Sue Hemberger
September 15, 2014

Subtitle I -- Downtown

As I have stated previously in oral testimony, I believe that Subtitle I has been poorly conceived and largely undiscussed over the course of the ZRR process. The changes proposed downtown are among the most significant ones in the code and some of the most fundamental questions have been largely ignored. How should we conceptualize downtown -- is it a coherent, compact area or just an agglomeration of extinct overlays? Which development outcomes can be best achieved through prohibitions vs. requirements vs. incentives? How do we make dense, mixed-use urban neighborhoods livable? How should aging infrastructure, heat islands effects, and flooding issues shape future development downtown? How should downtown contribute to our affordable housing stock?

You are also being asked to make decisions without sufficient information to evaluate their likely consequences. Where is the inventory of historic buildings and districts that will be impacted by the proposed changes in Historic Preservation standards? Where is the analysis of why some areas are surrounded by, but not included within, downtown and how will the different treatments of the two areas affect their development?

The most responsible course of action at this stage would be for the Commission to ask these questions (and others) of the Office of Planning, to solicit the information it believes necessary for intelligent decisionmaking, and then to hold hearings exclusively on downtown issues, after having alerted each ANC encompassed within or abutting the expanded downtown to the significance of the decisions being made. By the time OP has assembled the materials needed to address these questions, the new Comprehensive Plan Federal Elements on Urban Design Standards should also be available, which will make it easier to ensure consistency between the Comp Plan and the zoning regulations. Given that the Downtown BID is estimating 20-25% vacancy rates in commercial buildings over the next few years, and that the existing regulations have not impeded growth in this area, there's no urgency here that can justify a failure to think through these proposals.

In addition to these general comments, I have more detailed commentary on specific issues.

TDRs/CLDs

1. The simplest way to leave existing entitlements in place is not to allow them to be converted to the new density credits. If there's no administrative rationale for limiting the conversion period -- i.e. if there's a reliable system for keeping track of these entitlements over time -- then there is no need to allow conversion at all. The developers'-choice system (old entitlements vs. new credits), sustained indefinitely, is simply a windfall for TDR holders. Not only do they keep what they already have, they are being given the option of taking something different if/when that turns out to be more lucrative.

2. It's important to remember what these credit systems (both new and old) are designed to do. They are incentive systems whose logic is that DC government says to developers "you do something we don't think you want to do but that we feel is in the public interest

and, in exchange, we'll let you do something you do want to do but we'd prefer you didn't." The first thing to notice here is that converting old credits to new means that we don't induce the behavior we are now trying to incentivize. If you let current TDR owners corner the market (at least initially) on density credits, than nobody has to do what OP wants them to do. The quid pro quo becomes pay off someone who has TDRs and then you can do what you want. That's not in the public interest. Because it will take years for other density credits to be generated under the new system, converting TDRs to density credits will delay the type of development we consider most desirable and accelerate the type we consider least desirable.

3. The development community has known since at least 2007 (see attached WBJ article) that the TDR/CLD system is likely to be replaced. To the extent that people have spent money to acquire these credits and have not assigned them to specific projects, then we're talking speculation pure and simple. Developers who earned but haven't been able to use or sell their TDRs/CLDs have been on notice for years now that this system is likely to be replaced. So if they don't have any immediate use for what they've accumulated they sell, and they sell cheap because everyone's in the same situation. Someone else buys these rights and then lobbies OP to tell the Zoning Commission to make these pre-existing credits more lucrative. This is not behavior that should be rewarded -- no public benefit accrues from it. In fact, it's detrimental because it creates a way to bypass the new system and its imperatives.

4. It's also worth noting that TDRS have been volatile -- prices have ranged from $3/SF to $38/SF. And the premises behind the system haven't proven accurate over the long haul. The behavior we had to induce in the past (build residential downtown) is now appealing/lucrative without any additional compensation. And the opportunities presented by the TDRs haven't been as attractive as OP anticipated (which explains both why receiving areas were expanded and why TDRs have accumulated unused).

5. In the absence of any information regarding the number of square feet available from outstanding TDRs and CLDs and where that density can be claimed, as well as a comparison between those numbers and the square footage and locations available if TDRs/CLDs are converted to density credits, you have no rational basis for approving any conversion scheme. If this information exists and can be provided, then it needs to be made public and an opportunity for comment provided.

Upzoning and the elimination of restrictions on FAR

6. No rationale has been presented for massively upzoning the C-3-C zones being incorporated into the new downtown and replacing the PUD process in these areas with a developer-controlled market in density credits. Why does it make sense, when you are trying to attract more residents to an area, to take away public input on the development projects that will affect them most? And whose interest is the Office of Planning serving when it proposes that developers should write a check to a TDR-owner rather than

contribute to funding the public facilities that will be necessary to accommodate significant population increases in these areas?

7. The elimination of FAR is particularly problematic. It will disincentivize the creation of public space (because every SF on the ground that isn't built upon represents a loss of 13-14x that amount of SF from the project) and trivialize design review. Once 100% lot occupancy and unlimited FAR are available as matter-of-right or by virtue of density credits, it's unclear what design review will consist of. By contrast, limits on FAR force developers to sacrifice lot occupancy to achieve maximum heights, and the PUD process allows the Commission to require superior design and/or amenities in exchange for additional FAR.

Parking Downtown

8. Eliminating off-street parking requirements would pose a real threat to our pedestrian-friendly streetscape. Since the late 1950s, DC's low parking minimums, combined with Height Act limits have worked together to create a powerful economic incentive for the undergrounding of virtually all off-street parking in the central business district. DC wastes very little land in the CBD (<1%) on car storage -- we don't have surface lots and we don't have multistory commercial garages above ground. By contrast, in most other US cities, the percentage of downtown land devoted to such uses is typically in the double-digits.[1] From a walkability standpoint, the difference is striking and I experience it regularly when I travel. Since underground parking can generally only be produced during construction, buildings that go up without garages underneath represent a long-term loss of subterranean storage space. This is an amenity we can't retrofit -- we need to preserve the requirement.

9. As anyone who spends time downtown on weekdays will observe (and DDOT documents will confirm) that DC's traffic congestion is largely attributable to out-of-state commuters and visitors rather than to car-owning residents. Yet the "let the market decide" approach to parking will mean that garages for commuter vehicles will continue to be built, while residents will be deprived of off-street parking. Why? Because large corporate tenants have significant bargaining power when dealing with the developers of Class A office space while individual renters have no such power. So commercial developers will continue to include garages in their projects while the builders of rental apartments will not feel as compelled to do so. Commuters win, resident suffer, traffic congestion remains an issue.

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[1] **Compare the aerial photograph of DC here: http://oldurbanist.blogspot.com/2011/12/we-are-25-looking-at-street-area.html (scroll down)**

With the aerial photos of other cities posted here: http://forum.skyscraperpage.com/showthread.php?t=191539 (scroll down)

http://www.bizjournals.com/washington/stories/2007/08/20/focus9.html?s=print

TDR 101

Transferable development rights are dramatically transforming D.C.'s real estate market

Douglas Fruehling

They're one of the hottest things in commercial real estate today, but they aren't listed on CoStar. You can't find them in the classifieds or advertised on the side of a building.

Transferable development rights, or TDRs, are an intangible asset bought and sold in a haze of mystery and truly understood by only a few people in the city. Read: zoning attorneys.

Although they've been around for 15 years, TDRs have only recently made an impact on D.C.'s real estate market, thanks to the downtown housing boom and a dearth of prime development sites.

But how do they work? Where do you get them? And, most importantly, how much will they cost you? We've got your answers.

First, a history lesson. The District created TDRs in 1992 as part of the Downtown Development Overlay District. The goal was to provide incentives for development, particularly of housing and department stores, in downtown D.C. It's all spelled out in Title 11, Section 1709 of the D.C. code. Go ahead and look if you dare, but be forewarned: It's not for the faint of heart.

The concept allows developers doing projects downtown to generate bonus density that can be used or sold to build bigger projects than normally allowed in other parts of town. While the "receiving zones" generally allow a 6.5 FAR, or floor area ratio, and 90-foot heights, using TDRs allows a 10 FAR and a building up to 130 feet tall.

There originally were two receiving zones where the TDRs could be used -- one area just west of the central business district and one just west of Union Station -- but the city added three more zones in 1996. They are NoMa, the area south of the National Mall and the area just north of the new baseball stadium (though that area was designated well before the stadium was on the radar screen).

Allison Prince, a zoning attorney at Pillsbury Winthrop Shaw Pittman, says bonus density was a way to appease developers angry over the restrictive Downtown Development district. "It was a devastating blow to the real estate community at the time," she says.

How do you create them? Developers generate TDRs in three ways: preserving historic sites, developing the city's "preferred uses," or building residential space in the overlay district. Different uses generate different amounts of TDRs. For instance, new housing south of

Massachusetts Avenue NW generates TDRs on a 2-to-1 basis. That means 200,000 square feet of condos or apartments would yield 400,000 square feet of TDRs. Theaters and department stores generate TDRs at 3-to-1.

Remember that sizzling five-year housing market? That resulted in the most TDRs created so far. Consider JPI's Jefferson at Penn Quarter, the building boom on both sides of Massachusetts Avenue and the housing at the Spy Museum.

OK, you've started a project that will generate TDRs. Now what do you do? Call your zoning attorney and brace yourself. This is where it gets fun.

When all the criteria have been met, the owner is responsible for submitting a covenant to the city for review by the Office of Planning, attorney general and zoning administrator. When approved, the covenants are recorded.

Travis Parker, who has reviewed the covenants for the Office of Planning, says the city approves on average about a dozen a year.

What owners do with those rights is up to them. They can either use them on their own projects in the receiving zones, sell them to other developers or bank them for the future.

This is where the mystery comes to play. Because of the nature of the covenants, there's no easy way to track how many TDRs have been created or used since 1992. There's no easy way to track who has sold theirs or how much they sold it for.

"No one really has an accurate record of all the TDRs being held by private holding companies," Prince says.

How do you sell them? When you go to sell your TDRs, you'll be ringing up your attorney again. The rights are transferred to other developers using certificates of transfer, which must be recorded and provided as part of the building permit process.

What makes the process fascinating is how TDRs are sold. It's not exactly the black market of real estate, but only a handful of developers, brokers and attorneys know who has them and who needs them. Jayne Shister, a vice president at Cassidy & Pinkard Colliers, estimates that about 4.8 million square feet are still available as TDRs.

"There are transactions going on all the time," says Chip Glasgow, a real estate attorney at Holland & Knight. "TDRs are very readily available."

They are sold via standard purchase and sale agreements, but unlike real property, the transaction and their prices are not recorded anywhere. There are no official comps.

When Kaempfer created the first TDRs with its redevelopment of the Warner Theatre in the 1990s, it was in unchartered territory when pricing the TDRs for sale to another Kaempfer entity to build 1900 K St. NW. Prince says they went for $38 a square foot, but that rate plunged when they became readily available in the marketplace as downtown redevelopment skyrocketed. Values dropped as low as $3 a square foot (tough for those who bought them up at $15 a square foot), but they are beginning to head higher.

Glasgow says the going rate nowadays is in the $5 to $7.50 range a square foot, but Prince recently heard of them reaching $8.50. "The TDR market has been Economics 101 -- law of supply and demand," she says. She recommends that clients buy them if they own buildings in receiving zones. In other words, you can buy the right to build an extra 100,000 square feet for under a million dollars. How much value will that bonus density add to your property? You do the math. Again, it's simple economics.

Although redeveloped sites downtown conceivably will continue to generate TDRs until and if the law is changed, the pace will almost certainly slow down. "There will be a point where there just won't be as many as we'd like," Prince predicts.

Although TDRs don't expire and can be resold as many times as the market will bear, the city could change the law, perhaps even as part of the upcoming zoning rewrite (see story, page 5). When some city leaders realized TDRs could be used to build taller buildings near the ballpark and blocking the fans' view of the Capitol, there was discussion about disallowing their use in that part of the city. Lawsuits were threatened, and the city backed down.

Will such threats dampen the TDR market? Probably not. There's too little space to build in D.C. and plenty to stress over without worrying about changes you can't anticipate to a law you can't understand.

TDRs in action

Want evidence that transferable development rights are changing the city? Look no further than the west side of the central business district.

Developers are using TDRs to update several older buildings west of 19th Street NW, often by adding floors to existing buildings. The most visible project currently is 2121 K St. NW, where ING Clarion is adding three floors with nearly 52,000 square feet. And at least three other projects are under way or slated to begin soon: 1129 20th St. NW; 2175 K St. NW; and 2021 K St. NW (to be renamed 2011 K).

"This is a very complex way to create a new building," says J.P. Spickler, a principal at Fox Architects who's involved with the latter three projects.

In addition to a maze of zoning issues, developers must consider their buildings' structures, how to integrate the old and new, and how construction will affect existing tenants. It's also more expensive than starting from scratch: New Class A buildings cost about $180 a square foot to build, while additions and renovations cost about $420 a square foot.

Spickler says most buildings completed in the 1960s and '70s were "overstructured," meaning they were built to support more weight than called for by their designs. Most can easily support a three-story steel or even concrete addition. When the structure isn't enough, as is the case with some 1980s buildings, architects can use carbon-fiber reinforcing to boost the structural capacity of existing columns.

Architects also must update the safety systems, adding a fire control room, a voice-annunciated alarm and strobes and pressurizing stairs. New lobbies, elevators and restrooms also are standard. "High-paying tenants don't want to feel like they're going through a Class C building to get to a Class A building," Spickler says.

One of Spickler's biggest challenges is the facade. Some developers want a brand-new one for the entire building, while others want to keep the current facade, forcing architects to find a way to integrate the two. "It can't look like a big new head on a small old body," he says.

So do additions make the building appear to tenants like one seamless Class A building commanding Class A rents throughout?

"Someone else will ultimately judge that for me," Spickler says. "But that's my goal."

A TDR checklist

- Are you sure your property is in a receiving zone?
- How high is the current building and how high will you be able to build with TDRs?
- Will you need zoning variances or can you build by right with the TDRs?
- Can the building's structure support the weight of new floors?
- Will you create a new facade or integrate the skin of the new floors into the existing facade?
- How will you mitigate the effects of construction for existing tenants?