MEETING MINUTES
CITY OF FORT LAUDERDALE
PLANNING AND ZONING BOARD
WEDNESDAY, OCTOBER 21, 2020 – 6:00 P.M.

Board Members	Attendance	Present	Absent
Catherine Maus, Chair	P	4	0
Mary Fertig, Vice Chair	P	4	0
John Barranco	P	4	0
Brad Cohen	P	4	0
Coleman Prewitt	P	4	0
William Rotella (arr. 6:09)	P	4	0
Jacquelyn Scott	P	4	0
Jay Shechtman	P	4	0
Michael Weymouth	A	3	1

It was noted that a quorum was present at the meeting.

Staff
Shari Wallen, Assistant City Attorney
Ella Parker, Urban Design and Planning Manager
Jim Hetzel, Principal Urban Planner
Karlanne Grant, Urban Design and Planning
Trisha Logan, Historic Preservation Planner
Yvonne Redding, Urban Design and Planning
Adam Schnell, Urban Design and Planning
Benjamin Restrepo, Transportation and Mobility
Igor Vassiliev, Public Works
Jerry Jean-Philippe, Moderator
Brigitte Chiappetta, Recording Secretary, ProtoType, Inc.

Communications to City Commission

None.

I. CALL TO ORDER / PLEDGE OF ALLEGIANCE

Chair Maus called the meeting to order at 6:02 p.m. Roll was called and the Pledge of Allegiance was recited.

II. APPROVAL OF MINUTES / DETERMINATION OF QUORUM

Motion made by Mr. Prewitt, seconded by Ms. Scott, to approve. In a voice vote, the **motion** passed unanimously.

III. PUBLIC SIGN-IN / SWEARING-IN

~~discussions have addressed FPL access through the property. The site has been designed so the utility will be able to access the canal, which is part of the overall plat. FPL has uninterrupted access to the canal for drainage. Mr. Metz concluded that there are also FPL high-tension lines that run north/south on the site, which will be substantially higher than crane operations.~~

~~Ms. Scott asked if the project would come back to the Board during further development of the site. Karlanne Grant, representing Urban Design and Planning, stated that this depends on what the Applicant proposes for the site: if the use requires Site Plan Level III or Conditional Use approval, it will come before the Board again, but if it meets the threshold for Site Plan Level II, it will instead go before the DRC and Staff. If the site involves waterway use, it will also come back to the Board.~~

~~There being no further questions from the Board at this time, Chair Maus opened the public hearing. As there were no individuals wishing to speak on the Items, the Chair closed the public hearing and brought the discussion back to the Board.~~

~~**Motion** made by Vice Chair Fertig, seconded by Ms. Scott, to approve the plat [Item 4] with Staff recommendations. In a roll call vote, the **motion** passed 8-0.~~

~~**Motion** made by Vice Chair Fertig, seconded by Mr. Cohen, to approve. In a roll call vote, the **motion** passed 8-0.~~

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6. CASE:	**PLN-ULDR-20010001**
REQUEST: *	Amend City of Fort Lauderdale Unified Land Development Regulations (ULDR) By Creating Article XII., Section 47-36; Establishing a Transfer of Development Rights Program
PROPERTY OWNER/APPLICANT:	City of Fort Lauderdale
GENERAL LOCATION:	City-Wide
CASE PLANNER:	Trisha Logan

Trisha Logan, Historic Preservation Planner, provided an overview of the proposed Transfer of Development Rights (TDR) program. In 2018, the City Commission requested recommendations regarding potential changes to the City's Historic Preservation Ordinance. Staff outlined a tri-phased approach to the amendment process and identified potential incentives to enhance the program.

Phase 1 focused on key amendments to the ULDR to streamline the historic application, review, and approval process. Phase 2 resulted in the development of several recommendations to historic preservation incentives, many of which have been adopted, including parking reductions, setback waivers, and tax exemptions for commercial properties.

The TDR program would provide for the transfer of excess development rights, either in square footage or density, from a designated historic resource to a proposed new development site. The resource would act as the sending site and the new development as the receiving site. This process would allow for additional height through the transfer of floor area or additional units. Any property that is a locally designated historic landmark or archaeological site may qualify as a sending site, as would any contributing property in a locally designated historic district. There is no assignment thus far of contributing or non-contributing status in any of the City's historic districts, although there is a proposal for assignment in the Sailboat Bend Historic District.

The first calculation is for assignment of available density for residential units, which is determined by the maximum residential units permitted on the sending site less the number of existing residential units on that site. Total available density is based on the gross acreage of the site and will be rounded down to the nearest whole number.

Conversion of existing hotel units to residential units for the purposes of TDR density calculation is determined by the difference between the number of permitted residential units divided by the number of permitted hotel units as specified in the ULDR for each of the zoning districts acting as sending sites. The number will be multiplied by the difference between the number of permitted hotel units and the number of existing hotel units. Because some zoning districts in the Central Beach Regional Activity Center (Central Beach RAC) do not have a maximum density, the maximum density would be calculated at 48 units per acre and 90 hotel units per acre.

In certain circumstances, some historic landmark sites have received only partial designation. In these cases, only the portion of the property that has been designated historic may be included in the calculation of transferable floor area or density.

The calculation for available floor area subtracts the existing gross floor area from the permitted gross floor area at the sending site. These calculations will be verified through the submittal of calculations by the applicant as well as the incorporation of existing signed and sealed floor plans, which will need to incorporate setbacks, stepbacks, floor area ratio (FAR), and all other ULDR requirements.

Receiving areas for density, which would be new development sites, would include specific zoning districts within the Uptown Urban Village, as well as any lot of land located in the unified flex zone. A maximum of 10 units per acre may be transferred, with a minimum unit count of 400 sq. ft. While any lot within the unified flex zone is eligible to receive a density transfer, a receiving area may not be located on the City's barrier island or another adopted adaptation/action area. All receiving areas must comply with applicable height requirements per the FAA.

There are 13 zoning districts that may receive a transfer of floor area. This would allow for the receipt of floor area to be incorporated into new development as additional height. In RACs, the allowance of additional height corresponds to a smaller percentage of the

additional height permissible through an application for Conditional Use or specific performance standards.

Incorporation of development rights, whether they apply to density or floor area, into a receiving site is subject to DRC review. Additional height cannot be added by both a TDR and a Conditional Use permit.

The Certificate of Transfer is an application between the sending site and receiving site to transfer the excess development rights from the historic resource to new development. The application process requires a number of items from each property owner, including a restrictive covenant, existing conditions report, and maintenance plan, which must be recorded within 30 days of the approval of TDR.

Chair Maus asked if the TDR process comes to a public hearing at any point. Ms. Logan replied that this depends upon the development: the assignment of TDR itself would not come before the Planning and Zoning Board, but the new development to which TDR is applied might come before the Board for Site Plan review or another reason.

It is possible for a sending property to transfer units to a receiving property that would allow the receiving property to exceed the number of units permitted by Code. This would be part of the Site Plan review process. Attorney Wallen added that the Certificate of Transfer process includes a DRC meeting, which is open to the public. Chair Maus commented, however, that while DRC meetings allow the public to attend and speak to items, it is not televised or publicized to the same degree as a Board meeting.

Chair Maus asked if the transfer of rights to a receiving site is limited by that site's existing zoning. Ms. Logan replied that there is a limitation on what can be transferred: for example, 10 units per acre on top of the existing zoning in the aforementioned specified areas that may receive density. The transfer itself, however, may move more units than the receiving site's zoning permits by right.

Ms. Logan reviewed the City's receiving areas once again, noting that these include the unified flex zone, which has a number of requirements. The project receiving units cannot be located in an adaptation action area or an area that has limitations imposed by the FAA.

Chair Maus asked what part of the TDR process would trigger Site Plan Level III or Level IV review, which would bring a project before the Board. Attorney Wallen advised that TDR is a fully separate process. Any Site Plan review would come after the TDR process. The TDR Ordinance includes a provision that participants must comply with the regular ULDR provisions, which may include Site Plan review. Any Site Plan review requires a separate application. The Ordinance also states that purchase of TDR does not guarantee a use or a development permit, both of which are subject to all other applicable development regulations.

Ms. Scott asked if the TDR process is intended to encourage historic preservation. Ms. Logan confirmed this. Attorney Wallen noted that the TDR Ordinance lists the designated sending areas: a property must be located within one of those areas in order to sell its development rights to a receiving site. The sending areas are as follows:

- Lots or buildings designated as historic landmarks by the City
- Lots designated as historic landmark sites by the City
- Lots designated as archaeological sites
- Lots or buildings deemed by the Historic Preservation Board (HPB) as contributing properties located within a historic district

Attorney Wallen continued that the idea is to permit the owners of historic or contributing properties to sell development rights that they are not using. The receiving site must meet the following criteria as well:

- Must be in a designated receiving area for the type of rights to be transferred: density receiving sites must be in the Uptown Urban Village or must be a lot or land within the unified flex zone, while non-residential floor area receiving sites include the RAC-UV, RAC-RPO, B-1, B-2, B-3, and other designated sites
- Receiving sites must meet additional criteria: they may not be located on the barrier island and may not exceed the height requirements imposed by the FAA

Ms. Parker addressed project type and Site Plan review, pointing out that the unified flex zone's underlying land uses are mostly Commercial and RAC. These include the Downtown, RAC-NW, Uptown area, and others so designated. In order to bring forward residential units on most of these sites, an applicant would be required to go through the mixed-use development process, which requires Site Plan Level III review by the Board.

Mr. Prewitt asked if there are any single-family zoning districts within the unified flex zone. He explained that he would not want TDR to affect the nature of these neighborhoods by increasing density. Ms. Parker reiterated that the unified flex zone consists of mostly commercial corridors and RACs. There are no residential neighborhoods within that area.

Chair Maus asked to see an expanded version of the unified flex zone map, asking if a TDR occurring within certain districts would trigger Site Plan Level III or IV review. Ms. Logan explained that the TDR itself would not trigger this level of review: the project itself must trigger review.

Chair Maus pointed out that the Ordinance states the TDR does not carry assumptions of approval or guarantees. Attorney Wallen confirmed that a project accepting TDR must go through the regular approval process. TDR itself is reviewed by the Department of Sustainable Development (DSD) and then by DRC. The Planning and Zoning Board is not involved in the TDR process unless there is an appeal following the denial of a Certificate of Transfer.

Mr. Shechtman asked if TDR applies to properties already designated as historic or only to properties that will be designated historic in the future. Ms. Logan clarified that TDR

applies to both. Mr. Shechtman noted that portions of the historic Sailboat Bend neighborhood, for example, are located within a RAC. Ms. Logan noted that at the moment, that district does not differentiate between its contributing and non-contributing properties. The Ordinance only allows for contributing properties to participate in TDR.

Ms. Logan continued that each individual sending site would need to calculate what they are eligible to sell. This is the first step in the process and involves a Certificate of Eligibility. The applicant must submit a list of items depending upon whether they wish to transfer density, floor area, or both. The list is reviewed and the Certificate issued would show what can actually be transferred.

Mr. Shechtman noted that a number of receiving areas were recently designated in the City's Master Plan as "transition areas," and asked if TDR would allow receiving sites in these areas to exceed what that transition area would normally allow. Ms. Logan replied that there are several restrictions within Code regarding what height, for example, is allowable. The maximum allowable additional height within any receiving area is three stories, while some districts are capped at one to two stories.

Mr. Shechtman asked if an individual with transferable development rights would be permitted to break up the number of stories sold to a receiving site, or if all the transferable height must be transferred at once. Ms. Logan confirmed that multiple transfers would be permitted. Once a transfer has been made through the DRC process, it continues in perpetuity.

Ms. Scott requested more information regarding other cities that have or have tried a TDR program. Ms. Logan reviewed some of the examples, noting that Miami enacted their Ordinance in approximately 2010 but it is no longer effective. A study of incentives conducted by Miami-Dade County states that when the program first began, the TDRs made a substantial difference to major historic rehabilitation, but ultimately became a more cumbersome process to developers than other bonus programs available.

Ms. Scott asked if the HPB was involved in the development of the proposed TDR Ordinance. Ms. Logan confirmed this, stating that the HPB received a version of today's presentation in August 2020. They asked a number of specific questions about how the program would function, which could not be answered at the time because the program is expected to operate based on real estate demand.

Vice Chair Fertig asked what public outreach the City has conducted regarding TDR. Ms. Parker replied that for this type of Amendment, a memorandum is typically sent to the Council of Fort Lauderdale Civic Associations to inform them of the proposed amendments. This memorandum was sent twice to the Council. Additional emails were sent to parties that have expressed general interest in historic preservation incentives. Vice Chair Fertig suggested it might be possible to hold a virtual forum to allow the community at large an opportunity to comment on the proposed TDR program.

Chair Maus commented that there may be a rush of activity toward historic property owners by developers within receiving sites who wish to expand height or density on their own properties. She asked if an agreement between sending and receiving properties is all that is required. Ms. Logan confirmed this, further clarifying that the intent is to protect historic resources from further development by permitting their owners to sell their excess development rights. The sending site owner must enter into a restrictive covenant to ensure the preservation of his/her property, as well as a maintenance agreement and plan for preservation.

Mr. Shechtman asked what incentive an owner would have to designate his/her property as historic if there is a chance there will be no transferable development rights to sell. Ms. Logan advised that a property must have been designated historic before an owner can qualify as a sending site. Mr. Shechtman observed that the purpose for creating a financial incentive is to allow property owners to take advantage of this incentive in exchange for designating the property as historic, which means they will need to know the incentive is available to them before they are willing to make the designation.

Attorney Wallen stated that before a Certificate of Transfer can be issued, the owner must apply for a Certificate of Eligibility, which calculates the development rights associated with that property. This process is required before any rights may be transferred to a receiving site. The Ordinance is intended to encourage owners to designate properties as historic and preserve them, but does not guarantee that transfer rights are available before the process.

Mr. Shechtman suggested that the City consider allowing an owner to designate a property as historic, with the designation contingent upon receipt of TDR. He also asked what might happen when the owner of a receiving site takes possession of transferred development rights and then has the right to construct more floors than s/he could under existing zoning. Attorney Wallen stated that there is no implied approval. The Ordinance is intended to provide the opportunity to use development rights, and may not be commingled with Site Plan approval, which has different criteria.

Mr. Rotella agreed with Mr. Shechtman that an owner should know the rights available to him/her before designating a property as historic. He requested clarification of what would happen if a receiving site is denied approval for a project that would have used transferred units or area. Attorney Wallen replied that the transfer rights would remain on the property in perpetuity. She reiterated that the Site Plan review process is entirely separate from TDR.

Chair Maus observed that the Board has highlighted a number of issues that would need to be addressed before the Ordinance can be approved. She felt it would be appropriate to move the Application to the next level in order to save time on this issue. Vice Chair Fertig expressed concern, however, with advancing the Application until a number of the issues raised have been addressed, including discussions with communities that could be affected by TDR.

Ms. Scott stated that she felt an individual with a property to be designated as historic should be informed of the availability or unavailability of TDR incentives. While this could not serve as a guarantee, she suggested that the City could advise that owner to apply for TDR and inform him/her that s/he meets the criteria for that program. She concluded that she was in favor of a TDR program but needed more information.

Ms. Logan replied that the City can share information with an owner regarding the available incentives; however, until an application with full documentation has been submitted, the City could not certify how many transferable development rights are available.

There being no further questions from the Board at this time, Chair Maus opened the public hearing. As there were no individuals wishing to speak on the Item, the Chair closed the public hearing and brought the discussion back to the Board.

Motion made by Mr. Cohen to approve.

Attorney Wallen advised that the Board may move to recommend approval or denial. They may also recommend approval with suggestions.

Motion made by Mr. Shechtman to approve with the suggestion that the designation of the property becoming historic is revocable if the transferable development rights are not awarded. Attorney Wallen pointed out that a **motion** to approve had already been made by Mr. Cohen.

Mr. Prewitt **seconded** Mr. Cohen's **motion**. In a roll call vote, the **motion** failed 3-5 (Vice Chair Fertig, Mr. Cohen, Mr. Rotella, Ms. Scott, and Mr. Shechtman dissenting).

Motion made by Vice Chair Fertig, seconded by Ms. Scott, to defer for two months.

Chair Maus recalled that the Board had been advised in the past that they do not have the ability to defer an Item. Attorney Wallen pointed out that while the Board is able to defer an Item, Staff has answered all of the questions posed by the Board.

Vice Chair Fertig stated that she hoped the City could meet with individuals from civic organizations and neighborhoods that have or are considering historic designations to hear their feedback. She recalled Mr. Shechtman's question regarding owners who might want to consider taking advantage of TDR if there were greater incentives, and what those incentives could be. She concluded by recommending that Staff reach out to other cities with TDR policies and gather information regarding questions asked by the Board.

Mr. Shechtman commented that he did not feel deferral would accomplish anything, and was in favor of approving the Item with recommendation(s). Vice Chair Fertig did not feel

it was likely the Board would arrive at a recommendation at tonight's meeting due to the number of outstanding issues.

Attorney Wallen noted that the Item was advertised when discussed at a recent HPB meeting at which few members of the public were in attendance. She recommended that if the Board proposes additional outreach from Staff, they suggest something other than a special meeting, as the Item has now appeared at two advertised public meetings with little public response.

Chair Maus stated that the intent of deferring the Item was to have questions raised at tonight's meeting answered. Vice Chair Fertig observed that the proposed Ordinance is needed in some areas of the City more than others, and suggested that Staff advertise a special meeting "specifically on point" to address this issue. Chair Maus did not agree, reiterating that the Item has already been advertised.

Ms. Scott advised once again that her intent was for Staff to come up with more concrete ways to give a property owner TDR rights. Chair Maus noted that the public record of the meeting will reflect the concerns discussed by the Board.

In a roll call vote, the **motion** to defer failed 4-4 (Mr. Barranco, Mr. Prewitt, Mr. Rotella, and Mr. Shechtman dissenting).

Motion made by Mr. Shechtman, seconded by Mr. Rotella, to approve with the recommendation to Commission that applicants have the right to have the historic designation of their property contingent upon receipt of the transferable development rights.

Attorney Wallen advised that Staff would need to evaluate this recommendation offline, as it involves different criteria than what has been seen in other cities' ordinances.

Vice Chair Fertig recalled that in September, the Board made a number of motions suggesting amendments to the Downtown Master Plan; however, when that Plan came before the City Commission, it passed in the form that was presented to the Board without including the recommendations they had made. She concluded that the same issue was likely to recur regarding this Item: there is nothing to ensure that the Ordinance would be further evaluated by Staff before it goes to the City Commission.

Ms. Scott stated that she would like to defer the Item so all Board members may do their own research and come up with a recommendation, at a subsequent meeting, that takes into consideration how TDR works in other cities before the Application is advanced to the City Commission.

In a roll call vote, the **motion** failed 2-6 (Chair Maus, Vice Chair Fertig, Mr. Barranco, Mr. Cohen, Mr. Prewitt, and Ms. Scott dissenting).

Motion made by Ms. Scott, seconded by Mr. Shechtman, to defer [the Item] for one month so that [the Board members] have the opportunity to discuss this further and make a decision to pass it on or to make recommendations to Staff to make changes that [the members] think would be appropriate to incentivize people and make them comfortable to designate their properties as historic.

Attorney Wallen requested clarification of what the Board is asking of Staff. Chair Maus replied that a number of questions were raised during the discussion, and when the Item comes back to the Board in a month, some of the questions might be answered.

Ms. Parker asked for clarification of which questions the Board wished to have answered. Ms. Scott suggested that Staff determine a way to make knowledge of TDR rights part of the educational process when an owner requests historic designation for his/her property. Mr. Shechtman agreed that Staff should look into either guaranteeing TDR rights for the owner of a historic property or making the historic designation revocable if it cannot be accompanied by TDR rights.

Vice Chair Fertig asked if a member of the Planning and Zoning Board may discuss this Item with the community as long as no other members of the Board are present. Attorney Wallen confirmed that this could be done. Vice Chair Fertig also stated that she would like Staff to contact other cities with TDR policies to find out what has made some programs successful.

In a roll call vote, the **motion** passed 8-0.

~~V. COMMUNICATION TO THE CITY COMMISSION~~

~~Vice Chair Fertig requested an update on the communication sent to the City Commission following the September 2020 meeting. Ms. Parker reported that the Public Works Director has indicated that they will coordinate a presentation for the Board at the November 2020 meeting, to be placed at the end of that Agenda.~~

~~VI. FOR THE GOOD OF THE CITY OF FORT LAUDERDALE~~

~~**Motion** made by Vice Chair Fertig to have a conversation about what the process is for [the Planning and Zoning Board], [as their] recommendations to amend things do not make it into the main body of the document and become something that is just a recommendation that is going to be considered after something has already passed.~~

~~Vice Chair Fertig clarified that this was not intended to be a communication to the City Commission but an item to be discussed at a future Board meeting. Chair Maus requested that Staff be provided with specific examples of this occurrence.~~

~~Ms. Scott **seconded** the **motion**. In a voice vote, the **motion** passed unanimously.~~

~~Vice Chair Fertig explained that she was concerned because the Board's unanimous recommendations to the City Commission regarding the Downtown Master Plan were not advanced to the City Commission when the Plan went before that body for approval. She recalled that Staff had noted they needed to vet the recommendations further before bringing them forward. She concluded that she would email examples of this concern to Ms. Parker's office prior to the next Board meeting, so it could then be disseminated to the full Board.~~

~~Mr. Shechtman complimented City Forester Mark Williams on the City's Adopt-a-Tree program promoted by the Tarpon River Civic Association. He characterized the program as having a transformative effect on the neighborhood's tree canopy.~~

There being no further business to come before the Board at this time, the meeting was adjourned at 8:54 p.m.

Any written public comments made 48 hours prior to the meeting regarding items discussed during the proceedings have been attached hereto.

Catherine Mavo
Chair

Brigitte Chiappetta
Prototype

[Minutes prepared by K. McGuire, ProtoType, Inc.]