

EXECUTIVE SUMMARY

Recommendation that the Board of County Commissioners evaluate and consider each option presented with respect to including less than five acre illegal Rural Fringe Mixed Use District (RFMUD) Sending Land properties into the Transfer of Development Rights (TDR) Program for the purposes of programmatic participation relative to TDR severance

OBJECTIVE:

That the Board of County Commissioners (BCC) evaluate and consider each option presented as guidance towards formulating a policy recommendation in relation to the inclusion of less than five acre illegal RFMUD Sending Land properties into the TDR Program.

CONSIDERATIONS:

On October 9, 2007, during the BCC regular meeting, under the County Manager's Report, Item 10A, staff responded to an issue heard during the September 11, 2007 BCC regular meeting under Public Petition, Item 6F. The issue was initiated by Mr. Jim Schulze who petitioned the Board to allow his less than five acre illegal RFMUD Sending Land property TDR program participation as it relates to severing development credit.

Staff responded and recommended that the Board continue to uphold a prohibition on the inclusion of RFMUD Sending Land illegal properties into the TDR program (all less than five acre Sending Land parcels created subsequent to October 14, 1974 – i.e., after the underlying Agricultural zoning district standards of one dwelling unit per five acres was established in the Coastal Area Planning District of the County).

Given that an illegal lot or parcel (of less than 5 acres) was created after the underlying agricultural zoning district standards of 1 dwelling unit per five acres were already in place, such properties are not eligible for development per the LDC; as such, these lots do not contain any development rights to be severed under the RFMUD TDR program.

After extensive discussion, the Board ultimately directed staff to determine how many less than five acre illegal Sending properties actually existed within the RFMUD. In addition, the Board directed staff to come back with various options that would include potential ways to allow the subject illegal Sending Land properties severance participation *via* the RFMUD TDR program.

Less than Five Acre RFMUD Sending Land Property Analysis:

The RFMUD property analysis began with a GIS query of all privately owned less than five acre Sending Land properties. The total number of the subject properties was 256. After the initial number was garnered, staff used two eliminating factors which allowed for a more accurate evaluation with the intent of producing a precise assessment.

All GIS estimated properties were cross referenced with County Property Appraiser records and properties that were noted as five acres by way of official records were eliminated. Also, all less than five acre properties that were previously deemed to be legal non-conforming (LNC) (through individual determinations stemming from TDR program participation) were eliminated. After the eliminating factors were applied, the number of parcels being evaluated decreased to 189.

The final analysis focused on the subject 189 less than five acre RFMUD Sending Land properties. The process for conducting LNC determinations starts with obtaining the respective property card for each individual parcel from the County Property Appraiser, which indicates when the subject parcel was created. The Property Appraiser was able to retrieve 185 property cards (four properties did not have property cards on record).

In cases where there is no property card on record, the requisite documentation needed for a LNC determination is incumbent upon the property owner to produce. Staff primarily relies on the property cards obtained from the Property Appraiser, but if a property owner produces other evidence attesting to when the respective property was created, e.g., recorded deed, recorded agreement for deed, then such evidence will be taken into account when making LNC determinations.

LNC Determination Results:

Upon receiving the 185 property cards from the Property Appraiser, Comprehensive Planning Department staff forwarded the subject property cards to Zoning & Land Development Review Department staff for the necessary LNC determinations.

Subject LNC determinations revealed the following:

- 126 parcels deemed LNC (created prior to October 14, 1974)
- 51 parcels deemed illegal (created after October 14, 1974)
- 8 parcels deemed inconclusive, i.e., insufficient property card information
- A maximum of 63 parcels may be deemed illegal (51 parcels deemed illegal plus 8 parcels deemed inconclusive plus 4 parcels without a property card on record)

Option 1:

Option 1 would allow the 51 illegal lots (up to a maximum of 63) TDR severance participation on a strictly proportional basis based off of property size. All illegal properties could sever under the same circumstances which would always yield a fractional credit issuance. In addition, all properties would be eligible for complete TDR utilization with respect to base and bonus credit potential.

For instance, using Mr. Schulze's 0.34 acre illegal property as an example, the following credit structure would be applicable:

- 0.34 acre parcel x 0.2 units/acre (1 DU/5 acres) = 0.068 base TDRs

In this arrangement, the subject 0.34 acre property could potentially yield (if all applicable credits were achieved) up to 0.272 TDRs – comprised of 0.068 base credits and 0.204 bonus credits.

Option 1 Advantages:

Option 1 would afford all illegal lot owners equitable severance participation. Every less than five acre illegal lot would only be eligible for proportional TDR utilization based solely off of property size. This option would also permit subject illegal lot owners the ability to fully participate in the TDR program in relation to being eligible for all applicable credits. An advantage to full TDR participation deals directly with providing an incentive to subject property owners relative to encouraging environmental restoration and maintenance and conveyance.

Option 1 Disadvantages:

From a TDR market perspective, fractional credits could be deemed undesirable and would more than likely be difficult to sell to developers and investors who need to obtain TDR credits in whole number increments for redemption purposes. Additionally, there is an established Board directed and LDC codified minimum sale price of \$25,000 per TDR credit. If permitted to participate in the TDR program on a proportional basis, illegal lot owners who sever fractional credit cannot expect to garner the aforementioned minimum sale price. Further, staff anticipates having to amend the LDC for the purposes of codifying a policy relative to establishing a proportional minimum sale price based off the issuance of fractional TDR credit.

Option 2:

Option 2 would allow severance participation by permitting all 51 (up to a maximum of 63) illegal properties the ability to garner one base TDR credit. Notwithstanding property size, all illegal property being evaluated would be issued one TDR – bonus credits would not be available to illegal lot participants under this potential arrangement.

For instance, using Mr. Schulze’s 0.34 acre illegal property as an example, the following credit structure would be applicable:

- 0.34 acre parcel (and all illegal lots regardless of size) = 1 base TDR

Under this arrangement, the subject 0.34 acre property (and all illegal lots regardless of size) would be eligible for 1 TDR.

Option 2 Advantages:

Option 2 would also be equitable in terms of implementation. All illegal lot owners would be given a base TDR credit. In addition, fractional TDR credits would not be an issue and all participating illegal lot owners would have a marketable TDR credit.

Option 2 Disadvantages:

One potential disadvantage to Option 2 revolves around the future creation of new illegal RFMUD Sending Land lots. In theory, a five acre Sending Land property owner could split their property into 20 (each with an individual folio number) 0.25 acre illegal lots. Instead of severing based off of one 5 acre property, with an initial credit yield of 4 TDR credits, the owner has an opportunity to sever 20 TDRs from the newly created illegal lots. Such a situation would become an unquestionable detriment to the TDR program.

Should the Board choose this option, careful consideration needs to be focused on addressing only those illegal lots in existence as of the adoption date of the RFMUD (June 19, 2002) or the day the Board gives formal policy direction (in order to deter the widespread creation of additional illegal lots not currently in existence for the purpose of severing more development credit).

Option 3:

Option 3 would only permit developable illegal lots TDR severance capability. Any illegal lot deemed undevelopable (from a property size and lot configuration perspective) would be ineligible to participate in the TDR program. For example, a 10 foot wide lot is not developable and would be ineligible for TDR severance. The TDR credit allocation rate for subject developable illegal lots could be proportional or based on a 1 credit per parcel basis (referenced TDR credit allocation advantages and disadvantages described above in options 1 & 2).

Option 3 Advantages:

Option 3 would be consistent with existing programmatic administration as it relates to the severance of less than five acre LNC parcels that have participated in the TDR program. All less than five acre LNC properties granted TDR credits have been developable (based on property size and lot configuration) and all were assumed to be developable lots when the RFMUD overlay was approved.

Option 3 Disadvantages:

Option 3 would be viewed as a disadvantage to non-developable illegal lot owners.

Option 4:

Option 4 would uphold the current prohibition of TDR severance from illegal Sending Land lots within the RFMUD.

Option 4 Advantages:

Option 4 would be consistent with the Growth Management Plan (GMP), and existing Agricultural zoning district standards that have existed since 1974. If illegal lots became purported impediments to future environmental restoration and maintenance activities – e.g., hydrological restoration – future land managing agencies could purchase these properties *via* market rate acquisition. If any of the illegal lots were in close proximity to management activities, they would have value and could be marketed to interested public agencies. In addition, this option would not create an inequity for owners of non-RFMUD illegal lots, and would not give development rights that presently do not exist to the owners of illegal lots.

Option 4 Disadvantages:

Option 4 would be viewed as a disadvantage by illegal lot owners desiring to sever TDR credits.

Inherent Issues Associated with the Inclusion of Illegal Lots into the TDR Program:

The inclusion of illegal lots of record into the TDR program would create an inequity with respect to all other categorized illegal lots existing outside of the RFMUD. If illegal Sending Land properties were granted the ability to sever development rights, other illegal lot or parcel owners (outside of the RFMUD) could argue for the right to develop based solely upon the fact that illegal Sending properties of record are being granted severable development rights. For example, an owner of a 1.5 acre property in the Estates (one that was created after Estates zoning standards were established) could argue for the right to develop based off of the illegal lot TDRs.

Further, there is a fundamental question of appropriateness with respect to the County granting owners of illegal lots development rights they presently do not have (by virtue of processing illegal lots for TDR severance). If development rights in the form of TDR credits are going to be granted to owners of illegal lots, it's logical to suspect certain illegal lot owners will decline TDR severance participation and request the right to develop their property. If granted TDR credits, owners of illegal lots will have the right to sever TDR credits or develop the parcel itself.

Illegal Lot Owner Notification:

If option 1, 2 or 3 is approved, the inclusion of illegal RFMUD Sending Land lots would require a Growth Management Plan Amendment (GMPA) and subsequent Land Development Code Amendments (LDCA). Many owners will not be aware of their impending TDR eligibility until the formal GMPA process starts and the requisite public hearings commence. As such, each owner of illegal property (including those lots without a property card and ones deemed inconclusive) should be notified following any BCC policy direction regarding illegal lot TDR credit eligibility.

Requirements for Including Illegal Lots into the RFMUD TDR Program (option 1 or 2):

- Amend respective sections of the GMP – Future Land Use Element
- Develop implementing criteria through amendments to the LDC
- Develop and implement various administrative modifications
- Project Schedule to develop and publically vet the amendments
- GMP amendment cycle – transmittal hearings projected for March, 2009
- LDC amendment cycle commencing July, 2009

FISCAL IMPACT:

There is no quantifiable fiscal impact associated with this issue; however, the required amendments to the GMP and LDC will require extensive staff time, possible legal advertising costs, other attendant costs, and the costs associated with the unknown impacts on other projects which could be deprioritized as a result.

GROWTH MANAGEMENT IMPACT:

Inclusion of illegal lots or parcels into the RFMUD's TDR program is inconsistent with the Future Land Use Element (FLUE) of the GMP and would require a GMPA and subsequent LDCAs.

LEGAL CONSIDERATIONS:

This Executive Summary is for the purpose of presenting the Board with the background for a policy discussion by the Board, and as such raises no legal issue. This Office will work with staff to implement whatever direction the Board may give. - JAK

RECOMMENDATION:

Staff recommends option 4 as described; in an alternative scenario whereby option 4 is not acceptable to the Board, staff recommends option 3.

1. Option 4 would be consistent with the GMP and LDC and consistent with prior determinations that illegal lots created after October 14, 1974 have no development rights based upon zoning criteria.
2. In the alternative, although not supported by County Comprehensive Planning staff, as it would completely disregard standards set forth in the GMP and LDC, the BCC should consider option 3.

PREPARED BY:

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