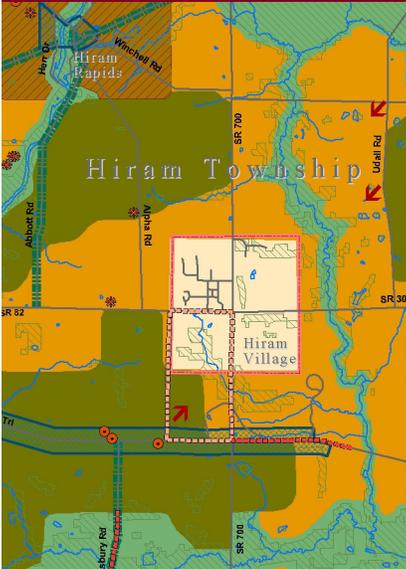


Chapter 13



Above: Hiram Township
Comprehensive Plan
(map: Portage County Regional
Planning Commission)

Above Right: The Reserve at Walden
Pond
(photo: Kirby Date)

TRANSFER OF DEVELOPMENT RIGHTS

Background

What is Transfer of Development Rights?

One of the reasons for the expansion of low density development in rural areas is the need for rural landowners to develop their properties to raise funds for retirement, health care, or other family needs. Tools have been developed in other states that allow rural landowners the flexibility to choose to develop, or to sell the development rights on their land to another landowner who can apply them to a more compact development proposal on another property.

For example, a landowner with 100 acres in a 2- acre zoning district would be permitted 40 or 50 homes to be built on his or her property. Instead of selling land for development, this “sending” landowner could sell the 50 development rights to another landowner, perhaps in a village, with 100 acres, thus allowing the “receiving” landowner the right to build 50 additional homes on the receiving property. The sending landowner places a conservation easement on the sending property and retains ownership and the ability to farm or use the property for other open space oriented uses. Usually, a few development rights are retained by the sending landowner to permit homes for his/her children or others.

This approach is known as “transfer of development rights” (TDR). If applied properly in Ohio, it could allow development in rural areas to be transferred to more compact development areas in urban areas, thereby encouraging balanced growth and retaining the quality of life and watershed in the countryside, while enhancing the small town feel and vibrancy of the village site.

TDRs have successfully harnessed market mechanisms to preserve over 40,000 acres of farmland in Montgomery County, Maryland since 1980. The twenty most successful TDR programs in the nation have preserved over 350,000 acres of land from development.

(Walls and McConnell, 2004;
Pruetz and Standridge, 2009)

How does TDR relate to Balanced Growth?

As discussed throughout the Best Local Land Use Practices document, compact development that is focused on areas of existing infrastructure is the most desirable from a watershed protection standpoint. Compact development allows for reduced impervious surface, more efficient management of storm water, a wider range of transportation options, more organized management of wastewater, and the continued strength of existing cities and towns. In rural areas, however, the standard character of new development is just the opposite: low density, decentralized residential and commercial uses extending out into the countryside.

As seen above, one of the demands driving low density development is the need for rural landowners to sell their property for financial reasons. TDR provides an alternative that is a “win-win,” allowing protection of rural land, while benefiting the sending landowner, the receiving developer, the community, and the watershed.

What makes a TDR program successful?

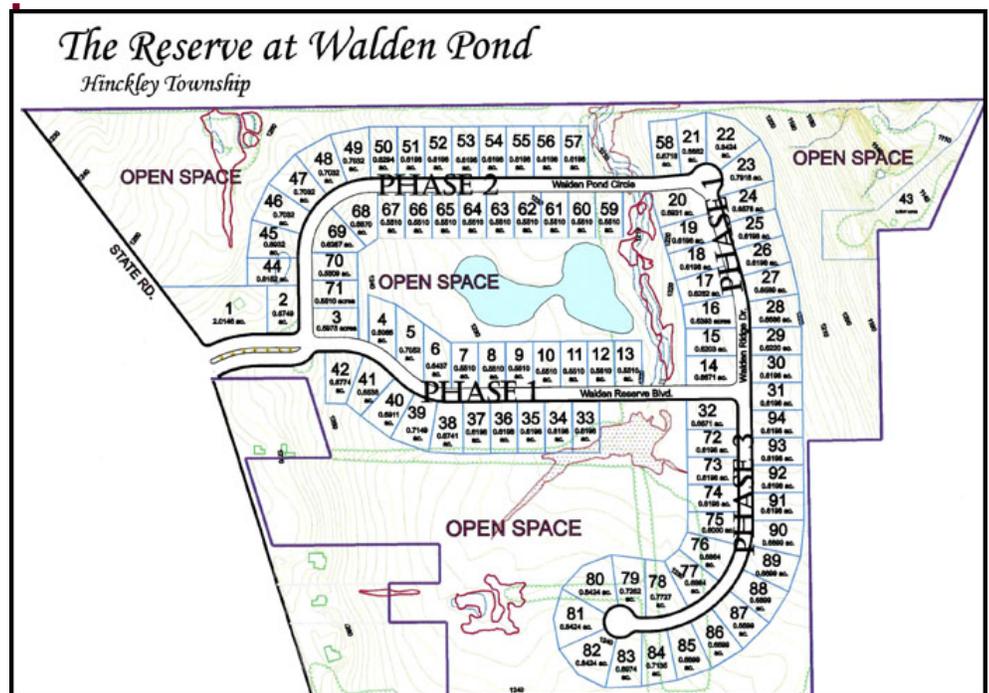
Legislation in other states has included certain components that contribute to the success of TDR, such as:

- Program should be voluntary.
 - Program must be tied to comprehensive planning, ideally countywide/region wide watershed-based planning.
 - Programs should provide for receiving zones in areas with supporting infrastructure.
 - Programs must allow for increased density in receiving areas.
 - Programs should provide for township tax base stability in sending zones.
 - Programs should provide for density transfer across jurisdictional boundaries, and should not require contiguous boundaries of participating communities.
 - Communities and counties should be enabled to establish banks to facilitate transfer of development rights.
 - Participating jurisdictions should be enabled to provide incentives such as density bonuses and streamlined review processes.
- The strengths of TDR as a tool for Ohio are first of all that a TDR

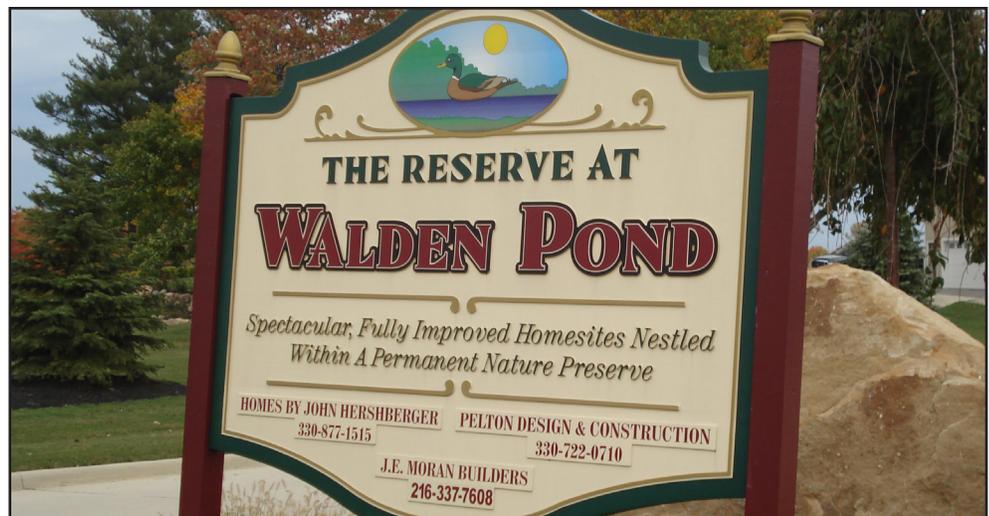


The Reserve at Walden Pond
Construction Site
(photo: Pulte Homes)

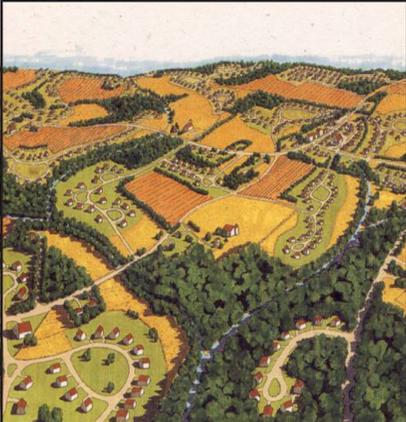
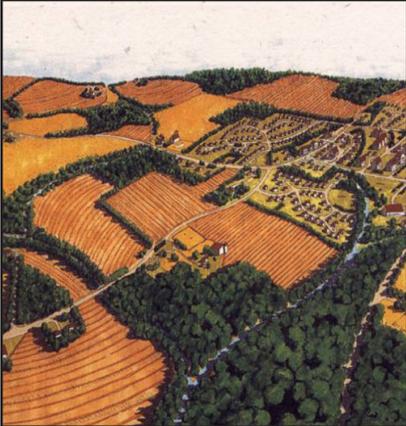
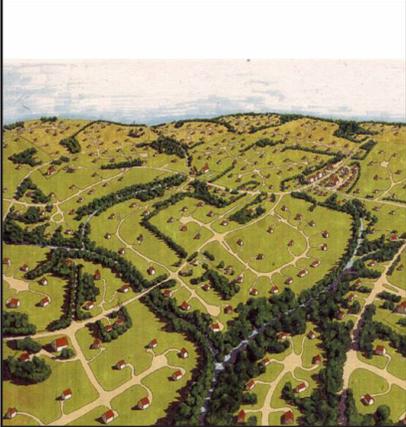
program can be set up as entirely voluntary, with incentives to encourage participation without impinging on private property rights. TDR is typically done on the private real estate market, requiring very little in the way of public regulation and revenue. TDR could be a tool that supports regional planning through inter-jurisdictional collaboration. The transfer of development rights can be coupled with a variety of financing mechanisms in the development area, such as Tax Increment Financing, to provide additional incentives. Tax incentives for townships, including CEDA agreements, can be accommodated. Finally, transfer of development rights as a tool particularly suits the township-village relationship which is so prevalent throughout the state.



The Reserve at Walden Pond Site Map
(map: Pulte Homes)



The Reserve at Walden Pond
(photo: Pulte Homes)



From Top to Bottom: Rural Area Before Development, Conventional Development Pattern, TDR Approach, & Conservation Development Approach

- **Individual vs. Program TDR:** TDR is currently being done in Ohio on a case-by-case private basis as arranged by individual landowners and developers, and accommodated through variances by the local community. However, a well-done TDR program will be based on a comprehensive plan, with designated sending and receiving zones, and may require the cooperation of two or more jurisdictions. While charter cities and villages can currently embark on such a program within their jurisdictional boundaries, there is no specific language in the ORC that allows townships and counties, both critical partners, to do so. In some cases, legal counsel has permitted townships to participate in transfer of development rights on a site-level basis. Statewide enabling legislation is recommended to make this tool widely available in the form of quality programs.

- **Voluntary Programs:** A well-done comprehensive plan will include the designation of desired sending and receiving zones. The number of development rights is based on the underlying existing zoning in these zones. In voluntary programs, incentives are often offered as increased development rights when they are transferred. For example, our landowner in the above illustration might be permitted to build 40 homes on 100 acres, but would be allowed to sell 50 development rights if participating in a TDR program. The addition of 10 rights would be an inducement to sell through a TDR program, rather than build on the site.

- **TDR Banks:** While sometimes landowners are able to locate an interested receiving party at the time they want to sell their development rights, the entire process is facilitated through the establishment of a community, county, or regional bank. Similar to a wetlands mitigation bank, this mechanism allows a sending landowner to sell development rights at their convenience, and an interested receiving landowner to purchase rights at the time of their choosing.

- **Gaining Public Acceptance.** Public resistance to new TDR programs can be traced to three main concerns: (1) general public resistance to new programs, especially due to a lack of understanding of the voluntary nature of the program; (2) resistance of the public in receiving areas to more compact new development with higher densities; and (3) resistance of the sending area communities to “giving up” development that might generate future taxes. To offset these concerns, new TDR programs **MUST:**

1. Incorporate sound education programs with real life examples to help the public understand the benefits and principles of the program (especially with drawings and models of the different types of development);

2. Focus on high quality design and the associated benefits of compact development in villages and cities; and

3. Provide tax-sharing components that ensure sending communities will continue to receive future tax revenues.

• **Gaining Developer and Landowner Acceptance:** Developer and landowner resistance can also be traced to a concern about decreased revenues and increased regulatory requirements. Especially in voluntary programs, it is critical that incentives such as streamlined review processes and density bonuses be incorporated to ensure that the program will be used.

Recommendations

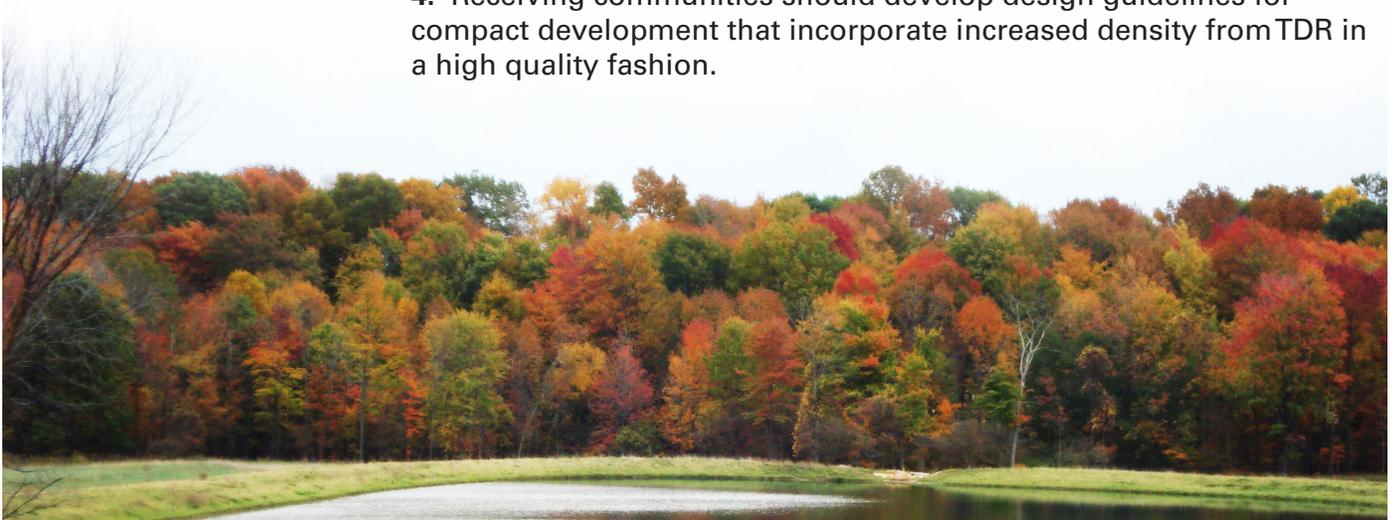
1. Legislation is recommended at the state level to ensure that strong, flexible programs can be established across jurisdictions.

2. Communities should conduct a comprehensive planning process which examines the potential for use of TDR as a development management tool. This planning process should incorporate surrounding jurisdictions and might be best done at the county or regional level. Through this process, sending and receiving zones should be established as well as policies for education, tax sharing, and design in compact areas, base densities in sending and receiving zones, density incentives, and review process incentives.

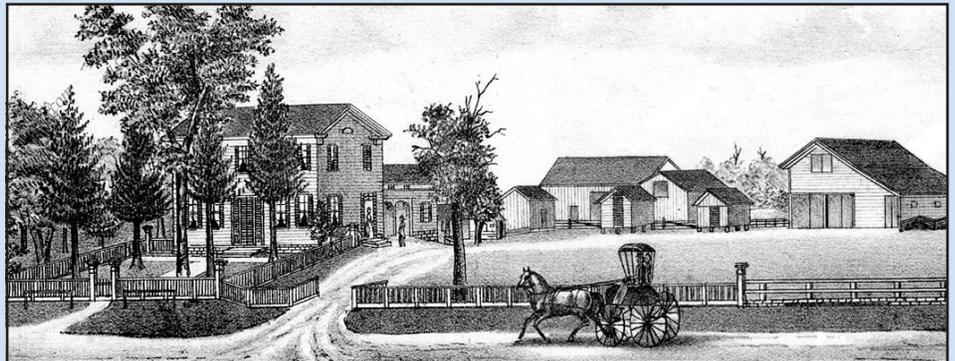
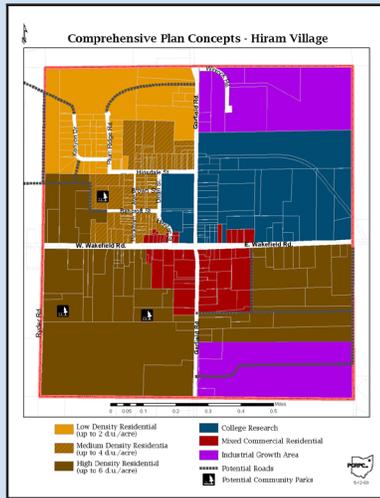
3. Communities should incorporate community education and communication in every step of the process, including meetings with affected landowners and developers, as well as surrounding property owners.

4. Receiving communities should develop design guidelines for compact development that incorporate increased density from TDR in a high quality fashion.

*Preserved Open Space at The Reserve at Walden Pond
(photo: Kirby Date)*

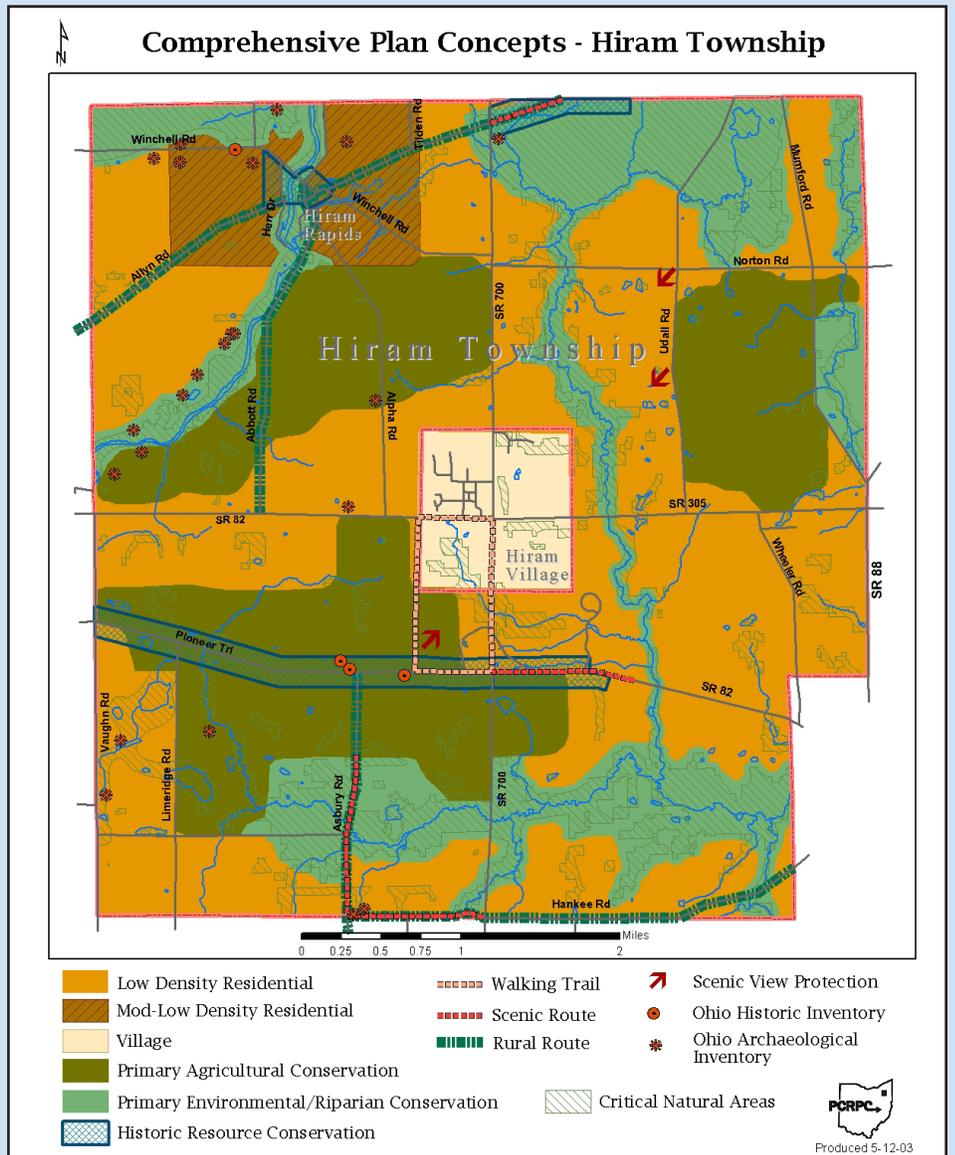


Hiram Village & Hiram Township, The Village-Township Relationship



Residence of W. Stevens, Lot 32 South Street, Hiram Twp. 1800s
 (photo: "A History of the Disciples in Hiram, Portage County, Ohio" Cleveland: Robison, Savage & Co., 1876)

Above is the Hiram Village comprehensive plan concepts plan map; and the map to the right is the Hiram Township comprehensive plan concepts map, showing village area and priorities for agricultural preservation. This village-township relationship is a common pattern in Ohio, and provides an opportunity for TDR solutions.



Above: Hiram College Old Main Building
 (photo: Hiram Community Photo Album)
 (maps: Portage County Regional Planning Commission)

Example Regulations

Transfer of development rights, while potentially a highly useful tool in watershed planning and development, usually requires no special zoning language. The comprehensive planning process will need to examine closely the underlying zoning in both sending and receiving zones to ensure that the desired effect in transfer of rights will be achieved. Provisions for density, including incentives such as density bonuses, can be incorporated into existing zoning. Review processes can be streamlined through zoning as well as subdivision regulations and administrative review policy.

Ohio State University's Center for Farmland Policy Innovation (CFFPI) has developed recommendations for tools to be used in a regional perspective. The CFFPI's policy paper titled "Finding Opportunity across Political Boundaries: Balanced Growth Watershed Plans and Cross-Jurisdictional Agreements" offers issues and strategies for communities to use in working with other communities to manage their Priority Development Areas (PDAs), Priority Conservation Areas (PCAs) and Priority Agricultural Areas (PAAs), through TDR and other strategies that take a cross-jurisdictional approach. These issues should be considered with neighboring communities as well as coordinating with all the communities on the local watershed-scale. The website and policy paper can be accessed from the resources section.

The following example codes are outlined in the Example Regulations Matrix (link):

Pennsylvania, Chestnut Hill Township, Monroe County, Optional Transferable Development Rights (Section 119-34)
<http://ecode360.com/6525721>

Pennsylvania, Pocopson, Chester County, Transferable Development Rights (Article XV, Sec. 250-106) <http://www.ecode360.com/6539810>

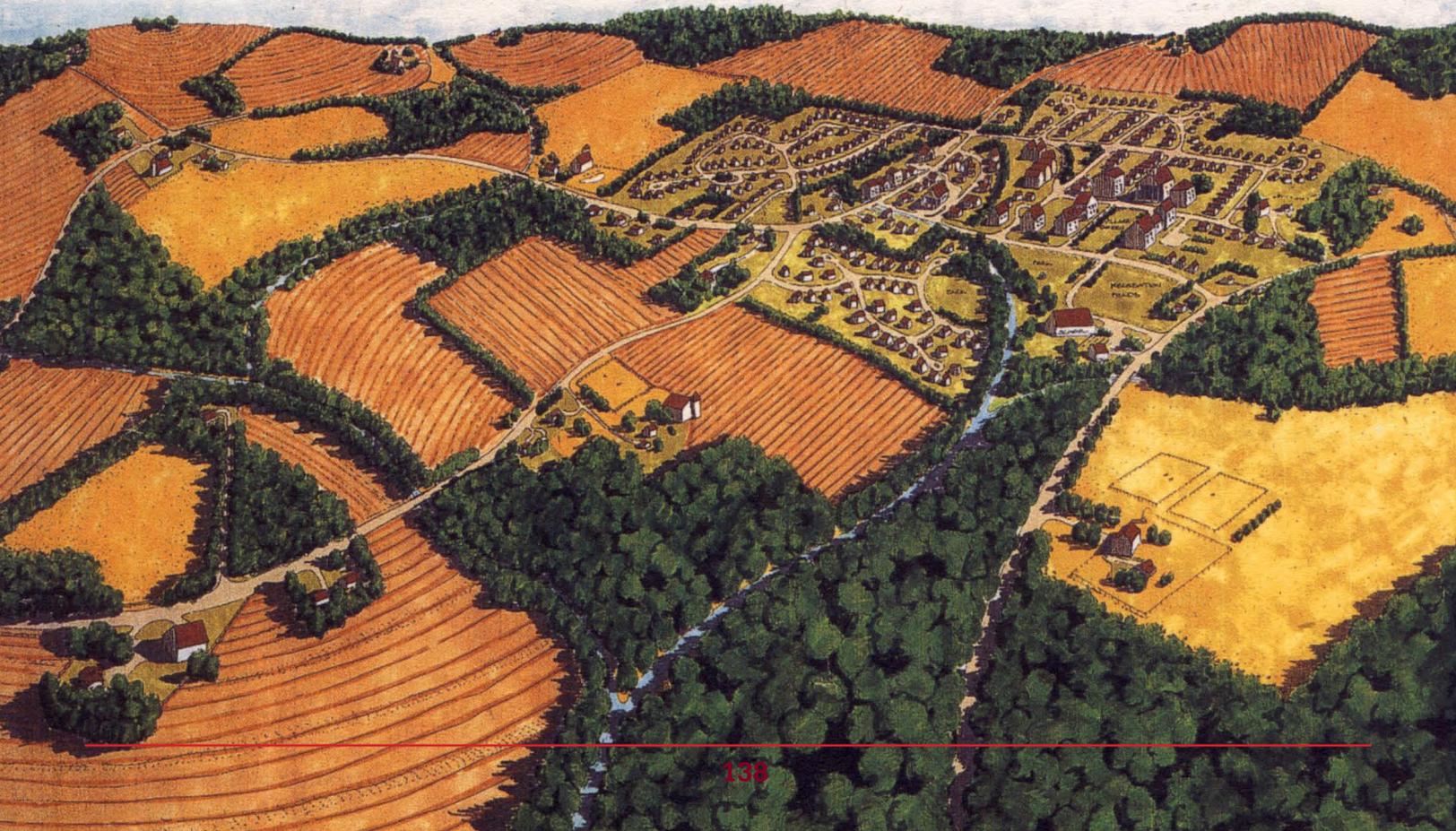
Pennsylvania, West Lampeter, Lancaster County, Optional Transferable Development Rights and Neighborhood Design Option (Sections 285-33, 285-34) <http://www.ecode360.com/base> (In the box under "Find By Name:" at the top center of the screen, type in "West Lampeter" . Click on the municipality's name in the list below when it appears." Under "Part II General Legislation," click on the button entitled "Chapter 285" with the name "Zoning" next to it. Click on the button entitled "Article III" and "Optional transfer of development rights (TDR)" listed next to it)

Pennsylvania, West Pikeland Township, Chester County, Transfer of Development Rights <http://www.westpikeland.com/> (Click on "Ordinances" at the top right, then click on "Zoning Ordinance" at the center of the screen. At the left, scroll down to and click on "Article XVII.")

Use of the Guidance and Example Regulations

This example guidance and/or regulations **should never be adopted without careful legal review** to assure that they are adapted to fit the authority and needs of the specific governmental body. They may need to be adapted for use by the specific type of local government and must be independently evaluated against potentially applicable federal or state law. **The law director/ solicitor, county prosecutor or other appropriate qualified legal counsel should always be consulted prior to adoption of any enforceable measures** based upon this guidance document to insure compliance and consistency with any applicable state and federal law, and to consider potential legal ramifications and liability in the implementation of the laws or rules to be adopted. Questions about the models and guidance can be directed to the Ohio Balanced Growth Program.

(Illustration: Randall Arendt)



Resources

Rick Preutz, *Saved by Development, Preserving Environmental Areas, Farmland and Historic Landmarks with Transfer of Development Rights*, Arje Press, Burbank, California, 1997.

The Community Planning Program, Levin College of Urban Affairs, Cleveland State University, Tel. 216-687-5477,
web: <http://urban.csuohio.edu/cpp>

Department of Agricultural, Environmental, and Development Economics, Ohio State University; Tel: 614-688-4907

Ohio State University's Center for Farmland Policy Innovation-Balanced Growth Plans and Cross-Jurisdictional Agreements.
Tel: (614) 247-6479
web: <http://aede.osu.edu/programs-and-research/cffpi>

Ohio Department of Agriculture, Office of Farmland Preservation,
Tel: 614-728-6201,
web: <http://www.agri.ohio.gov/divs/FarmLand/FarmLand.aspx>