

JAMES A. GRAASKAMP COLLECTION OF TEACHING MATERIALS

V. INDUSTRY SEMINARS AND SPEECHES - SHORT TERM

B. Assessors and Other Public Officials

16. "Impressions of the Marketability of Transeferable Development Rights", prepared for the Bettman Symposium at the 40th Annual ASPO National Planning Conference, Chicago, IL, May 13, 1974. File also contains correspondence

IMPRESSIONS ON THE MARKETABILITY OF
TRANSFERABLE DEVELOPMENT RIGHTS . . .

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Transferable development rights are expected to provide for economic compensation of those who must forego the development potential of a site to conserve landmarks or open space and in a larger sense to redistribute the wealth created by planning decisions to those who incur economic hardship as the result of public restrictions on use. For these transfers to occur the development rights, however defined, must have some market-ability and a market price. The current interest in the transferable development right may be the first time that planners have faced directly the ethics in the interrelationship between spatial allocations by the planner and the creation or destruction of wealth for individual owners.

At the University of Wisconsin real estate is defined as artificially delineated space of any kind with time as a fourth dimension. The space frame may be defined by pylons on the Nile, structures of wattle or geodesic frames, or condominium plats at Lake Tahoe. To these space frames various attributes are added such as air conditioning, roads or styles and landscaping. The time dimension is defined by deed or lease. This real estate space-time product is an interface of land (an exhaustible public resource), manufactured improvements and services, and cultural preference expressed through public regulation/^{and}market transactions. The real estate business is the conversion of space-over-time to cash-flow-over-time and involves the interaction of three cash cycle enterprises, a consumer, a producer, and a government entity. Sound real estate in the social sense occurs where the product permits each actor or enterprise cash cycle solvency at the minimum and hopefully a cash surplus to justify the allocation of resources. The business of real estate is the conversion of space-time for money-time and therefore the transferable development right strikes at the essence of the relationships between public

planning decisions and private expectations relative to land use.

Since the planner has never understood money, the TDR has appeal as a special scrip or street-car token which can be printed right in the planning office. This new coin of the planning realm to have free marketability must have:

1. Scarcity so that it is not virtually a free good
2. A readily understood standard definition to be a fungible commodity
3. A statistical market of sufficient buyers and sellers to establish a negotiated price, preferably day by day or week by week over the counter.
4. Broadly distributed ownership of the surplus to prevent monopoly or monopsony. Of course, a free market may be an anathema to the planner but that is ahead of the story.

Before examining some considerations of a market model for TDR's, it is first desirable to define the base unit, the fungible module to be traded in the market place. The speakers have indicated no real consensus but have suggested a number of bases which in my mind should be discarded, such as:

1. Assessed valuation as a base for distribution of development rights is the worst possible standard. Fair market value itself is a statement about future productivity which depends on a set of assumptions made under conditions of uncertainty, a future even more uncertain with the advent of intensive land use controls. Moreover, fair market value as used and recorded by assessors is drastically inequitable as a tax and therefore would be scarcely equitable as a base for defining TDR's. Indeed, reform of our present tax proration system should be a part of any improved system for land use control.

2. The Chicago plan and others have related to floor area ratio limits as defined by zoning envelopes as a measure of commercial development potential but this standard could not be expanded to deal with improvements which did not have floors such as oil refineries, open space areas, or goofy shaped structures like theaters, banks, and fried chicken stands.
3. Those who relate TDR's to number of dwelling units presume the land use development problem is unique to suburban land and residential neighborhood. Nevertheless the range of applications already demonstrated in this conference suggests a more universal standard for TDR's is desired.
4. Cubage is closer to the essence of real estate as a space-time product and is fungible for any particular land use including dwelling units, office space, custard stands or refineries. Cubage could be defined as a cubic foot or a cubic meter, if we would anticipate other reforms now under way. Moreover, since environmental disturbance of the land is the consequence of any form of improvement, why not attach one attribute to this space-time frame for TDR's, that is 1/10 of a square foot or square meter of impervious surface is permissible for every cubic TDR. It would then be possible to require the Highway Department, the airport people and the tennis court crowd to buy their development cubage rights, too, perhaps from the owners of open space zoned by the Sierra Club.

Assume for the moment then that the universal fungible unit of all TDR's is one cubic foot with the single environmental limit of 1/10 of a square foot of impervious surface, name it the cubit, and what follows is the new land economics of "cubernetics," a three dimensional chess of windfall, wipeout, and public welfare, to replace the older Parkerhouse version of Monopoly.

In structuring a marketing model for cubits, the planner undoubtedly will want to have a part in defining the basic objectives of all such transactions. Critical issues of the market structure are those which define how many cubits

each property owner receives for openers, who is to receive the money for sales, who pays the grantor of cubits, who is eligible to be the federal reserve bank of cubits, and when and if Milton Friedman should have the right to inflate periodically the available supply of cubits. Resolution of these basic issues depends on how narrowly or broadly one conceives of TDR's as a tool for planning, a function of the political psychology required to lead legislators down the primrose path of TDR's a step at a time. Various speakers would have TDR's benefit:

1. Those who graciously accede to socially desirable things like creating green space, plazas for lunch, landmark conservation, or downzoning on their lands.
2. Those who forfeit without recourse development expectations and potentials due to zoning classification within a larger master plan.
3. Those who possess undeveloped land with appropriate physical suitabilities but whose plans are out of proper sequence with the tempo or urban development or with the priorities of public policy.
4. Those individuals or government entities denied benefits of growth of economic base as part of a regional land use rationing system such as the California Coastal Zoning system.
5. All property owners, private and public, to the degree that public land use controls diminish their expectations and alternatives in relation to those which they enjoyed as of some specific date.
6. All property owners, private and public, correlated to the quantity of existing improvements and potentials for land as defined by a public agency as of specific date.

Some speakers have suggested that the TDR is a compensatory device with payment in kind instead of in cash, as is presently required for eminent domain

and inverse takings of any kind. For example, funds would flow:

1. From government to government where one community benefits at the expense of another in terms of economic base, assessment base, etc. as a result of regional land planning decisions.
2. From government to those who have been adversely affected by exercise of the police power so as to constitute a taking of property.
3. From developer to a public bank of TDR's so that the public can enjoy a portion of the wealth created by planning decisions to permit an increase in permissible densities or unit capacities.
4. From developers of sites suitable and zoned for development to land owners whose sites are economically unsuitable or not zoned for development.

These varying degrees of participation and of definition for the territory of the marketplace reflect both a philosophical issue as to who owns "development potential" and a technical problem as to what degree that potential already is scarce commodity with economic value which could be increased for any one property owner without an adverse impact on the quality of life influenced by the site. Some speakers and the State Supreme Court in Wisconsin (Just versus Marinette) have suggested that development potential as yet unrealized is a public asset that ought to be allocated in the public interest. Then the public would own all development potentials and could sell cubits at some stated price, the proceeds of which would be divided by formula among all the governments within the purview of the regional land plan. On the other hand if one subscribes to the theory that TDR's permit simply the detaching of development rights from existing private property, then any property owner would be eligible to receive payment for his unused cubits. As a free enterpriser who interfaces land as a public resource, I would like to follow the latter thesis and set up a market for universal cubits

applicable to highway builder and rugged conservationist alike. As a real estate professional, one must adapt and buy low or sell high any little thing planners choose to give for merchandise.

To create a supply of development potential defined by cubits, cubits which can be detached or transferred to other private parcels, it is first necessary to create a supply for the marketplace. Assume for the moment a cubit is a cubic foot; then every land owner in the county would be given a supply of cubits equal to ten times the square foot ground area of their parcels plus the cubits necessary to equal cubic footage of all existing structures as of a certain date. Government owned land as well as street right-of-ways, single family lots, and skyscraper office buildings would all receive their allotment of cubits. All God's children owning land would have cubits to define their development potential. For a time government would work from plats and aerial photos to determine the cubit assignment for each property but as each owner became concerned with a verified measure of his cubits, he would undertake the expense of paying a licensed surveyor to measure it more precisely than the government. This supply of cubits for any one site should be less than is required for anything other than agriculture or single family detached homes, so that other developments would generally require the purchase of cubits in order to proceed with improvement.

To have value cubits must enjoy economic scarcity, even an artificial one, such as diamonds or gasoline. Public planners can profit from the lesson taught by the petroleum industry, which sells land resources by the gallon instead of by the cubit. Rather than permit the planners to forecast the annual demand in cubits, the alternative would be to distinguish suitability of a site from capacity of a zoning envelope needed to build the appropriate use for matters of zoning. Therefore it is proposed that a county undertaking

a cubit approach have a master plan for land use which reflects the suitability of sites for uses consistent with certain community goals (such as conservation of prime agricultural or concentration of high density development to facilitate public transit) and physical land attributes (soil, water table, etc.). Codes would establish the minimum cibits required for various land use, perhaps something like this:

1. Marsh land, bluffs, and other low utility open spaces such as privately owned storm water swales or golf course fairways in excess of a minimum of 20% of a contiguous parcel. (HT. #1)
2. All easements and road right-of-ways (HT. #4)
3. Agricultural land low productivity (HT. #4)
 average " (HT. #6)
 high " (HT. #3)
4. Residential land
 - a. Single family detached home sites (HT. #20)
 - b. Multi-family 2-3 D.I. per acre (HT. #30)
 - c. Multi-family 4-10 D.U. per acre (HT. #40)
 - d. Multi-family 10.1-17.0 D.U. per acre (HT. #60)
 - e. Multi-family 17.1 D.U. per acre and above (HT. #80)
5. Government or private land utilized for the public interest such as all types of schools, churches, and other eleemosynary institutions, officially designated landmarks, or significant and officially designated limited use open areas such as scenic easements, or urban plazas in excess of 15,000 sq. ft. (HT. #10)
6. Commercial-retail land
 - a. Permissable F.A.R. of 1.0 or less (HT. #40)
 - b. Permissable F.A.R. ratio 1.0-3.0 (HT. #60)
 - c. Permissable F.A.R. greater than 3.0 (HT. #80)
7. Industrial, transportation, and mining lands (HT. #30)

No property owner would be allowed to sell cubits if he has less than is required by his zoning classification. Notice that the master plan reflects physical suitability while the minimum cubits to make a site ready for capacity development are in excess of those granted to each parcel owner. Since cubits were originally awarded for the cubage enclosed in existing structures at the time the law would go into effect, a developer could buy an old building and demolish it to gain the cubits while the public would be thus helping to discourage encroachment of new construction on raw land. In addition to the cubits required to provide suitably zoned land with capacity for a building permit, the developer would also have to own cubits equal to the cubage in the building plus any impervious surface area in excess of 10% of building cubage. This constraint would promote conservation of building materials by creating some small incentive, depending on the market price of cubits, for smaller buildings. Of course there is always the danger that the price of cubits would go so high that building owners would design six foot ceiling heights and provide four levels of hammocks to reduce sleeping room cubage, etc.

Given a supply and a demand, what kind of transactions could then take place? Certainly a cubit exchange commission (CEC) would be needed to establish transaction rules, etc. to police the market but there are more serious questions in creating a fungible commodity such as a transferable development right or cubit. All the economic institutions and tactics that characterize fungible commodities such as grain or pork bellies could appear, but unlike foods with a short storage life and future supply input from crops, TDR's would have an indefinite future life and since real estate is in fixed supply, monopoly value would grow with the century as population pressures and food shortages mounted. Many of these possibilities have by analogy have some undesirable byproducts of a futures market:

1. The smaller the region defined for a given TDR market area the easier it might be to corner the available floating supply of development rights.
2. At the initial outset of the program, there would be no knowledgeable buyers and sellers and little information as to the economic value of a cubit. How would a farmer in the hinterland know the marginal value of cubits to an office building developer at a preferred urban location in order to make a knowledgeable sales price decision? At the same time the poorest land owners would have an immediate incentive to dump their surplus cubits for a little hard cash, depressing the immediate price level and permitting the concentration of cubit control among those with less need for liquidity and more concern for long term futures.
3. Freely detachable cubits would be a fantastic estate transfer device as they would have a low cost to acquire and relatively low market value or holding cost in the near term and therefore a low value for estate taxes. Only later, as the heirs reached financial maturity, would the monopoly value of their cubit inheritance be fully realized. Consider the sheiks of Arabia looking for sinking funds for oil cash, when TDR's offer a claim on future American growth when their oil reserves are depleted!
4. As construction volume or community growth trends shifted with interest rates and economic events, TDR's would be incredibly volatile, analogous to warrants or options on development opportunities within a micro area. There are other analogies which could be found in crop allotments for government supported farm goods, water rights to a rancher, gallonage allotments in an irrigation district, timber stripping when stumpage value exceeds purchase price of north woods land, and so on.
5. Given a futures market, could one buy an option (call) in a national market on a development right in a particular locality and could one buy

a "put" (right to sell at a predetermined price) to hedge against a locality changing their cubit codes?

Almost all of these dangers are possible when a TDR is freely detachable from actual land ownership and available for purchase by absentee speculators. Therefore in my opinion several constraints should be imposed on the free marketability of TDR cubits.

1. A development right must always be attached to a parcel of land within the planning region, just an easement serves a dominant estate at the expense of a subservient estate. To own TDR's, one must own land and the total cubits attached cannot exceed the capacity required by its zoning plus the cubits required for an approved improvement plan. The only exception would be ownership by a quasi government cubit bank.
2. A government land or cubit bank should be established by the planning region to stabilize an orderly transaction market in cubits, perhaps establishing a minimum price from time to time, as well as recording all cubit transactions. In addition, governments owning surplus cubits could sell through the cubit bank. Such an institution to regulate the tempo and traffic in development rights could introduce a variety of regulatory complications:
 - a. Does every land owner receive a coupon book as in food rationing where different colored stamps become saleable at different times?
 - b. Should there be a half-life on development rights once they are detached from the land so that a stock pile of accumulated development rights would evaporate if they were not used to construct actual developments?
 - c. Would the planners periodically announce special bonus coupons for the rehabilitation or destruction of slum areas or old style industrial plants?

- d. Would the vacillations of the futures market lead to government support of price levels or land banking of development rights?
 - e. Would there be inter-planning district pooling at the government level to avoid short term shock impact on an individual district supply of floating development rights just as there is pooling and reinsurance between actuarial classifications for fire or earthquake premiums which failed to anticipate losses beyond a certain level of probability?
 - f. Should there be counseling of sellers to protect against exploitation of those in need of cash?
3. The real estate tax should be shifted, in part, to cubits. Assessors fail most consistently to measure the "fair" market value of land. For example, assume that 30% of the communities tax base is represented by land values. Therefore, the tax law could permit 30% of revenues raised from the real estate tax to be generated from all the cubits in a tax district including all the currently exempt church, government, and school owned land (which currently remain exempt primarily because no one knows how to appraise these properties). The balance of tax revenues would be assessed against cost-to-acquire of the improvements and land less an arbitrary percentage established by statutes for the value contribution of the land. There is no legal reason why real estate taxes cannot be prorated by cubits rather than value as long as the system is uniform, just as the tax may be distributed by animal unit months. (For an expansion of the fallacies of market value and an alternative tax system compatible with TDR's, see the article "A 'Uniform' Process of Preferential Real Estate Tax Assessment in Wisconsin," by J.A. Graaskamp to be published in the fall or winter 1974 issue of Land Economics).

4. Finally, there should be a transaction cost on all cubit transfers which would go into a state pool to be redistributed in inverse proportion to the cubit transactions in each community in a state in order to provide some modest compensation for regional land use rationing.

Naturally all of these problems and implications may frighten legislators and voters from consideration of TDR's. Like other modeling devices, it would probably work best where it was kept simple and controlled by a local land bank with both government and private representation on its board of directors. The marketing of cubits should be a clearly separate power than the planning function. It should then be possible to build a workable system with all of these immensely desirable and heretofore unavailable benefits:

1. Real estate potential would be measurable, divisible, liquid, and mobile as it never has been before.
2. The windfall, wipeout, and welfare tradeoffs of planning decisions would have a benchmark for economic cost benefit analysis.
3. All land use decisions would have a common denominator and constraint requiring careful optimizing by public agencies as well as private enterprises.
4. A device would be available to provide compensatory transfers among property owners and among government entities for land use decisions which was never before possible.
5. Economic incentives would be available to encourage desirable public goals such as landmark conservation and open space with equity to the private property owner. The real estate tax negative incentives could be rifled and the tax more broadly distributed and efficiently administered if it could abandon, in part, the fictional scenario of highest and best use appraisal for development land.

Certainly all of these beneficial features would justify the cost of designing a workable marketing structure for TDR's which would not have all of the characteristics of a fungible commodities market.

One other economic aspect or irony in the logic of planners advocating TDR's intrigues me. Back in 1947 Professor Ratcliff wrote that in the ideal sense the function of the planner is to reduce the cost of friction and other marginal surpluses that give rise to differential values to zero so that all land in a region would be equally valuable. Having failed to do that, the planner now wishes to declare by statute that all land within a district is equal in / ^{potential} and therefore in value. On another point planners have always longed to tax the incremental value of land on the theory that it was an unearned return due to the propensity of people to multiply and of government to provide services not fairly costed to the beneficiaries. Since no one yet has discovered an accounting method which would measure the incremental value to be taken from a land tax, why not have the developer set the tax on himself by making him bid for his development potentials, just as he now bids for mortgage futures in the Fannie May auction? Not only will that distribute the present incremental value but it will provide a base for an immediate ad valorem tax on the development right long before the community could expect to tax the land at highest and best use. Until now the planner has felt impotent because voters did not perceive any immediate vested interest in what the planner had to say. If the planner could create his own pseudo currency called development rights, a very large constituency of non-developers would have a vested interest in supporting the value judgments of the planner at the expense of the developer and consumers who come later. What an interesting way to buy voting power!

Marketability of Transferrable Development Rights

- I. Frank BAngs asked me to comment on the marketability of development rights, perhaps mistaking me as Business professor as a spokesman for free enterprise development. I am not. My metaphysical bias:
 - A. Any organized undertaking is an enterprise. Economic enterprises are cash cycle enterprises. The form of any enterprise is determined by the imagination and vigor with which it can respond to the constraints or contest of its situation.
 - B. Real estate is a dynamic product as the result of the interface of the three enterprises - a consumer, a producer, and a municipality and good real estate occurs where each achieve cash solvency at the minimum and hopefully some cash surplus superior to other alternatives.
 - C. The real estate product consists of land as an exhaustible public resource, private capital or money for all forms of improvements, and services to interface land and money with cultural preference expressed through regulation and market transaction. Only the money is private property. Land is a device for capturing an opportunity for providing services or attributes related to a space time product for money. The profit centers in real estate are in the services or the creation of monopolistic attributes.
- II. In setting any market model for transferrable development rights it is necessary to establish some basic objectives of the transaction and a definition of the commodity.
 - A. Among the speakers there is some general confusion as to who is to receive the money for some still to be defined development right:
 1. Those who forfeit development rights through planning and zoning simply because they are in a zone.
 2. Those who possess undeveloped land with necessary physical suitabilities denied development through planning.
 3. Those who suffered a wipeout of expectations to the benefit of someone elses windfall.
 4. Only individuals or public entities denied economic base and growth as part of a regional land use rationing system as part of the California Coastal program.
 5. Those who voluntarily do socially desirable things like creating green space, plazas, or deferring development for their lifetime.
 6. All property owners, private and public, to a degree that public land use controls diminish their options below that which they enjoy on some specific date.
 - B. Then there is the question who pays the holder of a development right:
 1. Residential developers only or all new development
 2. Renovators and those who increase existing densities, even those now permissable due to excess zoning.
 3. Government to those who refrain development as individuals
 4. Government to government ~~where~~ where one benefits at the other expense in terms of economic base, etc.

- C. Then there is the issue of nature of the payment or the variety of cash flows which may generate from the creation of development rights.
 - 1. Single purchase transaction - cash on the barrel head
 - 2. Single purchase with financing and collateral attributes
 - 3. Annuity payments to the seller in the form of a lease long term
 - 4. Tax assessment revenues - as real estate or personalty
 - 5. A license charge to be split among vested government interests
- III. Nobody has yet defined the base unit for defining the total supply of development rights, apparently a fundable commodity to be traded.
 - A. Assessed value was used by one plan but this must be discarded -
 - 1. Assessed value is totally erroneous
 - 2. Subjective valuation of future assumptions which are modified by even discussion of development rights
 - 3. REform of tax proration system is part of land use control requirements
 - B. Cubage is closer to the essence of real estate as a space-time product and fungible to any product.
 - C. Floor area ratio limits the development rights to buildings with floors which would exclude oil refineries, steel mills, etc.
 - D. Number of dwelling units presumes to relate the development problem only to residential when a more universal unit is desired.
 - E. If environmental disturbance is the concern why not use square yard of impervious surface and make the Highway Departments and airport people buy their development rights, too?
- IV. Assume for the moment we take a universal unit of cubage as the commodity or detachable certificate as the basic unit for a development right. Given this new tool for monopoly and sharing of windfall and wipeout, who gets to be the federal reserve bank and how many chips does each player get for openers?
 - A. If John Coasten's thesis is correct that development potential is a public asset that ought to be allocated in the public interest, then the public should own all the development rights through the local governmental scheme and it could sell cubits at some stated price which would then be divided among all the governments within a region which had a vested interest.
 - B. If you subscribe to the theory that we are detaching development rights from existing private property, then perhaps owners of vacant land or all privately held land or private and publicly owned land would receive a stated number of cubits at the outset.
 - 1. Planners can determine the ground area owned from the survey
 - 2. A master plan based on physical suitabilities would then produce a height factor.
 - 3. Area X height (proxy for potential development intensity consistent with public goals) would define cubage.

- C. However, if you wanted to encourage recycling of old buildings to discourage encroachment on new land, perhaps cubits should be awarded for the cubage enclosed in existing structures at the time the law goes into effect so a developer could buy an old building, say an old filling station, and get a bonus of so many cubits.
- D. I leave the dilemma to you social planners as my specialty is presumably to buy low and sell high any little thing you choose to give us development types.
- V. For anything to have market value the supply must enjoy economic scarcity, even an artificial one such as diamonds or gasoline, and since the public planners can profit from the lesson taught by the petroleum industry who sell land resources by the gallon instead by the cubit, how does one define a supply which will always be less than demand in order to retard growth, promote efficiency (say 6' ceiling heights and 4 levels of hammocks to reduce sleeping areas and related cubage. Set the cubits high enough and desk space could be rented by the hour, etc.).
 - A. What is needed is a forecast of demand which gives the planners credit for considerable more clairvoyance than they have been willing to reveal to date or
 - B. The public could print more cubit certificates from time to time to discourage speculators from cornering the market or hoarding their wealth in packages of cubits in a safety deposit box somewhere.
 - C. Or we could create a CEC (cubit exchange commission) which would not only regulate transaction rules but also determine the supply to be floated in each area of the country consistent with a national policy for growth, development, population dispersion, and governmental decree on what the consumer may do for recreation and all other pursuits requiring land.
 - D. Given a supply, what kind of transactions could take place?
 - 1. Must title to a development right always be attached to land like an easement with a dominant or subservient estate? In that case parceling and plottage would be a three dimensional gain, with various economies of scale consistent with other site zoning constraints.
 - 2. If TDR's could be bought by speculators, it would no longer be necessary for speculators to actually buy land when they could purchase warrants on future expectation for a county or a region. What fun! At that point we could have a futures market in development which would allow the long term investor to hedge prospects for its existing investments in one area by taking a counter position and development rights in another.
 - 3. If TRD's were separated from land ownership Japanese investors could corner the market in Honolulu and the European common market could acquire all the development rights surrounding General Motors plants in the United States. Or the sheiks in Arabia could purchase all the development rights in seaports which still had potential for deep water tankers and refineries.
 - E. The smaller the region were defined for the purposes of establishing development rights, the easier it would be to corner the detachable

development right or for some farmer, by accident, 30 years down the road in the hinterland to end up owning the only development rights that were not in strong hands so that the bid price for that farm would permit the farmer and his wife to retire forever.

1. Of course the public could print more TDR's to wipe out the speculators and the farmer.
 2. The public could discourage long term ownership by taxing it as real estate but transferrability might quickly go beyond your ability to collect it and tax liens could be used by the speculator as a put and call device. He would pay the tax lien when rising values gave him a profit or "put the development rights" to the municipality if values decline.
- F. If the injured private land owner is to be adequately compensated we must have knowledgeable sellers as well as buyers (developers who know what its worth to them).
1. Real estate brokers are a lousy market mechanism and in need of considerable reform themselves.
 2. A public exchange with bid and ask prices would need to be created for each planning or market area.
 3. A public record of transfers and ownerships would need to be kept current so sellers might anticipate what buyers were up to and trends toward centralized ownership of real estate futures could be identified.

VI.

Ultimately the supply and the price of TDR's would need to be fixed and a state tax on each transaction imposed which could then be distributed among all communities in the state on the same basis on which they shared state income tax rebate or similar mechanism.

- A. The base unit should be cubage with a given function for impervious surface so that all forms of improvement to land would require development rights including public improvements. This unit we will call a development cubit.
- B. The government by referendum would institute the program so that
 1. All land owners would receive one cubit per square foot of land owned at a given date plus one cubit for each cubic foot of structure presently on that land.
 2. Government would receive an equal number of cubits on a share for share basis for all existing streets and government structure. From that point on government would be constrained on the same basis as private development.
 3. 25% of the real estate taxes would be assessed on cubits and the balance on cost to acquire of improvements to land with assessed value as of date of law or cost to acquire within three years prior to the law as the base for the other 75% of real estate revenues. Currently exempt properties would pay on cubits but not appear on the roll for cost to acquire. Currently exempt properties would have a mild incentive in the form of holding costs to force reevaluation of their land and building requirements while contributing to cost of governmental infrastructure. Builders of new property would have great incentive to hold down new costs and therefore conserve materials and labor.

4. Transactions could only occur among land owners in a defined area so that cubits would always be attached to a site and the number of cubits per site could not exceed the maximum required to execute the permitted use for the site.
5. Down zoning of a site from permitted uses at the time of the law would reduce the number of cubits required for its maximum use and the public would be required to buy those cubits at the time of the down zoning at the current offering price of cubits in the market run by the Register of Deeds in any particular county.
6. Demolition of a building existing at the time of the law or built with cubits acquired later would give the land owner the released cubits for sale but otherwise the land owner must always own cubits equal to those required by all of his land improvements, including, of course, impervious surfaces, like parking lots and roads and ground floor area.

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1155 Observatory Drive, The University of Wisconsin, Madison 53706

November 16, 1972

Mr. Frank Bangs
Editor, Land -Use Controls Service
American Society of Planning Officials
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Dear Mr. Bangs:

There is always a certain satisfaction in having one's opinion sought by those who have some stature in a common area of expertise such as Dick Lehman and yourself. While your inquiry comes during the final crescendo of the semester, this note represents the musing of an evening's study on the Maryland proposal SD 254 and your critique. My area of specialty is the business of development rather than land economics although I consider myself an analyst rather than an advocate of the development business. The best economist I have met relative to development economics is Claude Gruen of Gruen & Gruen, Ferry Building, San Francisco 94111, and I would urge you to seek his opinion. Perhaps you are familiar with his work relative to the economics of the California Coastal Zoning Plan or the San Francisco Bay Land Use Commission.

The critical economic assumption and basic concept of SD 254, as you pointed out, is not the separation of current and future use but rather the premise "that all land within a district is equal in use value and all benefits from planning should be shared equally by all land owners within the plan." If that is so, then development rights are a fungible good and it therefore follows that economic institutions that characterize such goods would spring up. Most of these possibilities suggest undesirable by-products of a marketplace for the proposed development rights:

1. A futures market would exist for development rights for residential, commercial, and industrial units. Assuming development rights cannot float from one planning district to another, the size of the planning district would determine the number of development rights which would be available on the market. Just as stock must be qualified for an exchange listing, there would need to be a minimum number of shares and shareholders to assure a reasonable statistical probability of transactions every day or every week. There would be specialists on the development rights "exchange" who would know the supply and demand balance on any given day. If construction volume varies with interest rate and economic activity, these development rights would be fantastically volatile, in the nature of warrants or options on development opportunity.

2. Of course the planning district for which futures in development rights could be bought and sold might not be large enough to provide an orderly market and therefore little information for buyers and sellers to know what these rights were worth. Indeed how would a farmer in the hinterland know the marginal value of a development right to an apartment developer at a preferred urban location in order to make a knowledgeable decision?.
3. While the uninformed seller would have little ability to estimate marginal value of development rights to the buyer, he would be painfully aware of the marginal cost of holding a development right which would be taxed as any other real estate interest. A farmer in the hinterland who sees no reasonable hope for immediate urban appreciation would dump his development rights to avoid the marginal cost since the least productive land would be taxed on its development rights at the same rate as a development right with the most present value. He would do so with as little care as he sells posthole easements to the electric company or transmission routes to big utilities.
4. A development right would be a frozen asset which could be liquidated by the small property owner with no immediate development prospects so that initially the supply of development rights would exceed demand with the logical consequence of an extremely low value for long term benefits. Gradually development rights would be concentrated in the control of those with less need for liquidity and more concern for futures. What a fantastic estate transfer device as land control would have a low cost to acquire, relatively low taxes or holding cost, a low value for estate taxes, and eventually monopoly value as the market value for a fixed supply of floating development rights is cornered for a small development district by a combine of local home builders and developers! Talking about analogy to oil and mineral rights, how about analogy to:
 - a. The sale of savings and loan passbooks for pennies on a dollar when the S & L's went on call to cash rich investors who then traded the passbooks at par value for foreclosed property held by the same S & L.
 - b. Timber stripping in northern Wisconsin when stumpage value exceeds purchase price.
 - c. The distribution of commercial interests in the land of the Indian reservation to members of the tribe when the tribe loses reservation status.
 - d. Conversion of a mutual insurance company to a stock insurance company when policy holders have right to a fraction of a share or a guaranteed purchase price of X dollars from the directors who end up owning the company at a fraction of its growth potential. Who better understands the potential of the company particularly if they have been doing the accounting for several years prior to the distribution?

- e. The problems of crop allotments for government supported crops like tobacco, cotton, etc.
- f. From the developers viewpoint access to development rights would be as critical as access to water rights to a rancher or gallonage allotments in an irrigation district!

All of these situations involve fungible claims on productivity in the future and invariably have led to concentration of wealth through monopoly for the savvy as a result of exploitation of the unwise or temporarily illiquid sellers. Whole crops would represent an annuity. The price of the crop operates in a national market while development rights could be easily cornered as the total supply of "float" (i.e. rights which would relocate to other sites) would be finite in a planning district, only a percentage of the total since many people might refuse to sell, and constantly shrinking in supply. For example, could you buy an option (call) on a development right? Could you buy a put to the local zoning board if they changed their building codes? Talk about leverage benefits from planning for a few at the expense of the many - wow!

While the short term value of cash relative to future development rights is very high for the seller who is not in the development business, the utility of cash to the developer is very low relative to the utility value of controlling development rights.

1. The long term investment profitability of residential real estate is very low in terms of after tax cash for the developer because of the real estate tax, continuing change in the income tax, growing political pressure for rent controls, and an accelerating rate of style and location obsolescence. Increasing amounts of mortgage capital are necessary and the long term prognosis is for gradually rising interest rates. While the productivity of residential capital is falling, the cost to construct is rising so that the land residual value in constant dollars will also decline. However, a real estate enterprise with a very low net profit margin nevertheless turns over a large volume of dollars. The developer is interested in diverting these dollars through his land, construction, insurance, brokerage, mortgage banking, and property management companies. Equity is defined as the power to control disbursements of the real estate investment enterprise as each discretionary expense or outlay represents a sales dollar to some other organization. This explains why developers are happy to build in a soft market and then to sell to a limited partner since they retain all of the discretion to divert expenditures as a general partner while the limited partner remains in the position of a contingent revenue bond investor. The development profit centers are in front end load on the total cost.
2. In that light the cash cycle which the developer controls begins with the production process of land development. Those who control

the development rights have the bargaining power for tie-in contracts to secure a portion of the cash cycle created by a development. In the early years of legislation purchase of the development rights on the most marginal land creates a trading commodity of tremendous monopolistic power with which to control construction contract awards, mortgage banking, and all of the rest.

3. Recognizing that potential in terms of the sophistication imbalance between early sellers and buyers the government might step in to regulate and control the tempo and traffic in development rights, which raises a variety of regulatory complications:
 - a. Does everyone get a coupon book as in food rationing where different colored stamps become saleable at different times?
 - b. Is there a half-life on development rights once they are detached from the land so that a stock pile of accumulated development rights would evaporate if they were not used to construct actual developments?
 - c. Would the planners periodically announce special bonus coupons for the rehabilitation or destruction of slum areas or old style industrial plants?
 - d. Would the vacillations of the futures market lead to government support of price levels or land banking of development rights?
 - e. Would there be inter-planning district pooling at the government level to avoid short term shock impact on an individual district supply of floating development rights just as there is pooling and reinsurance between actuarial classifications for fire or earthquake premiums which failed to anticipate losses beyond a certain level of probability?
 - f. Will there be counseling of sellers to protect against exploitation of those in need of cash?

Several ironies of the planners logic intrigued me. Back in 1947 Professor Ratcliff wrote that in the ideal sense the function of the planner is to reduce the cost of friction and other marginal surpluses that give rise to differential values to zero so that all land in a region would be equally valuable. Having failed to do that, the planner now wishes to declare by statute that all land within a district is equally in use and therefore in value. On another point planners have always longed to tax the incremental value of land on the theory that it was an unearned return due to the propensity of people to multiply and of government to provide services not fairly costed to the beneficiaries. Since no one yet has discovered an accounting method which would measure the incremental value to be taken from a land tax, why not have the developer set the tax on himself by making him bid for his development features, just as he now bids for mortgage futures in the Fannie May auction? Not only will that distribute the present incremental value but it will provide a base for an immediate ad valorem tax on the development right long before the community could expect to tax the land at highest and best use. Until now the planner has felt impotent because voters did not perceive

any immediate vested interest in what the planner had to say. If the planner could create his own pseudo currency called development rights, a very large constituency of non-developers would have a vested interest in supporting the value judgments of the planner at the expense of the developer and consumers who come later. What an interesting way to buy voting power!

All of the premises that planner have made relative to the desirability of such drastic legislation are subject to considerable skepticism, to wit:

1. That land is a fungible commodity when in fact value lies in the uniqueness of every parcel relative to static physical properties and its dynamic interfacing with consumer behavior..
2. That planners at the state level are incorruptible or infallible when establishing the boundaries of districts or the quantity of development for all time within those districts.
3. That the politics of land use will be simplified because of the mutual sharing of incremental value when there will be land owners with development rights, without rights previously sold, and in addition, a new class of development right owners who would wish to see public cost for services resting on those presently using the land and who will experience tremendous leverage from their uncommitted pool of development rights.
4. That density zoning by district will not create indirect development costs which must either reduce quality of development or increase price with the result that the consumer surplus produced from pooling of the incremental value will be more than offset by the incremental cost to the consumer.
5. That the planner having created the artificial currency of Development rights to manipulate the developer won't decide to later manipulate the currency through inflationary techniques to conceal erosion of the consumer surplus or to reward favorite schemes of the planner.
6. That the use of police powers will never succeed in achieving land use balance.
7. That the land owner or the developer are profiting unfairly (windfall) by the fortuitous location of their property and the slavish catering to the consumer. (After all, the country makes life and death decisions by means of a draft lottery and protects the right of the cigarette smoker to kill himself in the long run).
8. That additional fragmentation of the planning process by district will not have the same undesirable consequences that present political fragmentation has produced for regional planning.

Most of these thoughts above are suggested by your essay but perhaps your dispassionate presentation might gain emphasis through organization under topics relating to the implicit premises above. These implicit premises are smoothly or naively overlooked by both Senator Goodman and the New Jersey planners memo.

However, there are a couple of items in your presentation which are unclear to me since the proposed legislation is also unclear. The community infra-structure of which you speak on page 4 is generally financed from the bonding power of the real estate tax. To what degree will the carrying costs be assigned to existing users when it is the future users who will be pushing the consequences of development beyond the capacity of the existing infra-structure of the tolerance of the good earth to forgive abuse? The more rights which are sold and relocated to other parts of the district, the more remaining existing uses would need to carry their own service costs unless the real estate tax district were the same as the planning district. What would establish the ad valorem base for development rights taxation when these net values would be the averaged present values of speculative futures after hedging and dollar averaging? I suspect that the real estate tax would be more regressive than you suggested on page 5. Again you have covered these points but you have not been explicit as to their impact as to operational problems with which all citizens can identify. In short, you have structured your criticism on the explicit claims of the preamble while I would challenge the implicit and counterproductive premises of the planners logic. As you may notice I think best by analogy to similar institutional frameworks which is a business viewpoint, I suppose rather than pure economic dissertation. The problem with argument by analogy is that the perceived image of the comparable institution imputes a value judgment to the development rights proposal which may or may not be fair. However, in any event your review should expose that which has not been said in the preamble and the law as well as that which has been written in its support.

While this correspondence represents a rambling first draft of impressions, I would like to exact a small favor in return. Enclosed is a synopsis outline of a small modification of land planning law as it relates to a counterproductive aspects of real estate taxation. The State of Wisconsin Planning Department is now considering financing a test of this rather simple minded proposal and I would value any suggestions or analogies which you might provide. Note that the tax burden on land would be decided indirectly by the planners while the tax on improvements would be derived from cost to acquire in the market.

I am reminded of a conversation I had with a nationally known analyst in which he expressed some concern over the objectivity and ability of planners with whom he worked a good deal. I, in turn, expressed grave doubt on the ability and the wisdom of the appraiser (my specialty) in valuing undeveloped land by attempting to interpret market value from

a few presumed comparable sales. He carried the day with a reply that "I would prefer to trust the consequences of interpreting a half-assed market rather than live with the consequences of half-assed planning!" Perhaps my tax plan is a political compromise based on the above postulate. Thank you for the opportunity to comment.

Sincerely yours,

James A. Graaskamp
Associate Professor in Real Estate

JAG/db



1313 East Sixtieth Street Chicago Illinois 60637 Telephone 312: 324-3400

American Society of Planning Officials

April 22, 1974

Mr. James Graaskamp
Associate Professor in Real Estate
University of Wisconsin
Graduate School of Business
1155 Observatory Drive
Madison, Wisconsin 53706

Dear Professor Graaskamp:

I'd like to formally thank you for accepting our invitation to participate in the Bettman Symposium on Transferable Development Rights, May 12 and 13 in Chicago at the Palmer House. As discussed in our telephone conversation you will be a panelist in Session II, Monday, May 13, 10:30-12:00 noon. The Bettman Symposium is part of the ASPO Conference, May 11-16.

Established by ASPO as an annual feature of its national conference, the Bettman Symposium explores in depth emerging concepts and techniques in the field of planning law. This year we have chosen to evaluate the potential of transferable development rights as a means of implementing land planning policies.

The subject matter of your session and the general scope of your remarks are covered in the enclosed program outline. Listed there are several issues or questions you may wish to address. Let me emphasize, however, that this listing is not exhaustive; you are free to shape your remarks in any way that best reflects your own knowledge and experience, within the scope of your task as a session participant.

To assist your preparation for the symposium (particularly those who will act as respondents), I have enclosed a collection of readings on TDRs, most of them authored by symposium panelists. Also enclosed is a recent bibliography of materials on TDRs. I can provide copies of items in the bibliography not a part of the enclosed readings.

President: GRADY CLAY, Editor, *Landscape Architecture Quarterly*, Louisville. **Vice-President:** HARVEY S. PERLOFF, Dean, School of Architecture and Urban Planning, University of California, Los Angeles. **Immediate Past President:** FRANK P. LLOYD, M.D., Vice-President, Marion County Metropolitan Development Commission, Indianapolis. **Secretary-Treasurer:** GEORGE T. MARCOU, President, Marcou, O'Leary and Associates, Washington, D.C. **Board of Directors:** AUDREY BECK, State Representative, 15th District, Connecticut General Assembly, Hartford. CARLOS C. CAMPBELL, Planning Consultant, Reston, Va. STRATMAN COOKE, Member, Toledo Planning Commission. ALLAN B. JACOBS, Director, San Francisco Department of City Planning. RITA D. KAUNITZ, Ph.D., Advisor, Lecturer; Planning/Environmental Affairs, Westport, Conn. H. PETER OBERLANDER, Secretary, Ministry of State for Urban Affairs for Canada, Ottawa. BEATRICE FARRAR RYAN, Senior Planner, Wallace McHarg Roberts and Todd, Philadelphia. ANN SATTERTHWAITE, Planning Consultant, Washington, D.C. JAMES VARNER, Executive Director, Morris County Economic Opportunity Council, Morristown, N.J. DOROTHY WALKER, Member, Berkeley Planning Commission, Cal.
Executive Director: ISRAEL STOLLMAN.

Mr. James Graaskamp
April 22, 1974

- 2 -

As indicated in our telephone conversation, ASPO will reimburse your travel expenses; including coach air fare, ground transportation; hotel and meals. A travel expense form is enclosed; please return it to me following the conference. In addition, you will receive a complimentary registration for the ASPO Conference.

Should you have any questions, please call me collect at (312) 324-3400, extension 106. I'll look forward to seeing you in Chicago.

Sincerely,



Frank Bangs

FB:sm

Enclosures: 1. Symposium Outline
2. TDR Bibliography
3. Selected TDR Readings
4. Speaker Memorandum and Enclosures
5. Symposium Speaker List
6. Expense Form



1313 East Sixtieth Street Chicago Illinois 60637 Telephone 312: 324-3400

American Society of Planning Officials

April 30, 1974

Mr. James A. Graaskamp
Associate Professor in Real Estate
University of Wisconsin
Graduate School of Business
1155 Observatory Drive
Madison, Wisconsin 53706

Dear Professor Graaskamp:

Enclosed are additional materials on TDRs authored by symposium panelists. I would appreciate learning of other materials not listed in the TDR bibliography forwarded to you earlier.

One note about that earlier mailing: the preliminary conference program was printed before the format of the Bettman Symposium was finalized. Hence, the sequence of sessions differs from that in the program outline which was also enclosed. The final conference program now being printed will reflect the order of sessions in the outline.

Should you have any questions please call me collect at (312) 324-3400, Ext. 106.

Sincerely,

A handwritten signature in dark ink, appearing to read "Frank Bangs", is written over the typed name.

Frank Bangs
Editor, Land Use Law and Zoning Digest
FB/ev

Encls: (1) DeVoy, "The Transfer of 'Development Rights'"
(2) Gans, "Saving Valued Spaces and Places Through Development Rights Transfer"
(3) Rose, "A Proposal for the Separation and Marketability of Development Rights as a Technique to Preserve Open Space"
40th Annual ASPO National Planning Conference - Palmer House - Chicago, May 11-16, 1974

President: GRADY CLAY, Editor, *Landscape Architecture Quarterly*, Louisville. **Vice-President:** HARVEY S. PERLOFF, Dean, School of Architecture and Urban Planning, University of California, Los Angeles. **Immediate Past President:** FRANK P. LLOYD, M.D., Vice-President, Marion County Metropolitan Development Commission, Indianapolis. **Secretary-Treasurer:** GEORGE T. MARCOU, President, Marcou, O'Leary and Associates, Washington, D.C. **Board of Directors:** AUDREY BECK, State Representative, 15th District, Connecticut General Assembly, Hartford. CARLOS C. CAMPBELL, Planning Consultant, Reston, Va. STRATMAN COOKE, Member, Toledo Planning Commission. ALLAN B. JACOBS, Director, San Francisco Department of City Planning. RITA D. KAUNITZ, Ph.D., Advisor, Lecturer; Planning/Environmental Affairs, Westport, Conn. H. PETER OBERLANDER, Secretary, Ministry of State for Urban Affairs for Canada, Ottawa. BEATRICE FARRAR RYAN, Senior Planner, Wallace McHarg Roberts and Todd, Philadelphia. ANN SATTERTHWAITE, Planning Consultant, Washington, D.C. JAMES VARNER, Executive Director, Morris County Economic Opportunity Council, Morristown, N.J. DOROTHY WALKER, Member, Berkeley Planning Commission, Cal.
Executive Director: ISRAEL STOLLMAN.

THE UNIVERSITY OF IOWA

IOWA CITY, IOWA 52242



*Institute of Urban and Regional Research
102 Church Street
Area 319; 353-3862*

Office of the Director

15 May 1974

Dr. James A. Graaskamp
Associate Professor in Real Estate
Graduate School of Business
University of Wisconsin
Madison, Wisconsin

Dear Jim:

Sorry I missed your presentation on Monday of ASPO but would appreciate a copy of your remarks, if they are available. Enclosed is a list of our publications which best describes activities we are undertaking. Particularly, I am enclosing a copy of Technical Report #25 which describes some of our activities in the statewide land resource information area.

Keep me informed of your activities.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ken". The signature is stylized with a large, sweeping "K" and a smaller "en" following it.

Kenneth J. Dueker,
Director

KJD/bah
Encl.: (2)

ARTHUR RUBLOFF & Co.

REAL ESTATE

69 WEST WASHINGTON STREET

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(312) 368-5400

May 21, 1974

Professor James A. Graaskamp
UNIVERSITY OF WISCONSIN
Graduate School of Business
1155 Observatory Drive
Madison, Wisconsin 53706

Dear Jim:

The attached draft of an article grows out of the recent Bettman symposium and deals with the concern which looms large in the minds of many people interested in development rights transfer. Your comments and criticisms would be much appreciated.

Next time let's get together and talk.

Sincerely yours,



Jared B. Shlaes

1s
enclosure



947-2560

1313 East Sixtieth Street Chicago Illinois 60637 Telephone 312: 324-3400

American Society of Planning Officials

May 28, 1974

James A. Graaskamp
Associate Professor of Real Estate
University of Wisconsin
School of Business
1155 Observatory Drive
Madison, Wisconsin 53706

Dear Professor Graaskamp:

Thanks for your excellent contribution to the Bettman Symposium on transferable development rights. The comments we've received from those that attended confirm our own perception that it was a useful, stimulating program.

We intend to publish in the near future a Planning Advisory Service report using materials generated by the Symposium. Dan Mandelker and I will prepare an introductory, overview chapter on TDR's to be followed by our speakers remarks (either submitted articles or portions of the edited transcript). I am very much interested in getting your article for the report. It would be preferable if you could hold the length to 15 to 20 double-spaced, typewritten pages, and I would like to receive it by June 15.

I have forwarded your statement of expenses to our accountant for payment. You can expect to receive a check in about two weeks time.

Sincerely,

A handwritten signature in dark ink, appearing to read "Frank Bangs", is written over the typed name.

Frank Bangs
Editor, Land Use Law & Zoning Digest

FB:mj

40th Annual ASPO National Planning Conference - Palmer House - Chicago, May 11-16, 1974

President: GRADY CLAY, Editor, *Landscape Architecture Quarterly*, Louisville. **Vice-President:** HARVEY S. PERLOFF, Dean, School of Architecture and Urban Planning, University of California, Los Angeles. **Immediate Past President:** FRANK P. LLOYD, M.D., Vice-President, Marion County Metropolitan Development Commission, Indianapolis. **Secretary-Treasurer:** GEORGE T. MARCOU, President, Marcou, O'Leary and Associates, Washington, D.C. **Board of Directors:** AUDREY BECK, State Representative, 15th District, Connecticut General Assembly, Hartford. CARLOS C. CAMPBELL, Planning Consultant, Reston, Va. STRATMAN COOKE, Member, Toledo Planning Commission. ALLAN B. JACOBS, Director, San Francisco Department of City Planning. RITA D. KAUNITZ, Ph.D., Advisor, Lecturer; Planning/Environmental Affairs, Westport, Conn. H. PETER OBERLANDER, Secretary, Ministry of State for Urban Affairs for Canada, Ottawa. BEATRICE FARRAR RYAN, Senior Planner, Wallace McHarg Roberts and Todd, Philadelphia. ANN SATTERTHWAITE, Planning Consultant, Washington, D.C. JAMES VARNER, Executive Director, Morris County Economic Opportunity Council, Morristown, N.J. DOROTHY WALKER, Member, Berkeley Planning Commission, Cal. **Executive Director:** ISRAEL STOLLMAN.



1313 East Sixtieth Street Chicago Illinois 60637 Telephone 312: 324-3400

American Society of Planning Officials

June 18, 1974

James A. Graaskamp
Associate Professor in Real Estate
University of Wisconsin
Graduate School of Business
1155 Observatory Drive
Madison, Wisconsin 53706

Dear Professor Graaskamp:

Enclosed is that portion of the Bettman Symposium transcript containing your remarks. You are invited to expand (or refine, as appropriate) those remarks into a ten to fifteen manuscript page comment. It will appear, subject to editing and space constraints, as part of an ASPO Planning Advisory Service report on TDRs. At a minimum, please edit the transcript for accuracy.

If at all possible, return your comment or the edited transcript to me by June 30. We hope to capitalize on the timeliness of the Symposium by publishing the report this summer. We appreciate very much your assistance.

Sincerely,

A handwritten signature in cursive script, reading "Frank Bangs".

Frank Bangs, Editor
Landuse Law & Zoning Digest

FB/ct
enc:II:64-82

Robert E. Hansen, F.A.I.A.

June 24, 1974

Dr. James A. Graaskamp
Chairman, Real Estate & Urban Land Economics
School of Business
1155 Observatory Drive,
University of Wisconsin
Madison, Wisconsin 53706.

Dear Jim:

Thank you for your favor on "Transferable Development Rights". The enclosed material may (or may not) make clear the slightly different emphasis we're looking at here.

We think that putting the Tradeable Density Privilege in operation is as simple as:

1. By mutuality, declaring a cut and try temporary norm of D.U.'s or equivalent, per unit of horizontal space in a jurisdiction, based on technology and mutual consensus.
2. Allowing density privileges to be traded and registered in the same manner as mineral or timber rights. (requires no new law.)
3. Applying the vital equating rule of taxation according to highest and best use according to zoning (or impact)- (Including a method of building up specific front ends funds for the escalating costs of allowable high impact.)

There must be an extension of Equatable Density in terms of Ecological Equity: additions, depletions, pollution,--whether liquid, gas, solid or sound.

I've not had occasion to bounce the cubit concept off the minds of our Community Development Council forum, but will work on it.

Recently, searching for already published "urban islands" (some are very ancient), I ran across the enclosed, which represents some kind of ideal model for a "3D Mile Urban Island" (James Rouse, Baltimore Country Club area, in "Cluster Development", 1964) which trades mixed vertical and horizontal usage for green space.

Robert E. Hansen, F.A.A.

It has seem'd to us that the vertical model might be based on traditional norms of single lot density--3 or 4 D.U.'s per acre, or an equivalent in commercial impact, with some leveled off sweetening as the green space ratio increases. (Tokyo now says, "Go as high as you like, as long as you keep 90% open.")"

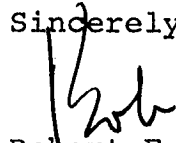
Verticality should, of course be governed by reasonable shadow formula agreements, wherein shadow casting peivileges in excess of mid-morning and mid-afternoon norms might in some cases be purchased, with consent, as with Density Privileges.

At transportation nodules, higher densities should be encouraged so that we may keep the interstices, but a recommendation for a formula escapes definition for a moment.

The same is true for desirably high industrial nodules, like the Port Everglades--Broward Airport,--rail and auto corridor complex here.

I enjoyed very much the opportunity to bounce thoughts with you, and trust there will be more opportunities soon.

Sincerely,



Robert E. Hansen
REH:cms

Enclosures:

Robert E. Hansen, F.A.S.A.

July 29, 1974

Dr. James A. Graaskamp
University of Wisconsin
School of Business
Madison, Wisconsin

Re: Density Equity
Your paper on
TDR's May 13, 1974.

Dear Jim:

As I read your recent paper, I was reminded that when our oldest son was quite small our housekeeper, Georgia Mae, would say, "he's too sha'p fo' me. I am inclined to now admit the same to you.

I have to say that to me your reaction in this paper to the T.D.R. seems a bit brittle, and your lumping of "Planners" too general and too harsh, though we're having some difficulties with planners here.

We must collectively find ways to overcome the problems of amorphous growth, which is much like putting too many cows in a holding lot; compounded by every added animal and having finally driven out the source to new lots elsewhere, the stink may abate and the residue dry up to become fertilizer for a new batch, but for awhile its a hell of a problem.

Many newer lots have no green space at all, just a muck of old urine and excreta, whose strong odor carried on an atmospheric invert 20 miles to downtown Pheonix the time I was there, to spoil the otherwise clear air.

First, I must try to make it clear that an Equatable Density Norm is the essence of Density Equity as we see it, and the T.D.R. (D.P. or density privilege to us) a working tool, one of many. The T.D.R. is not by itself the heart of the matter.

To avoid stuffing pillows in a box interminably, the density norm must be taken on some "cut and try" number of peeple in a jurisdiction- a good place to start is the currently allowable number, by zoning.

Then, if you're in Broward, take any number from one to twenty (new officially allowed densities, 1973) multiply the remaining acres and add to the original number.

Robert E. Hansen, F.A.S.A.

After reaching a total, divide by the number of acres in the jurisdiction to get a norm. It will probably be rather high--like 8 or 10 to the gross acre or some such. Use the formula enclosed or a better one if you have it to find out how many miles of roads and millions or billions of dollars you'll need for that phase.

Do the same for water, sewer, and other services based on a reasonable escalation of existing costs: (1) for predictable annual increases, (2) for density impact increases.

Next put the physical logistics of housing and work space for the number of people on paper as best you can, and add all the other logistic problems, one by one.

If you think its too big to handle, have another look--how to cut it? How to create green interstices? How to breakdown into managable units?

Tell the people with empty space they can't develop? forget that .. Buy the empty space? at those prices? Tell the new people to bug off? Remember Petaluma!

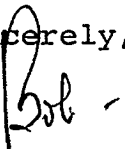
Try a lower density norm and think about Density Equity, The "Three D Mile" and "Urban Islands"? right! how else?

We cannot rely on "Belle Terre" and "Petaluma" type decisions for guidance, since they do not get down to the heart of the problem--nor did Euclid/Ambler.

A new and solid base for land use policy must be developed, I believe the root stock is already here: "Nor shall private property be taken without just compensation", "(Value land for taxes) on ' highest and best use according to allowable zoning' ". "This room will safely accomodate a maximum number of ~~XXX~~ persons."

Remember that Broward County is an extreme of a problem which is universal, just beginning to be recognized as very real by such small communities as Hendersonville, North Carolina, Peterborough, New Hampshire, and someday Chetek, when they clean up the lake.

Sincerely,



Bob Hansen
REH:cms

Enclosure:

Robert E. Hansen, F. A. I. A.

July 29, 1974

Equatable Density Norms

A dwelling Unit is roughly analagous to an office units, about 800 square feet. Obviously some are larger, some smaller and some that start single, split up; many are added to, but the family unit, growing larger, splitting off, diminishing back to two, remains the important dynamic cell of civilzation, and it is fitting that we use it in some manner as a basic measure of "density equity" in the land use policy. Perhaps it can be formalized into "cubits" of some dimension--say a "room" size of 10' x 10' x 10' (a roofers "square", to the third dimension).

Documented study is needed to see whether an equivalent amount of commerical or industrial space, on the average, will produce an approximate equivalent number of person trip miles per day, and an approximate equal need for parking.

Adjustment could be made, within limits, for those enterprises which create a larger or smaller ecological demand.

The inherent need to trade verticality for green space in the urban scene should generate carrot incentive to create such "urban islands" as James Rouses' "Cross Keys Village", Baltimore, ca.1963 (enclosure.)

The nodular effect of transportation corridor confluences, and similar effects created by ports and airports, pose a problem of accomodation which maybe achieved through slightly higher decibel allowances, and higher densities (interspersed with open space) for more efficient function of a multitude of urban "hearts".



State of Wisconsin \ DEPARTMENT OF REVENUE

Patrick J. Lucey
Governor

David W. Adamany
Secretary

August 13, 1974

201 EAST WASHINGTON AVENUE
MADISON, WISCONSIN 53702

Dr. James A. Graaskamp, Ph.D.
University of Wisconsin
School of Business
1155 Observatory Drive
Madison, Wisconsin 53706

Dear Dr. Graaskamp:

The Wisconsin Department of Revenue is sponsoring a series of conferences this fall in conjunction with the Wisconsin Humanities Committee. Our September 14, 1974 conference is entitled, "Human Values, Ethics and Land Use Decision-Making" and will be held in Green Bay.

I am in charge of preparing background material for the conference. I recently was given a copy of a paper authored by you entitled, "Impressions On the Marketability of Transferable Development Rights" prepared for the Bettman Symposium May 13, 1974. I was very much impressed by the paper and feel it would be valuable to those attending the conference. Therefore, I would like your permission to reproduce the paper for distribution at the conference.

If you could suggest any additional sources or materials on this subject I would be most appreciative.

Sincerely,

Randy Nilsestuen
Project Coordinator

RN:pp



August 30, 1974

Mr. James A. Graaskamp
Associate Professor in Real Estate
Graduate School of Business
University of Wisconsin
Madison, Wisconsin

Dear Mr. Graaskamp:

At the present time, our company is compiling data on Transfer of Development Rights. It is our understanding that you have become familiar with this concept and have spoken or written on this subject.

We have been engaged by the County of Mono, California, and the National Park Service to prepare a Master Plan for Mono County. They are interested in exploring Transfer of Development Rights for use in their communities.

Any data, thoughts or references you could send us will be greatly appreciated. If we, in turn, can be of any help to you, please let us know.

Thank you in advance for your attention to this request.

Sincerely,

SASAKI, WALKER ASSOCIATES, INCORPORATED


Roberta Andersen

RA:bd