development rights to another landowner, typically a developer who wants to develop another property at a density higher than existing zoning would allow, usually without the need for a rezoning. The TDR purchaser pays the seller for their unused residential development rights, usually on a per unit basis, and "moves" those units to another location in the community. The sender agrees to an easement that precludes residential development on the property, but allows the continuance of farming or other activities that maintain the property in an undeveloped state. Some programs (and the legislation approved in Virginia) also allow residential density to be transferred and converted to a square footage equivalent for use in a non-residential development.

Local governments, typically through their comprehensive plans, designate "sending" areas – where density is transferred from - and "receiving" areas – the area where density is transferred to. The sending areas are areas that a community wants to protect from development because they are sensitive environmental areas, prime agricultural lands or have scenic, historic or open space value. Receiving areas are locations that are usually well-suited for development because utilities, transportation facilities and public services are present or planned. The transfer of development rights and subsequent placement of restrictive easements can occur at the time units are approved or, in some programs, the two events can be separated by time and the TDR unit can be "banked" or set aside for use until there is a need or market for the unit.

Two of the oldest and most successful TDR programs are operating in Calvert County, Maryland and Montgomery County, Maryland – both located within commuting distance of Washington D.C. Approximately 49,000 acres of land has been placed under conservation easement through TDRs in Montgomery County, MD, making it the most successful TDR program in the country. TDR prices in Montgomery County have ranged on average (in 2007 dollars) between $4,000 and $18,000; the most expensive easements sold for approximately $45,000. In Calvert County, prices (not adjusted to current dollars) ranged from approximately $1,200 to $7,500 dollars between 1980 and 2006.

<u>Virginia TDR Legislation</u>

In 2006, by adoption of, § 15.2-2316.2 the Virginia General Assembly authorized any Virginia locality to implement transfer of development rights. In 2007, the General Assembly authorized the transfer of development rights to adjacent jurisdictions. Further in 2008, by amendment of the Acts of Assembly, Chapter 440, Albemarle County became the first and only Virginia locality with the express authority to bank development rights for future use. As structured, the current legislation requires TDR programs be voluntary and that density transfer can not be required as a condition of development. It also allows for residential density to be converted to non-residential density.

MANDATORY OPEN SPACE CLUSTERING

In 2006 the General Assembly adopted legislation (§ 15.2-2286.1, effective July 1, 2007) requiring that certain localities that grew by more than 10% between 1990 and 2000, and with a density of less than 2000 persons per square mile, must provide cluster regulations applicable to at least 40% of the unimproved land in residential and agricultural zoning districts. Cluster developments must be permitted by right under the local zoning and subdivision ordinance, without a public hearing or any kind of special use permit; however they may be subject to standards, conditions and criteria.

IMPACT FEES

Overview

An impact fee is a fee charged by a local government to offset the costs of public improvements required to support new development. Impact fees are based on the premise that new development should pay its own way and that the developer proposing the project should pay all or part of the costs of improvements required to serve the project. Initially used in the 1950s and 1960s to pay for water and wastewater facility improvements, the use of impact fees has been expanded to help finance construction of schools, roads, libraries, fire stations and similar public facilities. Use of impact fees has grown rapidly in the last 15 years and they are used to varying degrees in over 25 states. Impact fees have been most widely implemented in rapidly urbanizing states like Florida, Colorado and Arizona and in states where property revenues are limited, like California.

Impact fees are typically mandatory and not subject to negotiation. Most impact fees are collected at the time of building permit approval so they can be collected regardless of whether a development is approved administratively and by-right or subject to legislative approvals like rezoning. This differs from Virginia's voluntary proffer/conditional zoning system which only garners funding for public improvements when a rezoning is necessary for development.

Virginia Impact Fee Legislation

Virginia has long allowed cities, towns and counties to charge fees for connection to municipal sewer and water systems, often known as tap fees. The State Code allows for these fees to include the actual connection charge and a portion of the costs associated with funding or retiring the debt on the sewer or water facility. The only other type of impact fee currently permitted in Virginia is for road improvements.

In 1989, the General Assembly authorized localities in Northern Virginia to use impact fees for road improvements. None of the Northern Virginia localities opted to use transportation impact fees, which would have replaced the proffer system for road improvement. The legislation was expanded in 2002 to include Stafford County and in 2006 to include Fauquier and Spotsylvania County. In 2007, with the passage of House Bill 3202, the General Assembly expanded the roadway impact fee authority to 57 additional counties meeting certain criteria. The new impact fee legislation authorizes the use of impact fees to expand existing roads to serve new development and to construct new roads or improvements to meet increased demand attributable to new development. The revised impact fee legislation not only increased the number of localities permitted to use this tool, it broadened the 1989 legislation by allowing impact fees to recover the costs of any road improvements that benefit new development.

Virginia's new impact fee legislation allows collection of road impact fees when a building permit is issued for the new development. Among other provisions, the legislation lays out the steps that a locality must undertake to implement a road impact fee program:

- Establish an impact fee advisory committee; at least 40% of the members must represent real estate, development, or building interests.
- Designate one or more Impact Fee Service Areas (IFSA).
- Conduct a road improvement needs assessment for each IFSA according to certain statutory standards.
- Develop a road improvements plan for each IFSA according to certain statutory standards.
- Adopt each IFSA road improvements plan as an amendment to the comprehensive plan
- Incorporate each IFSA road improvements plan into the local capital improvements plan and/or the six-year secondary road program.
- Adopt an impact fee ordinance for each IFSA.

BEST PRACTICE APPROACHES TO LAND USE, DENSITY & INTENSITY

Background

Comprehensive plans with more explicit and extensive community design standards are starting to replace traditional use-based plans as a means of addressing the physical character of future development. Many localities are moving toward comprehensive plans and zoning ordinances that emphasize form over use, reflecting planning trends like Neo-traditional design and New Urbanism. This approach incorporates traditional land use concepts like use type, density and intensity but relates them to physical form and character, Virginia has even embraced and mandated the use of these principles in the new UDA legislation describe above.

New Urbanism is based on principles of urban design that are the underpinning of treasured and historic places, and have been used successfully for centuries, but which fell out of favor as new development became increasingly auto-oriented. “New Urbanism principles seek to create new communities “by creating “human-scale” streetscapes that are comfortable for pedestrians, a “fine-grain” of mixed-uses, usable public spaces, prominent civic buildings, and strong neighborhood identity. These are provided in ways that still accommodate motor vehicles, modern commercial markets, and consumer preferences. New Urbanism, however, based on principles of urban design rather than architectural design. Whereas architecture is concerned with style and materials, urban design is concerned with the relationship of buildings to the street, the real and perceived scale of buildings, public space design, site access, and street networks .” These principles can be applied to new development, redevelopment or infill development and in urban, rural or suburban communities.

New urbanism principles are being incorporated into comprehensive plans in many localities throughout the country. These plans feature detailed conceptual plans for the future street network, even in suburban communities. These plans also provide guidance for land use intensity across the locality, from the low density rural or agricultural areas, to the most dense areas, on a gradient known as the “transect.” For example, Albemarle County’s comprehensive plan amendment for the village of Crozet won a national Congress for New Urbanism award in 2004.

PURCHASE OF DEVELOPMENT RIGHTS (PDR)

When conservation easements are purchased as part of a broad government program, it is typically called “Purchase of Development Rights” or PDR. In some other parts of the country it is also known as PACE or Purchase of Agricultural Conservation Easements. Purchasing “development rights” is the same as purchasing conservation easements or that portion of the “bundle of rights” that allows landowners to construct dwellings or non-farm commercial structures on the property. Thus, when a locality purchases a conservation easement from a landowner, it essentially “buys” the right to develop the land and “retires” that right by placing a permanent conservation easement on the property that restricts or prohibits further non-farm development. Typically, these easement restrictions run in perpetuity.

LEASE OF DEVELOPMENT RIGHTS (LDR)

When conservation easements are acquired for short periods, they are called easement leases, term easements or the leasing of development rights (LDR).
Lease of Development Rights (LDR) is the same as Purchase of Development Rights except that the term of the easement can be as short as five years, under amendments to Virginia’s Open Space Land Act made in 1981. To date, no Virginia locality has enacted an LDR program, but the concept has the potential to be a good alternative to Use Value Assessment, because the locality can set the terms of eligibility, easement duration, restrictions, and compensation; whereas under the Use Value program, the state sets most of the rules. However, like Use Value Assessment, an LDR program is a temporary solution to the problem of farmland and open space conversion.

When conservation easements are accepted as donations from landowners, the donor property owner qualifies for certain tax incentives at the state and federal levels, instead of receiving payment from the locality. For landowners in the upper tax brackets, these provisions can be quite lucrative. Localities may accept donations of conservation easements, and many private or semi-private institutions also accept easement donations. Easement donations can also be promoted by localities in conjunction with a PDR program.

The Internal Revenue Service (IRS) code allows two principal forms of tax benefit - a federal income tax deduction and an estate tax exclusion. The amount of the deduction or exclusion is determined by an appraiser who calculates the diminution in value resulting from the permanent restriction on the use of the land resulting from the placement of the easement on the land. Only easements granted in perpetuity are eligible for the tax benefit. The donation must be made to a qualified organization exclusively for "conservation purposes."

In Virginia, the charitable gift deduction taken for a conservation easement on the federal tax return results in the same diminution in taxable income for state income tax purposes as it does for federal income purposes. Virginia Code Sec. 58.1-510 through 513 allows a tax credit of an amount equal to 40 percent of the value of a gift of easement up to $100,000. As with the federal tax benefits, the unused portion of the credit may be carried forward for a maximum of five consecutive tax year.

TAX INCREMENT FINANCING

Description

Tax increment financing is a redevelopment funding tool that earmarks anticipated increases in tax revenues from a defined redevelopment area to pay the debt service issued to finance the public improvements in the redevelopment area. Based on the earmarking of increased revenues, public debt can be issued for public improvement in a redevelopment area. These public improvements serve as a catalyst for private investment.

Authority

The Virginia Code, § 58.1-3245 through § 58.1-3245.5, has authorized the use of real estate tax increment financing to promote private investment as part of the blighted area redevelopment program since 1988. The code states that it is within the public interest of local governments to provide public facilities (such as roads, water, sewer, safety services, parks, and schools) to blighted areas. The code requires jurisdictions to establish a Tax Increment Financing Fund for each project. Increases in real estate taxes attributable to the redevelopment project, as determined by a base assessment value, are paid into the Tax Increment Financing Fund and used to pay the principal and interest on loans for public development costs.

Implementation

Few jurisdictions in Virginia have used tax increment financing. Virginia Beach was one of the first localities in the state to use this tool, creating a tax increment financing district in the area of the Lynnhaven Mall shopping complex. The financing was used for public acquisition of property and public improvements (which resulted in the lease of parking spaces, improved traffic flow, improved transit service, and improved storm water management practices) associated with the expansion of the mall. According to Virginia Beach the advantages of this financing were:

- It allowed the incremental increase in real estate tax revenues from new development, redevelopment or expansion to pay for public investments and infrastructure needed to attract private investment;
- It provided another tool for job creation;
- Property owners paid no more than the normal tax rate;
- Tax increment bonds were not counted against the city's annual charter limits; therefore, they do not detract from other needed infrastructure financing; and
- In effect, the new development pays for itself with property taxes, while other benefits and taxes flow to the community at large.

Limitations

- Tax increment bonds are inherently less secure than General Obligation Bonds, as they apply to only a small portion of the City, which typically means higher interest costs;
- Tax increment financing districts may be seen to potentially divert future property taxes from other uses; and
- If tax increment financing districts proliferate and take up too much of the tax base of the community, then the tax base available to support the locality's general fund could be impaired.

TARGETED DEVELOPMENT AREAS

Description

A targeted development area (TDA) designates a specific area within a locality for development and growth. It is an area of a jurisdiction where a local government would like to see most new growth occur, and a local government can utilize its own criteria to define a TDA. Targeted development areas are depicted on comprehensive plan maps, and can be defined by comprehensive plan policies. Implementation of targeted development areas can occur through many means including the adoption of zoning standards applicable only to the TDA, and through public capital facility investment within the targeted development areas.

Authority

Virginia Code, § 15.2-2232 and 2283 (legal status of plan and zoning) allow any locality to designate areas for various types of public and private development, use and density.

Implementation

There are several different ways a locality may implement a targeted development area. Some of the most popular tools include:

- Phasing of tiered growth boundaries around a developed area for five to twenty years into the future;
- Creating service districts in a county; and
- Growth boundaries dividing urban areas from rural land.

- Targeted development areas are effective means of guiding development. Localities that utilize this tool are many, and include:
- Fauquier County first designated service districts in 1967. The county continues to guide growth to achieve and maintain a more compact development pattern and tries to preserve agricultural lands by limiting the extension of water and sewer outside the designated service district.
- Virginia Beach adopted the growth boundary, known as the Greenline, in 1979 to run east and west through the city's center. The land to the north of the line is designated for urban development and services. The area immediately to the south is a transition area. The land lying south of the transition area is zoned agricultural. To complement the Greenline, Virginia Beach adopted a Purchase of Development Rights program to purchase acres in the agricultural zone for open space. (See discussion on PDRs in Part H.3, page 57.) The city has purchased over 4,000 acres as part of this program and has succeeded in maintaining the majority of the city's growth in the northern area for over 25 years.

- Prince William County introduced a "Rural Crescent" into its comprehensive plan in 1998, and continued this concept in the 2003 plan. It designates a band of rural development along their western boundary and targets county growth along the eastern boundary of the county and the interstate corridors. Over 100,000 acres are within this "Rural Crescent".
- Westmoreland County amended its comprehensive plan in 1999 to identify two Primary Growth Areas and six Secondary Growth Areas.
- The 1999 and draft 2007 comprehensive plans for Prince George County designate a targeted development area in the northern portion of the county. Implementation is guided through zoning standards and utility policy.

Limitations

Targeted development areas and service districts are created within the framework of a comprehensive plan and are applicable to guiding future development. They are not applicable to land already zoned. A comprehensive downzoning is required if the land zoned exceeds the density guidelines of the targeted area.

REVENUE SHARING (TAX SHARING)

Description

The sharing of revenues between jurisdictions involves the transfer of some portion of a locality's revenue receipts, with the individual political subdivisions retaining full autonomy over tax rates applied within their jurisdiction. Revenue-sharing programs have been employed to offset inequitable consequences (service costs v. revenue attained) in an area from the nature and pattern of development and to address problems caused by local reliance on the property tax.

Authority

Section 15.2-3400, Code of Virginia authorizes all localities to include provisions establishing long-term, permanent revenue-sharing agreements settling annexation or governmental transition issues. Further, §15.2-1301, Code of Virginia permits all local governments to enter into voluntary economic growth-sharing agreements for purposes other than the settlement of boundary change or transition issues. Finally, there are specific jurisdictions that have been granted authority by the General Assembly to enter into revenue-sharing arrangements with regard to economic development [§15.2-6214, Code of Virginia (Town of Clifton Forge and Alleghany County) and §15.2-6407, Code of Virginia (the localities in Planning Districts 1-5 and 10-15)].

Implementation

For settling annexation issues: City of Radford-Pulaski County, City of Charlottesville-Albemarle County, City of Franklin-Isle of Wight County, and City of Lexington-Rockbridge County.
For annexation and economic development purposes: City of Radford-Montgomery County, City of Franklin-Southampton County, City of Bristol-Washington County, and City of Bedford-Bedford County, County of Roanoke and Town of Vinton.
For economic development purposes: Town of Clifton Forge-Alleghany County, Cities of Buena Vista and Lexington-Rockbridge County, and the jurisdictions of Planning Districts 1-5 and 10-15.

Limitations

Negotiations to reach a revenue-sharing agreement are very complex and require a considerable amount of time and patience because of their long-term and permanent nature.

In all but a few circumstances, a revenue-sharing program that calls for a county to transfer monies to a municipality is considered a general obligation debt of the former and thus requires referendum approval by county voters.
The most common form of revenue sharing in use in Virginia today requires review by the Commission on Local Government and approval by a special three-judge court appointed by the Virginia Supreme Court.

Revenue-sharing agreements generally require the receiving jurisdiction to surrender permanently some governmental or functional authority (e.g., a city's right to revert to town status, some portion of the capacity in municipal water and sewer systems, etc.).
Localities that have low property tax rates and growing capital needs may not be able to "afford" to enter into revenue-sharing arrangements.

Enhancements

Since 2002, the number of localities that have been granted specific authority by the General Assembly to enter into revenue-sharing arrangements with regard to economic development has been greatly expanded to include all localities in Planning Districts 1-5
and 10-15.

A December 2006 report published by the Virginia Commission on Local Government lists all cities and counties that participate in revenue-sharing arrangements and the amounts of revenue involved