

4.0 LITERATURE REVIEW AND REVIEW OF POLICIES IN OTHER JURISDICTIONS

4.1 CHARACTERISTICS OF SUCCESSFUL DENSITY TRANSFER SYSTEMS

We reviewed published papers and articles that examined existing transfer of density systems in other jurisdictions to help identify the characteristics of a successful system. Based on our review, no other Canadian cities have a system comparable in scope or activity to Vancouver. However, transfer of density systems are prevalent in the United States, where transferable density is referred to as Transferable Development Rights (TDRs). There are over 100 jurisdictions in the United States with TDR programs⁹. Most programs are aimed at preserving farmland, ecologically sensitive areas, rural character or open space. However, some programs are intended to help preserve heritage buildings or historic features.

Based on this review, we identified seven characteristics of a successful transfer of density system:

1. The system should be relatively simple to understand and to administer. In Vancouver, the system sounds simple but the approvals process for both source sites (heritage) and receiver sites can be complex for developers and land owners. For example, the heritage building owner needs to negotiate an HRA with the City and the developer of the receiver site faces an uncertain outcome during the approvals process to obtain the permission to use the transferable density. In addition, the policies are not documented in a user-friendly manner.

⁹ "Putting Growth in its Place with Transfer of Development Rights", Planning Commissioners Journal, Summer 1998, Rich Pruetz, AICP.

2. The receiver area(s) should be actively under development. Vancouver's receiver area is under active development, although a substantial share of new development in the Central Area is occurring in CD-1 locations, which are not eligible for transfers.
3. There should be incentives for the owners of potential heritage sites to enter into agreements to sell transferable density. In Vancouver, heritage building owners have several incentives to sell density: City policy requires developers to explore retention of heritage buildings prior to seeking approval to demolish and rebuild on-site, density bonuses are available, there has been a liquid market for transferable density, and transfers can be to multiple parties.
4. Developers should have a strong incentive to purchase transferable density. Developers in Vancouver have incentive to acquire transferable density as it can be used to increase the size of the project at an attractive price, price is set on the open market, and space can be transferred across zoning districts. However, there are some constraints: developers are not always able to achieve a 10% density increase, the outcome of the approvals process is uncertain, and there are other methods available to increase density (such as an amenity bonus).
5. The City needs to select appropriate receiver areas where developers do not face strong opposition from utilizing the transferable density. This appears to be the case in Vancouver. However, due to urban design objectives it is difficult to achieve the density increase in some locations.
6. The City should facilitate transfers by stream-lining the approvals process. Although rezoning and a Public Hearing is not required in Vancouver to obtain a 10% bonus, most developers that were interviewed indicated that the process is still too lengthy and the outcome is highly uncertain.
7. The City should help build public support for the program. In Vancouver, the City may need to help generate more support for increased density at receiver sites as a trade-off for heritage preservation.

4.2 EXAMPLES OF PROGRAMS IN OTHER JURISDICTIONS

We examined transfer of density policies in some other North American jurisdictions to help identify opportunities to improve Vancouver's existing system. We reviewed the programs in four jurisdictions:

- San Francisco, California.
- Seattle, Washington.
- New York City, New York.
- New Jersey Pinelands.

4.2.1 *San Francisco*

San Francisco has a TDR program designed for historic/landmark building preservation purposes. San Francisco has used TDRs¹⁰ since the 1960's, but the program gained momentum in 1985 with the adoption of a new downtown plan which identified buildings to consider for preservation (source sites) and lowered allowable base densities in downtown (down zoned), creating incentive to acquire TDRs to achieve higher permitted densities. Planning Staff in San Francisco could not provide any figures on the amount of density that has been transferred or the number of buildings that have been involved. However, the City reported that the system is very active and density is transferred on a regular basis.

Some of the notable features of San Francisco's system are:

1. In San Francisco, the potential bonus varies depending on the zoning of the receiver site:

¹⁰ Transferable Development Right. This is the term used to describe transferable density in most jurisdictions in the United States.

- In the C-3-0 (SD) District the density can be tripled from 6.0 to 18.0 FSR.
 - In the C-3-0 District the density can be doubled from 9.0 to 18.0 FSR.
 - In the other candidate districts (all C-3), the potential increase is 50%.
2. Without rezoning, TDRs are the only method to increase the permitted density otherwise allowed at receiver sites.
 3. Third parties are allowed to purchase TDRs. Parties can acquire development rights without actually having an approved receiver site in place. The City reported that third parties are an integral part of the market for TDRs in San Francisco. These buyers fall into three categories:
 - Developers who do yet own a suitable receiver site, but are active in San Francisco and are interested in acquiring density for future use. These developers know that large increases in permitted density are available using TDRs and want to own ample density when they acquire a suitable site.
 - Investors who are speculating that the value of the density will appreciate over time.
 - Brokers who profit from buying and selling transferable density. These parties help pool available density and sell the density in large blocks to developers who are interested in applying for a large increase in permitted density. Effectively, these individuals act as a private density bank.
 4. As outlined above, receiver sites were down-zoned to create an incentive for developers to acquire transferable density.

4.2.2 *Seattle*

The City of Seattle first permitted transfer of development rights in 1985. Seattle's system is structured primarily to alleviate pressure on low income housing and landmark buildings. Seattle's system can be characterized as complex and has undergone many changes since its inception, with the most recent changes introduced in 2001. Between

1985 and 1997, there was very little demand for TDRs in Seattle as development in the receiver areas was limited. However, since 1997 demand has increased. Based on available information, we estimate that about 320,000 sq.ft. of space was transferred to receiver sites between 1997 and 2000, or about 80,000 sq.ft. per year on average.

Some of the notable features of Seattle's system are:

1. The City operates a true Density Bank that can purchase TDRs from source sites if no other buyers exist. Seattle set up the Bank in 1988 on the assumption that there would be periods of limited demand for TDRs, sellers would need to be ensured a minimum price, and purchasers might prefer to negotiate with one seller for large transactions. The Bank has proven useful, as there was no demand for TDRs between 1987 and 1997. Since 1997, the Bank has sold a large amount of its holdings.
2. Large potential density increases are available without rezoning. The potential density increase at a receiver site depends on its existing zoning:
 - In the primary downtown commercial zoning districts (DOC 1 and 2), the potential bonus ranges from about 100% to 133% of the base permitted density (an additional 5 to 8 FSR above base density).
 - In the downtown residential district (DMR/R), the increase varies depending on the receiver site's location. The maximum increase in this district is about 150% of the base density, an increase from 2.0 FSR to 5.0 FSR.
 - Height increases of up to 30% are available with TDRs.
3. There are three types of TDRs¹¹ in Seattle and each allows a different potential density increase at a receiver site. To achieve the maximum density increase a combination of TDRs is required, with the largest increase available through Housing TDRs (protects non-market housing). Landmark and Open Space TDRs allow lower density increases.

¹¹ Landmark TDRs come from historic sites, Open Space TDRs come from sites that are preserved for parks and open space, and Housing TDRs come from sites that preserve non-market housing.

4. Seattle allows third parties to purchase TDRs. Parties can acquire development rights without actually having an approved receiver site in place. This helps increase the potential pool of buyers of transferable development rights.

4.2.3 *New York City*

Based on our literature review, New York City is credited with the first TDR legislation, allowing the transfer of unused air rights to other lots as long ago as 1916. New York's current TDR system was established in 1961 and the existing Zoning Resolution has a detailed TDR program designed for historic/landmark building preservation.

Some of the notable features of the New York system are:

1. The potential density increase at a receiver site from using TDRs varies depending on the heritage/landmark site being preserved and the receiver sites existing zoning:
 - In the case of preserving a landmark theatre site, the potential increase (without rezoning), ranges from 20% to 24% (an additional 2.0 to 2.4 FSR above the base FSR of 12.0).
 - For other landmark sites, the maximum permitted increase at a receiver site is lower (about 1.0 FSR or about 7% to 8% above the base FSR of 12.0). Although, the percentage increase is relatively low, it is important to note the absolute increase of 1.0 FSR is still significant. With a special permit (which involves a public process), the increase can be substantially higher.
2. Transfers between adjacent properties are treated differently than transfers to other receiver sites, with the potential density increase much higher. In addition, the definition of "adjacent" has been broadened to include sites across streets and intersections, or where intervening properties are under the same ownership.
3. New York allows third parties to purchase TDRs. Parties can acquire development rights without actually having an approved receiver site in place.

4.2.4 *New Jersey Pinelands*

The Pinelands is a large rural area is located between Atlantic City, New Jersey and Philadelphia, Pennsylvania that was under development pressure prior to the introduction of a TDR system. In 1981, the State of New Jersey required 60 communities in the area to amend the plans and codes to conform to a regional plan to help preserve this area. Part of this plan included TDRs. The system allows land owners in protected areas to sell development rights to receiver sites in 23 different jurisdictions. This program has reportedly permanently preserved over 15,000 acres of land to date.

Some of the notable features of the Pinelands system are:

1. The Pinelands system includes a state owned Density Bank that was established in 1985. The Bank offers a set price (1985 price adjusted for inflation) for TDRs, establishing a minimum market price. TDRs do not have to be sold to the Bank.
2. Receiving sites can obtain density increases of 50% above the base density using TDRs. However, it should be noted that the receiver site base densities are relatively low (e.g., single family and low density multifamily densities in most locations).
3. The system was designed so that potential demand in receiver areas was equivalent to about 200% of the potential TDRs that could be generated at source sites. This helps ensure demand for TDRs meets or exceeds supply.
4. Third parties are allowed to purchase TDRs. Parties can acquire development rights without actually having an approved receiver site in place.

4.2.5 *Comparison with Vancouver*

Vancouver's policies share many of the same basic characteristics as the systems in these other locations, such as:

1. Open market pricing. The price is set on the open market in all four locations (although below some have a density bank to buy rights in order to establish a minimum price).
2. Geographic flexibility. Each jurisdiction allows transfers across relatively large geographic areas.
3. Multiple transactions. Each jurisdiction allows a sending site to sell TDRs to multiple parties.
4. Minimal public process involved in approval. In all of the jurisdictions, transfers can be approved as an administrative process without public hearings.

In some ways, Vancouver's system could be considered more flexible than these other jurisdictions. For example, Vancouver can approve a density bonus for transfer off-site to help preserve a heritage building. The other jurisdictions only allow transfers of residual density under existing zoning. In addition, Vancouver's system includes a wide variety of zoning districts and transferable floorspace can vary in use. The policies in the other jurisdictions appear to be more restrictive in terms of the zoning districts included.

However, the programs in these other jurisdictions include some significant features that are not part of the Vancouver system:

1. The existence of a formal Density Bank. Vancouver does not have a Density Bank and is not involved in the transaction. Seattle and Pinelands both have Density Banks to help facilitate transactions and help ensure a minimum price.
2. Large potential density increases at receiver sites. In Vancouver, a 10% density increase is possible at a receiver site without rezoning. However, potential increases range from 20% to 200% in the other four jurisdictions (without rezoning). Many of these jurisdictions have relatively high permitted base densities so the percentage bonus is equivalent to a large amount of floorspace:
 - In New York City, the potential increase ranges from 20% to 24% of the base density.

- In Seattle, the potential increase ranges from 100% to 150% of the base density.
 - In San Francisco, the potential increase ranges from 50% to 200% of the base density.
 - In Pinelands the potential density increase is about 50% of base density.
3. The opportunity for third parties to acquire transferable density. In Vancouver, third parties are not permitted to acquire density for future use or resale. Density is required to remain tied to a particular site. In all four of the other jurisdictions, third parties can acquire density for sale or use at a later date.
4. Features to help ensure demand for density is high relative to the supply of density. In Vancouver, eligible heritage sites are limited to specific geographic areas and the supply of transferable density is monitored as part of the process to determine whether heritage sites outside policy area should receive approval to transfer density.
- In Pinelands, the receiver areas were defined to ensure that that these areas had the potential to generate demand for about 200% of the potential supply of transferable density for source sites.
 - In San Francisco, base densities in the receiver areas were decreased to help generate demand for transfers and there are no other mechanisms available to developers to increase density.
 - In New York City, transfers between adjacent properties are treated differently and can result in significantly higher density increases.