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TRANSFER OF DEVELOPMENT RIGHTS: A LEGAL BLUEPRINT FOR THE TOWN OF BRISTOL, RHODE ISLAND

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TRANSFER OF DEVELOPMENT RIGHTS:

A LEGAL BLUEPRINT FOR
THE TOWN OF BRISTOL, RHODE ISLAND

BY

JOHN A. PAGLIARINI, JR.

A RESEARCH PROJECT SUBMITTED IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF MASTER OF
COMMUNITY PLANNING

UNIVERSITY OF RHODE ISLAND

1999

MASTER OF COMMUNITY PLANNING
RESEARCH PROJECT
OF

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John A. Pagliarini, Jr.

ABSTRACT

This paper addresses the issue of how to establish a transfer of development rights system in the Town of Bristol, Rhode Island. Identified are changes necessary to implement the program. These changes include the adoption and amendment of several pieces of legislation by the Rhode Island General Assembly. Additionally given are amendments and additions to the Bristol Comprehensive Plan, Zoning Code and Subdivision Regulations. These changes establish the parameters of the transfer of development rights program, including: sending district requirements, receiving district requirements and the development rights bank.

This paper does not present a history of transfer of development rights programs. Rather, it is a legal blueprint designed to preserve cultural, natural and historical sites in Bristol. If adopted, the program will preserve valuable undeveloped lands while mitigating against a Constitutional takings claim.

INTRODUCTION

Development is steadily consuming the private open space lands in the town of Bristol, Rhode Island. The year 1964 found 68.0% of the total land area in Bristol, or 4,101 acres, classified as developable undeveloped land (Bristol Comprehensive Community Plan, 1964:19). Thirty years later, only 20.5% of the total land area, 1,243 acres, remained classified as developable undeveloped land (Bristol Comprehensive Plan: Planning Analysis, 1994:49).

The town has enacted several growth control techniques, such as overlay districts and special zones requiring mandatory cluster developments, to counter this development, realizing however, that an uncompensated takings claim is a possible event. To minimize the probability of a takings claim being brought, additional growth controls are necessary. Specifically, the drafting of enabling and local legislation, which authorizes the transfer of development rights. This paper will review the current status of development rights as a growth control: reviewing both statutory and case law. Further, a review of Bristol's local ordinances and regulations will identify those changes required to successfully defend a constitutional due process challenge. Additionally, this paper will construct a legal blueprint, in the form of suggested legislation, which will insulate the town from any uncompensated takings claims.

The proposed research will utilize a legal memorandum format to evaluate the current state of law regarding transfer of development rights as a growth control technique. A legal memorandum being defined as a written analysis of a legal problem (Shapo, 1995: 72). This paper will analyze the legal issues faced by the Town of Bristol in implementing a transfer of development rights ordinance.

The source of data will be documentary information. Statutes, local ordinances and regulations, case law, and professional journals will supply the information necessary to analyze the state of the law as it applies to Bristol. The proposed research will compare the Town of Bristol's local ordinances and regulations with the holdings of select court decisions. This comparison will then yield the proposed changes to the town's ordinances and regulations.

A legal memorandum is an example of exploratory research. Exploratory research involves: becoming familiar with the basic facts of an issue, developing the status of what is occurring, and generating ideas as they apply to the issues (Neuman, 1994: 20). This exploratory research approach is known as a Linear-Analytical structure (Yin, 1994: 138). Under this approach, the evidence builds upon itself until the construction of a plausible theory.

The Town of Bristol, Rhode Island is a peninsula community located in southeastern Rhode Island with a 1990 population of 21,625 (U.S. Census

Bureau, 1990). The town encompasses a physical area of 10.2 square miles, including a section known as the Historic District (Bristol Comprehensive Plan: Planning Analysis, 1991, as amended: 23). The Historic District is a fully matured area serviced by all utilities and also houses Bristol's central business district. The Historic District is the most densely populated section of town. Id.

Bristol's concentric-like development is similar to the theory of development proffered by the Chicago School (Dear and Flusty, 1998: 52). Recent development is occurring on the outer edges of the town. This development necessitates the extending of public utilities to the development at the contractor's expense. While most of Bristol has public sewers, several areas do not have access to public water. The town issued sixty-six new single-family housing permits in 1998 (Dillon Interview, March 23, 1999). A demand for large, newly constructed homes has increased the cost of housing in Bristol: the average price being \$145,000 (Tax Assessor Public Records, March 23, 1999).

Table 1 identifies Bristol's largest, undeveloped tracts of land:

Table 1: Undeveloped Tracts in Bristol, RI (over 35 acres)

| Property | Area |
|------------------|-----------|
| Brown University | 356 acres |
| Ushers Farm | 110 acres |
| Tavares Farm | 57 acres |
| Herreshoff Farm | 43 acres |
| Bodell Property | 40 acres |
| Fales Farm | 36 acres |

Source: Bristol, RI Tax Assessor

Many of the above acres are unique areas having special natural and/or historic values. The Town has adopted several growth controls to protect these undeveloped parcels. The most evident is the use of special zones and overlay districts. The town comprehensive plan states as a goal: “[T]he conservation and protection of significant natural, cultural, and historical resources and open spaces which identify the community’s character” (Bristol Comprehensive Plan: Planning Analysis, 1991, as amended: 186). To achieve this goal, each of the parcels in Table 1, except Bodell’s, lie in an overlay district entitled: Land Development Projects (Bristol, Rhode Island Zoning Ordinance, 1994, as amended, § 802). This overlay district mandates cluster development with great specificity. *Id.* An additional feature of the overlay zone requires that seventy-five (75) percent of the subject parcel be maintained as open space. *Id.* The mandatory cluster development occurs on the remaining twenty-five (25) percent of the subject parcel.

Another growth control technique used by the Town is the purchase of open space lands. The Town purchased the Mt. Hope Farm in February 1999 for \$3,295,000 (Hayes, 1999). This voter-sanctioned action removed the possibility of development on a pristine 127-acre waterfront farm rich in history and in local lore. The preservation of the farm became the rallying cry of the November 1998 election. By a four-to-one margin, the voters supported the farm purchase with public funds (Corkery, 1998).

The Town of Bristol is keenly aware of the need to preserve natural, cultural and historical sites. The land use controls in place have kept major development at bay. Scarcity of sites and rising property values, however, will soon cause a strain on these controls. Constitutional challenges to Bristol's growth controls are a seemingly viable happening as developers vie for increased density and profitability.

The goal of this paper is to identify the current status of development rights as a growth control. Specifically, this paper will review case law and statutes as they apply to the creation of a transfer of development system in the Town of Bristol, Rhode Island. A review of the land use regulations in Bristol will reveal what amendments are necessary to create the system. Ultimately, this research will provide the Town of Bristol a legal blueprint designed to avoid any claims of a taking due to land use regulations.

A product of this study will be several appendixes identifying changes to existing state and local statutes. Also proffered will be legislation drafted to meet the goals of a transfer of development rights system in Bristol.

Further, it is hoped that this study, whether implemented or not, will raise the consciousness of Bristol residents towards the preservation of cultural, historical and natural resources. Awareness to the inevitable loss of these important areas is the first step towards saving them from development.

AUTHORITY

Rhode Island State statute authorizes the transfer of development rights.

R.I. Gen. Laws §45-24-33(B)(2). This statute reads as follows:

“A zoning ordinance may include special provisions for...establishing a system for transfer of development rights within or between zoning districts designated in the zoning ordinance.”

The above quotation is the extent of authorization local communities have for guidance when enacting a transfer of development rights ordinance.

This statute is an example of a very broad land use authority. Subsection B of section 33 provides that a zoning ordinance *may* include a special provision for a transfer of development rights system. The lack of specificity in the statute is a delegation of authority to the municipalities to establish a transfer of development rights system if they so desire. The delegation of authority to enact, by ordinance, a local transfer of development right system, is a permissible growth control technique. Providing the enabling legislation and the local ordinance relate to the “Police Powers,” they are constitutional. A court will declare a zoning ordinance unconstitutional on due process grounds when, “[T]he provisions must be clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.” Euclid v. Ambler Realty Co., 272 U.S. 365. Additionally, use regulations that are reasonably necessary to protect the public health and safety are permissible exercises of the police power which do not require compensation provided that they do not become arbitrary,

destructive or confiscatory. Annicelli v. Town of South Kingstown, 463 A.2d 133 (1983).

Notwithstanding the authority of R.I. Gen. Laws §45-24-33(B)(2), the passage of specific enabling legislation would better insulate Bristol from a court challenge. An enabling statute written in broad terms, is a delegation of draftsmanship from the General Assembly to the municipalities. This may lead to inconsistent applications between communities and questions of interpretation and intentions. As a protective measure, a specific statute would prevent many potential issues of litigation.

The General Assembly should adopt enabling legislation which addresses: legislative findings, definitions, establishment of a bank, taxation, limitations and specific procedures. A community should implement a transfer of development rights system only within the framework of the specific legislation. Such legislation would create consistency amongst communities similar to that created by the Rhode Island Land Development and Subdivision Review Enabling Act of 1992. R.I. Gen. Laws §45-23-1 et seq. Additionally, specificity diminishes a challenge claiming vagueness of content. In order for a statute to be found to be unconstitutionally vague and therefore violative of the due-process clause of the Fourteenth Amendment to the Constitution of the United States, the statute must fail to alert the public of the statute's scope and meaning. City of Warwick v. Aptt, 497 A.2d 721.

A comprehensive plan comprises “text, maps, illustrations, or other media of communication,” establishes a binding framework or blueprint that dictates town and city promulgation of conforming zoning and planning ordinances. East Greenwich v. Narragansett Elec. Co., 651 A.2d 725 (R.I. 1994). The Rhode Island Comprehensive Planning and Land Use Act mandates that each community will adopt a comprehensive plan. R.I. Gen. Laws § 45-22.2-1 et seq. The Town of Bristol adopted their comprehensive plan on April 24, 1991 (Bristol Comprehensive Plan: Blueprint for Action, 1991, as amended).

One of the goals of Rhode Islands comprehensive plan statute is to “[P]romote the protection of the natural, historic and cultural resources of each municipality and the state.” R.I. Gen. Laws §45-22.2-3(C)(4). The implementation of a transfer of development rights system can help achieve this goal. The Bristol Comprehensive Plan Land Use section, Natural and Cultural Resources section, and the Open Space and Recreation section should all reference a transfer of development rights system. Specifically, those sections should establish the findings of the town regarding the issue. The amendments to the Bristol Comprehensive Plan should include a broad statement of goals and implementation strategies.

The specifics of the transfer of development rights system are found in a local zoning ordinance. A local zoning ordinance must be consistent with the

municipality's comprehensive plan. East Greenwich v. Narragansett Elec. Co., supra. This is known as the Consistency Doctrine. The General Assembly states in the legislative findings and intent section of the chapter on Zoning Ordinances, that:

“The zoning enabling authority contained herein requires each city and town to conform its zoning ordinance and zoning map to be consistent with its comprehensive plan ...” R.I. Gen. Laws § 45-24-29(b)(2).

The Town of Bristol adopted a zoning code in 1994 (Bristol, Rhode Island Zoning Ordinance, 1994, as amended).

Several amendments to this code are necessary to implement a transfer of development rights system. A section establishing the transfer of development rights system will explicitly state the requirements of the system. This section will be much more specific than the broad language of the comprehensive plan. The powers of the town to administer the system; collect funds; purchase development rights, and to create receiving and sending districts are enumerated in this section. Beyond just specifying the terms of the system, the code must provide definitions, purpose, identify sending and receiving zones, establish the bank, and create procedures and limitations. Additionally, a complete evaluation of the entire zoning code is necessary. Permissible density levels and variance procedures require particular attention as a market for development rights must exist. (Pruetz, 1997). This market can not exist if the zoning code is promiscuous and

permits excessive density in receiving areas without using the transfer of development rights system.

The planning board must review each existing zoning district and create new baseline requirements. Essentially, their recommendation to the town council will present a zoning code almost exclusively single-family in nature. Additional units are permissible in designated receiving districts, however, the property owner must purchase development rights from a sending district to add the new units. This rezoning of existing districts does not constitute a taking as the town is exercising its police powers. Euclid, *supra*.

The Town Zoning Map must be consistent with the comprehensive plan and the zoning ordinance. R.I. Gen. Laws § 45-24-29(b)(2). This requires the map to show those areas designated as a receiving district or a sending district. The adoption of the amended map by the Bristol Town Council will give public notice to those areas where development rights may be sold and applied.

Changes to the town subdivision regulations are minimal. As the transfer of development system procedures and limitations are set forth in the zoning code, subdivision regulation amendments serve only as reference points. The zoning code should direct any development in the receiving zone to the appropriate section of the subdivision regulations. Similarly, the subdivision regulations mention of a transfer of development rights system would be to classify such a development as a Major Subdivision, or, to mandate review by

the Technical Review Committee. Also, the appeal section should reference any dispute regarding the transfer of development rights system. Beyond that, the subdivision regulations will remain silent on the issue.

The Fifth Amendment of the United States Constitution is known as the Takings Clause: “[N]or shall private property be taken for public use, without just compensation.” U.S. Const. amend. V. These twelve words serve as the catalyst for the adoption of many transfer of development rights systems. While the stated purpose of adopting a transfer of development rights system is the preservation of cultural, historic and natural resources, a more pressing matter concerns local government. The adoption of a transfer of development right system may insulate a community from a takings claim. The Rhode Island Constitution states:

“Private property shall not be taken for public uses, without just compensation. The powers of the state and of its municipalities to regulate and control the use of land and waters in the furtherance of the preservation, regeneration, and restoration of the natural environment, and in furtherance of the protection of the rights of the people to enjoy and freely exercise the rights of fishery and the privileges of the shore, as those rights and duties are set forth in Section 17, shall be an exercise of the police power of the state, shall be liberally construed, and shall not be deemed to be a public use of private property. R.I. Const., Art. 1, §16.

A takings claim originates from an aggrieved property owner who feels that government regulation has removed all use of his property. Rooted in the police powers, government can regulate land use. Euclid, *supra*. The United States Supreme Court, however, established the standard that “[W]hile property may be regulated to a certain extent, if regulation goes too

far it will be recognized as a taking.” Pennsylvania Coal Co. v. Mahon, 260 U.S. 393.

Transfer of development rights systems attempt to avoid the taking problem by providing landowners with a reasonable economic return on their property (McEleney, 1995). The importance of an economic value to development rights must be viewed in light of the Lucas decision. The United States Supreme Court held that a taking occurs when regulation denies all economically beneficial or productive use of land. Lucas v. South Carolina Council, 505 U.S. 1003. Lucas owned two barrier beach parcels and applied for a building permit. His request was denied as being violative of recent South Carolina statute prohibiting construction along a barrier beach. The U.S. Supreme Court held that unless the restrictions result from the title or principles of property or nuisance law, compensation is due the owner of property which regulation has removed all economic value. Id. at 1024. The basis for this decision is that “[B]y requiring land to be left substantially in its natural state – (regulations) carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm.” Annicelli, supra.

The leading federal case regarding transfer of development rights established that the restrictions imposed under state statute were an appropriate means of advancing legitimate state interests. Penn Central Transportation Co. v. City of New York, 438 U.S. 104. Additionally, the

ability to transfer development rights had economic value. Id. While development rights have value, they may not provide “just compensation” when considered in relation to the entire financial burden suffered. Id. at 137. This shows that the use of a transfer of development rights system is not an unlimited avoidance of the takings issue (Pruetz, 1997: 90). Rather, a properly adopted system is a strong mitigation tool as “[C]laims against state and local governments under the federal just compensation clause are not ripe for federal review until the aggrieved party has exhausted the procedures which the state affords for obtaining recompense for the alleged confiscation.” Golemis v. Kirby, 623 F.Supp. 1057 (D.R.I. 1985).

The regulation’s economic impact and the extent to which it interferes with invest-backed expectations are relevant to the inquiry. Suitum v. Tahoe Regional Planning Agency, 80 F.3d 359. A takings claim, however, is not ripe until the plaintiff has pursued the sale of her development rights. Id. Failure to pursue the sale of development rights impedes the analysis of loss of value as the full economic impact is not known. A diminution of value due to regulation does not constitute a taking. Id. This ability to negate a takings claim is the mitigation power of a transfer of development rights system.

THE SENDING DISTRICTS

The designation of a property as a sending district is the culmination of a very lengthy process. The town council must determine which parcels of land fulfill their stated goal: “[T]he conservation and protection of significant natural, cultural, and historical resources and open spaces which identify the community’s character” (Bristol Comprehensive Plan: Planning Analysis, 1991, as amended: 186). Those large, undeveloped tracts of land identified in Table 1 (pg. 3) are parcels due serious consideration. A sending district, however, may include a parcel of land which includes a historical structure, a farmhouse, or a parcel of land which if built upon would infringe upon a significant resource. An example of this would be the Weetamoe Condominium site which has permission to construct another seventy (70) units in a very sensitive area (Tax Assessor Public Records, March 23, 1999). If built, destruction would come to the natural resources of the area.

Having established sending site criteria such as: minimum size; cultural, natural or historical significance; and location, the next step is the determination how many “conventional” dwellings could be built on the sites. The town must estimate the total number of potential dwellings which could occur on these sites: not accounting for areas possessing constraints such as wetlands or ledge. Next, the Planning Board must recommend a density bonus ratio to the Town Council. The bonus amount should be for residential and for non-residential uses. Once this figure is ascertained, the potential

number of development units is multiplied by the density bonus to see how many transferable development rights the sending sites could yield (Pruetz, 1997: 141). This total is then balanced against the maximum potential of the receiving districts. An over abundance of available development rights will depress the market value of the development rights. Simultaneously, it may force owners in sending districts to delay selling. The town council can directly influence the development rights market by setting the density bonus at a level which creates a demand while offering the seller an incentive to sell.

Consideration of the Land Development Projects district authorized by the Bristol Zoning Ordinance is important. Bristol, Rhode Island Zoning Ordinance § 802.4. The development rights market can not function effectively if the Land Development Project density bonus is greater. Sellers with a cluster option can more easily find buyers for an entire parcel than those seeking purchasers of development rights (Pruetz, 1997:142). As part of their comprehensive review of the entire zoning ordinance, the Planning Board must decide if the cluster option should remain intact, reduced, or terminated. One solution to this problem would be to preclude cluster development of land in sending districts.

A requirement of Planning Board approval needed by a seller of development rights is the recording of a conservation easement. A conservation easement is a recorded land-use agreement in which the

property owner conveys certain rights to be enforced by the holder for public benefit (National Trust for Historic Preservation in the United States, 1990:62). Historical, scenic, natural and open space characteristics are fully identified and protected against intentional or inadvertent destruction. The agreement binds current and future owners in perpetuity (See Appendix E). Restrictions limit the addition of new buildings to agricultural purposes only. The land must be kept in its near natural state. The public does not have the right to use the land as it is still owned by the sending district site owner. All the seller has relinquished is the property's development rights, not, fee ownership. The prohibition of all uses except those deemed compatible to the town's goals are detailed in the conservation easement (Pruetz, 1997: 159). The restrictions last in perpetuity and pass from the Grantor to his successors and assignees.

The conservation easement should be a condition of approval by the Planning Board. The recording of the instrument should take place within three (3) business days of the sale of the development rights. If the instrument is not recorded within this period, the approval should terminate (see Appendix D).

THE RECEIVING DISTRICT(S)

When the goal of a transfer of a development rights system is the preservation of open space, ecologically sensitive land, or farmland, generally the development rights transfer to non-contiguous parcels in designated growth areas (McEleney, 1995: 637). This transfer requires the municipality to designate a growth area as a receiving district, and a preservation area as a sending district. According to McEleney, the receiving district should have all public utilities, existing traffic access and be suitable for high density development (Ibid.).

Two due process arguments often arise when determining receiving districts. The first is that the redistribution of density is inherently contrary to zoning policy. *Id.* at 639. Consideration of the surrounding areas and property values is required. Those areas chosen as a receiving district will usually become more dense than the surrounding areas. The concerns of nearby property owners must factor into the decision when identifying a receiving district. To counter this, the chosen receiving districts should already be densely populated upon designation as a receiving district.

The second due process argument is that the designated receiving district should have a clear planning nexus to the sending district (Ibid.). The chosen receiving area should have a reasonable relationship to the sending district. A series of legislative findings, by the town council, identifying this nexus will help counter this argument. If not, the court will look to the

redistribution of density argument. If the town loses on the redistribution of density issue, the transfer of development rights system will be struck down on due process grounds.

The receiving district should have a two-tier zoning structure. First, the district should employ a base zoning density which delineates the maximum density a property owner could build without utilizing purchased development rights (Pruetz, 1997:144). Second, to motivate the purchase of development rights, a density bonus system which rewards a purchaser is needed (Danner, 1997).

The Town of Bristol must review its entire zoning code when implementing the first tier of the zoning structure. When a receiving district is delineated, that area's zoning should reflect minimal development potential. A demand for development rights is the lifeblood of a successful transfer system. Without a demand for additional density, the purchase of development rights will not materialize (Pruetz, 1997: 144). A receiving district which permits high density as a right will stagnate the market for development rights. The area designated as a receiving zone should be zoned for single or two-family use. The downzoning of the receiving district to single-family use on larger parcels will undoubtedly cause concern for the owners of those properties. The town, however, should downzone only after conducting a due diligence analysis which will include a build-out analysis based on the present zoning.

The affect on town services will provide the basis of the towns findings and will serve as the rationale for the downzoning (Ibid.).

The densely populated areas of Bristol are prime for designation as a receiving zone. Property owners in the Historic District frequently petition the Zoning Board of Review for density variances to add additional units. The downzoning of this area to preclude additional units as a right of zoning would foster a market for development rights. If a property owner desired to add additional units, they would have to purchase development rights from a sending district and apply them within the Historic District area. This would reduce the number of zoning variance requests while simultaneously stimulating the development rights market.

The identification of each parcel in the receiving district is very important (Danner, 1997). This identification should explicitly designate the receiving parcels by reference to the assessor's plat and lot. The assessor's maps will graphically represent the receiving zone much more clearly than will the Town Zoning Map. The specific identification will eliminate any future problems with district lines that fall between parcels. Additionally, the owners of the affected properties will know with certainty that their property is located within the receiving district.

The choosing of the receiving district may involve several different methods. With one method, the town may choose to concede an existing farm as a receiving district. While seemingly contrary to the transfer of

development rights system, this concept offers the town control and location of new development. A receiving district could encompass several small farms located in dense areas served by all utilities. Bristol houses several undeveloped parcels less than ten acres in size: including some small farms. The likelihood of development consuming these parcels is great. Recent developments on Sherman Avenue and Francesca Lane attest to this fact (Tax Assessor Public Records, March 23, 1999). As these parcels fulfill the receiving zone criteria, their sacrifice may help preserve other lands of greater value to the town. Additionally, the development costs of these parcels will be far less than a larger undeveloped tract as the roads and utilities are already present. This will motivate the developers to seek additional development rights to use on the site. The use of purchased development rights will in turn preserve a more valuable property elsewhere in Bristol.

Another method may include a specific type of development desired by the town. The need for elderly housing and assisted living facilitates may cause the planning board to recommend designating certain parcels as a receiving zone. Proximity to other facilities frequently used by the elderly such as medical, shopping and pharmacies are important factors for review. Consideration of transportation is also relevant when choosing a receiving district premised on housing for the elderly needs. Proximity to a bus route and ease of entry into traffic are imperative for the elderly.

A further goal of the town may be to increase the number of housing units for low and moderate income persons. The selection of a receiving site based upon this goal, must take into account the surrounding housing types and values. Demographically similar areas will produce the fewest objections to this designation. Unfortunately, housing of this type is subjected to more public scrutiny than any other type. The planning board, however, is bound by the Low and Moderate Income Housing Act to establish a minimum of ten percent (10%) of the towns housing units for low and moderate income persons. R.I. Gen. Laws § 45-53-1 *et seq.* Currently, the Town of Bristol's subsidized low and moderate income housing stock is only six-and-one-half percent (6.5%) of the nearly eight thousand units in town (RIPEC, 1998:Table A-3). The designation of a receiving district for the purpose of low and moderate income housing would allow Bristol to come into compliance with the Low and Moderate Income Housing Act.

The second tier of the zoning structure involves motivating the purchase of development rights. This is accomplished through a density bonus system which rewards a purchaser of development rights (Danner, 1997). The purchaser is given a density bonus for each development right purchased. The planning board must decide which of the several methods of calculating the density bonus they wish to recommend to the town council.

The density bonus, or transfer ratio, describes the relationship between the number of development rights which can be used on the sending site versus

the number of development rights which can be transferred from that site (Pruetz, 1997:139). A one-to-one ratio means that each sending district development right is transferable to a receiving district. If the demand for development rights is great due to scarcity, this ratio will suffice. To create demand for the development rights, the town may consider a greater than one-to-one ratio. The determination of the ratio will affect the market for development rights. What must be weighed, is the number of potential development rights generated by all the sending districts versus what is the build-out capacity of the receiving districts. Many transfer of development right systems fail due to a poor marketplace. To be successful, the receiving districts must be able to use all the potential development rights from the sending districts; including any density bonus given. Excessive availability of development rights will cause the market value to remain low, while scarcity will cause the value to be too high.

Similar to a cluster subdivision, the seller of development rights must determine how many potential housing units could be built if the rights were not sold. A map showing a “traditional” development should accompany the subdivision application. Those areas of historic significance, cemeteries, wetlands, ledge and slope should not count in the calculation of developable sites. Once the number of developable sites is determined, the appropriate density bonus is then applied.

Developers who apply purchased development rights to a commercial/industrial property would also receive a bonus density. The expansion of the floor area ratio or height restrictions would accommodate the added density. A conversion factor of how many residential development rights equal a commercial development right must be established by the planning board. The scarcity of commercial/industrial land in Bristol should force the conversion factor above a one-to-one ratio.

Finally, the subdivision regulations should require the receiving district to be compatible with the surrounding neighborhood (Pruetz, 1997:163). Issues such as setbacks and height restrictions should be compatible with the surrounding area. The technical review committee meeting required under the subdivision regulations should address these points (see Appendix D).

THE BANK

A transfer of development rights bank is analogous to a court of last resort. When sending site owners are unable to find purchasers in the private market, they have the option to sell their development rights to the bank (Pruetz, 1997:61). State statute must specifically authorize the bank. Else, the legal basis of the bank becomes suspect (Roddewig, 1987:27). The absence of a specific statute may bring a challenge that the bank is not an appropriate use of the police powers. Additionally, the state statute should also address the gift, donation and bequest of development rights to the bank (see Appendix A). The current enabling legislation does not consider these tangential issues. R.I. Gen. Laws §45-24-33(B)(2). Given the power to accept development rights via gift, donation and bequests, the bank becomes a source of revenue for the perpetuation of the program.

The town council has the responsibility of forming a committee to administer the bank. The town council will encounter a philosophical decision as to whether the town will administer the bank, or a quasi-public entity will administer the bank. The biggest detriment to the town itself operating the bank, is the raising of accusations of self-interest and non-objectivity (Pruetz, 1997:167). Particularly sensitive is the fact that the town promulgates the entire transfer of development rights program including the selection of receiving and sending districts. The perception that a town administered bank is not catering to the best interest of the town and can

undermine the entire program. The appointment of either the planning board or the zoning board raises similar issues. The town council could counter these concerns by adopting stringent regulations regarding the purchase and sale of development rights. The regulations would address such issues as rejection of receiving district projects and the expansion of sending district sites. Thwarting criticism through regulations, however, will ultimately reduce the effectiveness of the program. To flourish, the transfer of development rights program needs to be easy to understand and free of extraneous rules and regulations.

The remaining alternative is to create a quasi-public organization whose sole purpose is to administer the bank. The town council may choose to select individual committee members from the public at large. They could also charge an existing body with the responsibility of administering the program. Groups such as the Mt. Hope Trust, the Board of Tax Assessment and Review, the Conservation Commission and the Bristol Land Conservation Trust have the expertise necessary to run such a program. Claims of non-objectivity and self-interest will dissipate with the selection of any of these groups, or a combination of their membership. Regardless of the chosen committee composition, the Town Treasurer and the Director of Community Development are essential to the success of the bank. These two individuals bring a level of expertise to the bank that will safeguard the interests of the

town and her citizenry. Therefore, the Town Treasurer and the Director of Community Development should serve as voting committee members.

The bank can help establish a transfer of development rights market because it can stabilize the market by providing a steady demand (Danner, 1997). This is achieved by the bank acquiring development rights over time and selling them at opportune times. As economic conditions change, the demand for development rights will fluctuate (Roddewig, 1987:27). If there is a market surplus of development rights then the sales price of development rights will be lower than during a period of scarcity. The bank can help stabilize the market through the timing of purchases and sales.

As stated, the bank is similar to a court of last resort. The bank must be careful not to interfere with the market during normal times. An established market will set the fair market price for transferred development rights. The town council should establish a maximum price that the bank will pay for development rights. This value should be below the fair market value determined by the market (Pruetz, 1997:167). The bank offers a final option to property owners desiring to sell their development rights, not, a primary option. If the town was to pay fair market value, or greater, they would be in competition with the local developers. This will ultimately cause dissension and weaken the effectiveness of the program.

To succeed, the transfer of development rights bank needs initial funding. The sources of funding can be local funding, grants, gifts, donations or

bequests (see Appendix A). The adoption of the specific enabling legislation proffered in Appendix A permits the town to use grant money to purchase development rights. This broad power permits the town to use open space funds to purchase development rights. The outright purchase of open space preserves the land. The purchase, however, exhausts the available funds. The purchase of development rights by the bank, conversely, expends the open space funds while reserving the right to sell the development rights in the future. The future sale will regenerate funds which can purchase additional development rights. Ultimately, the original funds will save more open space land through the purchase and sale of development rights than through direct purchasing.

AD VALOREM TAXATION

A concern of any growth control technique is the regulation's affect on the local property tax base. Property tax issues are a significant part of a transfer of development rights system. Before adopting a transfer of development rights system, the Town of Bristol must seek enabling legislation defining a method of local taxation. If not, the town council abdicates development of a taxation method to the tax assessor. R.I. Gen. Laws §44-5-1. Enabling legislation also protects the town from a claim of arbitrary and capricious decision-making by the assessor.

Taxation legislation must address the valuation of development rights sold and bought. Property liable to taxation is assessed at its full and fair cash value, or a uniform percent thereof. R.I. Gen. Laws §44-5-12. Full and fair cash value means that price the property would probably bring in a transaction in a fair market between a willing seller and a willing buyer. Allen v. Bonded Mun. Corp., 62 R.I. 101, 4 A.2d 249 (1938). In determining the fair market value of ratable property an assessor engages in a discretionary act and is not bound by a particular formula. CIC-Newport Assocs. v. Stein, 121 R.I. 844, 403 A.2d 658 (1979). The three recognized formulas are: the sales comparison approach, the cost approach and the income approach (IAAO, 1990:82).

The first step in taxing development rights is a declaration that they are property subject to taxation. This declaration forecloses a claim that development rights are exempt from taxation as intangible personal property. R.I. Gen. Laws §44-3-2.1. Legislation on this matter is necessary to give guidance to purchasers, the town and the courts.

The valuation of purchased development rights must use the sales comparison approach. The cost approach is not appropriate for development rights as there is no “brick and mortar” construction (IAAO 1990: 82). The income approach is only used on vacant land when income is generated from the property (Ibid.). Examples of income generated by vacant land are parking fees and agricultural income. The generation of income from the transfer of development rights is precluded as the purchaser does not have any rights to the sending parcel. Therefore, the appropriate method of valuation is the sales comparison approach.

The sales comparison approach uses sale prices as evidence of the value of similar properties (Ibid.). The creation of a market for development rights will establish their full and fair cash value. Similar to land values, development rights in some sending districts will be more expensive than in others. The tax assessor will establish “neighborhood prices” and apportion the assessed values as warranted. R.I. Gen. Laws §44-5-1.

The valuation of the land which sold the development rights is more difficult. The assessor must determine the full and fair cash value of a parcel of land which is now limited in use. The property is burdened with a conservation easement as a term of the transfer. The assessed valuation of the parcel must reflect this encumbrance. The Before and After Method states that the assessor should determine value prior to the transfer of development rights and then again after the sale (National 1990:19). The before value would be that valuation levied against the property the previous December 31st. R.I. Gen. Laws §44-5-1. The before value less the purchase price of the development rights could equal the after value. This method, however, is suspect. Depending on the situation, the purchase price of the development rights may actually exceed the valuation of the large, undeveloped parcel.

A more appropriate technique of valuation would be to amend R.I. Gen. Laws §44-5-12 to mandate that transfer of development rights not be assessed using full and fair cash value. Similar to real estate classified as farm, forest and open space under chapter 27 of title 44, parcels devoid of development rights should be assessed by the use value method. A use value is the value of a property for a specific purpose rather than at value in highest and best use (IAAO, 1990:82). The inclusion of parcels devoid of development rights in the use value section would remove any discretionary

aspect from the valuation. The town would assess the property using the same value per acre as those properties in the farm, forest and open space program.

Ancillary to the taxation of property devoid of development rights utilizing a use value, is the imposing of a land use change tax. Whenever land classified as farm, forest or open space land, and assessed and taxed under the provisions of §44-5-12, changes use it becomes subject to a land use change tax. R.I. Gen. Laws §44-5-39. An amendment to R.I. Gen. Laws §44-5-12 should except the gift, donation or bequest of development rights, by a participant in the farm, forest and open space program, from the land use change tax. While it is arguable that no change in land use occurred, the voluntary removal of the parcel by the owner will trigger the land use change tax. Id. To increase the likelihood of gifts, donations or bequests, this amendment to §44-5-12 is prudent.

The assessor must also consider the valuation of parcels abutting a property devoid of development rights. The adjacent properties may have an enhanced value as a result of the transfer of development rights in the area. Sales of adjacent properties will determine if any increase in values occurred. This review will occur every three years during the revaluation of all town properties.

Similar to the sale of other property, the transfer of development rights should be subject to the real estate conveyance tax. Currently, when the consideration paid for any property exceeds one hundred dollars (\$100), the grantor must pay a real estate conveyance tax of \$1.40 per five hundred dollars of value. R.I. Gen. Laws § 44-25-1. This conveyance tax is known as the purchase of tax stamps. The amendment of this statute to include the transfer of property rights is necessary (see Appendix C). Subjecting development right transfers to the real estate conveyance tax has two purposes. First, public notice is given of the sale. This permits the tax assessor to recognize the sale and process it accordingly. Banks, title examiners and the public are given notice should they have an interest in the purchasee or the purchaser. The second purpose is to further legitimize the transfer of development rights system. Inclusion in the real estate conveyance tax statute reflects a complete attempt to recognize development rights as a salable property right.

CONCLUSION

The Town of Bristol, Rhode Island needs to adopt a transfer of development rights system. The long term gains of such a system are weighed against the cost of either outright purchases or of doing nothing. This paper explored the legal framework necessary to establish a valid transfer of development rights system for the Town of Bristol. The importance of adopting this system is evident to those concerned with preservation and to those concerned with impending lawsuits.

While no other Rhode Island community currently uses such a growth control, it has great value to Bristol. The preservation of open space lands is an important mechanism in maintaining Bristol's charm. Approaching the taxpayers each time a sensitive property becomes available for sale is an example of poor planning. The outright purchasing of open space lands is subject to the whimsy of the taxpayers. Their ability to carry any additional financial burden is dependent on many variables. During poor economic times, the financial realities may outweigh the desire to preserve. The adoption of a transfer of development rights system is similar to an investment in a trust fund. Properly managed, assets will grow even during poor economic times.

The transfer of development rights system requires minimal codification of rules and regulations. The success of the program is based upon the ease of understanding and implementation by the sellers and by the developers. A

development rights market can best flourish when a funded bank is operational. The consistency of a well-designed program is a tribute to those empowered to create such a program. Done correctly and complemented with other appropriate growth control techniques, a transfer of development rights program will preserve historical, natural and cultural resources for generations of Bristolians to come.

Make no mistake. Development will consume Bristol. Over-regulation will lead to legal actions and to takings claims seeking just compensation. The adoption of a transfer of development rights system is a strong growth control which affords the town to plan growth while preserving valuable resources. Additionally, a transfer of development program is a strong mitigation tool when countering a takings claim.

The citizens of Bristol must realize the importance of preserving natural, historical and cultural resources. You need not be a lifelong resident of Bristol to reminisce about the days when open fields were abound. Several have disappeared in the past five years alone. All the fields and forests will disappear if Bristol does not change her ways. Adopting a transfer of development rights system is a change in the right direction. By preserving unique assets, the proposed system will increase the value of all other property and make Bristol a more desirable place for living and doing business.

Should the Town Council choose to embrace the concept, this paper provides a legal blueprint to achieving the goal of establishing a transfer of development rights system. The blueprint is not exhaustive, yet, the most important issues are addressed in detail. Minor details are discussed throughout the paper and should be garnered when implementing the program.

John A. Pagliarini, Jr.
May 14, 1999

APPENDIX A

The Town Council of the Town of Bristol, Rhode Island hereby resolves that the following act be forwarded to our state legislators and introduced as legislation for the current session:

CHAPTER 24.6
TRANSFER OF DEVELOPMENT RIGHTS

§45-24.6-1. **Short title.** -- This chapter shall be known and may be cited as the "Town of Bristol Transfer of Development Rights Act of 1999".

§45-24.6-2. **Legislative Findings.** -- The General Assembly hereby recognizes and declares that:

(a) For the purpose of promoting the public health, safety, morals or general welfare, the town council of Bristol may provide for transfer of development rights within a comprehensive planning program in order to protect natural, scenic, recreational and agricultural qualities of open lands including critical resource areas and to enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value.

(b) The legislature finds that the growth and spread of development in Bristol is encroaching upon, or eliminating, open and distinctive areas and spaces of varied size and character, including many having significant agricultural, ecological, scenic, historic, aesthetic or economic values, which areas and spaces if preserved and maintained in their present state would constitute important physical, social, aesthetic or economic assets to existing or impending development.

(c) The legislature further finds that transfer of development rights is a useful technique to achieve community objectives and that properly utilized is consistent with comprehensive planning requirements.

(d) The legislature further finds and declares that transfer of development rights, utilizing the normal market in land, may provide just compensation to owners of property to be protected or preserved.

(e) The legislature declares that the proper utilization of transfer of development rights shall not be deemed to occur if the result is an unreasonably negative impact upon the availability or potential development of housing for persons with low or moderate incomes.

§45-24.6-3. **Definitions.** -- The following words shall have the following meanings. Additional words and phrases may be used in developing a local

ordinance under this chapter; however, the words and phrases herein defined shall be controlling in any local ordinance created hereunder.

(1) **Conservation Easement.** A recorded land-use agreement in which the property owner conveys to the Town of Bristol, or their designee, certain rights to be enforced by the holder for public benefit. Historic, scenic, natural and open space characteristics are fully identified and protected against intentional or inadvertent destruction. The agreement shall bind current and future owners in perpetuity.

(2) **Development Rights.** The rights permitted to a lot, parcel, or area of land under a zoning ordinance or local law respecting permissible use, area, density, bulk or height of improvements executed thereon. Development rights may be calculated and allocated in accordance with such factors as area, floor area, floor area ratios, density, height limitations, or any other criteria that will effectively quantify a value for the development right in a reasonable and uniform manner that will carry out the objectives of this section.

(3) **Receiving District.** One or more designated districts or areas of land to which development rights generated from one or more sending districts may be transferred and in which increased development is permitted to occur by reason of such transfer.

(4) **Sending District.** One or more designated districts or areas of land in which development rights may be designated for use in one or more receiving districts.

(5) **Transfer of Development Rights.** The process by which development rights are transferred from one lot, parcel, or area of land in any sending district to another lot, parcel or area of land in one or more receiving districts.

§45-24.6-4. Adoption --Power of council to adopt. -- In addition to existing powers and authorities to regulate by comprehensive planning, subdivision or zoning act, the town council of Bristol may, by ordinance, provide for transfer of development rights subject to the conditions hereinafter set forth and such other conditions as the town council may deem necessary and appropriate that are consistent with the purposes of this section. The purpose of providing for transfer of development rights shall be to protect the natural, scenic or agricultural qualities of open lands, to enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value and to enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource. The conditions hereinabove referred to are as follows:

(a) That transfer of development rights, and the sending and receiving districts, shall be authorized by the Bristol comprehensive plan.

(b) The sending districts from which transfer of development rights may be authorized shall consist of natural, scenic, recreational, agricultural or open land or sites of historical, cultural, aesthetic or economic values sought to be protected.

(c) Every receiving district, to which transfer of development rights may be authorized, shall have been found by the Bristol town council, after evaluating the effects of potential increased development which is possible under the transfer of development rights provisions, to contain adequate resources, environmental quality and public facilities including transportation, water supply, waste disposal and fire protection, and that there will be no significant environmentally damaging consequences and such increased development is compatible with the development otherwise permitted by town and by the federal and state agencies having jurisdiction to approve permissible development within the district.

(d) A generic environmental impact statement shall be prepared by the town for the receiving district before any such district, or any sending district, is designated, and such statement shall be amended from time to time by the town if there are any material changes in circumstances.

(e) The receiving and sending districts need not be coterminous with zoning districts.

(f) The sending and receiving districts shall be designated and mapped with specificity and the procedure for transfer of development rights shall be specified.

(g) The burden upon land within a sending district from which development rights have been transferred shall be documented by an instrument duly executed by the grantor in the form of a conservation easement, which burden upon such land shall be enforceable by the town in addition to any other person or entity granted enforcement rights by the terms of the instrument. The conservation easement shall be recorded in the town registry of deeds in the manner of other conveyances of interests in land affecting its title. All provisions of law applicable to such conservation easements shall apply. Upon the designation of any sending district, the Bristol town council shall adopt regulations establishing uniform minimum standards for instruments creating such easements within the district.

(h) Any development right which has been transferred by a conservation easement shall be evidenced by a certificate of development right which shall be issued by the town in a form suitable for recording in the registry of deeds where the receiving district is situated in the manner of other conveyances of interests in land affecting its title.

(i) As of the next December 31, the assessed valuation placed on the affected properties for real property tax purposes shall be adjusted to reflect the transfer. A development right which is transferred shall be deemed to be an interest in real property and the rights evidenced thereby shall inure to the benefit of the transferee, and his heirs, successors and assigns.

(j) The transferred development rights shall be assessed as real property reflecting the normal market in land, including sales between owners of property in sending and receiving districts.

(k) The town council of Bristol may establish a development rights bank or such other account in which development rights may be retained and sold in the best interest of the town. The town, or its designee, shall be authorized to accept for deposit within the bank any gifts, donations, bequests of cash or development rights. All receipts and proceeds from sales of development rights sold by the town, or its designee, shall be deposited in a special account to be applied against expenditures necessitated by the development rights program. The town, or its designee, may use proceeds from the sales of development rights sold by the bank, local funding, grants, gifts, donations or bequests, to purchase additional development rights.

APPENDIX B

The Town Council of the Town of Bristol, Rhode Island hereby resolves that the following act be forwarded to our state legislators and introduced as legislation intending to amend R.I. Gen. Laws §44-5-12:

§44-5-12. Assessment at full and fair cash value. -- (a) All property liable to taxation shall be assessed at its full and fair cash value, or at a uniform percentage thereof, not to exceed one hundred percent (100%), to be determined by the assessors in each town or city: provided, however that any residential property encumbered by a covenant recorded in the land records in favor of a governmental unit or Rhode Island housing and mortgage finance corporation restricting either or both the rents that may be charged or the incomes of the occupants shall be assessed and taxed in accordance with §44-5-13.10 hereof; provided, however, that in assessing real estate that is classified as farm land, forest, or open space land in accordance with chapter 27 of this title, or any real estate devoid of development rights pursuant to chapter 24.6 of title 45, the assessors shall consider no factors in determining the full and fair cash value of the real estate other than those which relate to such a use without regard to neighborhood land use of a more intensive nature, provided, however, the city council of the city of Warwick is hereby authorized to provide by ordinance that the owner of any dwelling of one to three (3) family units in the city of Warwick who makes any improvements or additions on his or her principal place of residence in the amount up to fifteen thousand dollars (\$15,000), as may be determined by the tax assessor of the city of Warwick, shall be exempt from reassessment of property taxes on such improvement or addition until the next general city-wide re-evaluation of property values by the tax assessor. For the purposes of this section, "residence" shall be defined as voting address. This exemption shall not apply to any commercial structure. The property owner shall supply all necessary plans to the building official for such improvements or addition and shall pay all requisite building and other permitting fees as now required by law, and provided further, however, that the city council of the city of Central Falls is hereby authorized to provide by ordinance that the owner of any dwelling of one (1) to eight (8) units who makes any improvements or additions to his or her residential or rental property in an amount not to exceed twenty thousand dollars (\$20,000) as determined by the tax assessor of the city of Central Falls shall be exempt from reassessment of property taxes on the improvement or addition until the next general citywide reevaluation of property values by the tax assessor. The property owner shall supply all necessary plans to the building official for the

improvements or additions and shall pay all requisite building and other permitting fees as are now required by law.

(b) Municipalities shall make available to every land owner whose property is taxed under the provisions of this section a document which may be signed before a notary public containing language to the effect that they are aware of the additional taxes imposed by the provisions of §44-5-39 in the event that they use land classified as farm, forest, or open space land for another purpose, excepting, the gift, donation or bequest of development rights by the owner of any lot, parcel or area of land classified as farm, forest or open space land under chapter 27 of title 44 shall waive the additional taxes imposed by the provisions of §44-5-39.

(c) Pursuant to the provisions of §44-3-29.1, all wholesale and retail inventory subject to taxation shall be assessed at its full and fair cash value, or at a uniform percent percentage thereof, not to exceed one hundred percent (100%), for fiscal year 1999, by the assessors in each town and city. Once the fiscal year 1999 value has been assessed, this value shall not increase. The phase-out rate schedule set forth in §44-3-29.1(d) shall apply to this fixed value in each year.

APPENDIX C

The Town Council of the Town of Bristol, Rhode Island hereby resolves that the following act be forwarded to our state legislators and introduced as legislation intending to amend R.I. Gen. Laws §44-25-1:

44-25-1. Tax imposed --Payment--Burden. (a) There is hereby imposed, on each deed, instrument, or writing by which any lands, tenements, ~~or~~ other realty sold, or development rights shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or her direction, when the consideration paid exceeds one hundred dollars (\$100), a tax at the rate of one dollar and forty cents (\$1.40) for each five hundred dollars (\$500) or fractional part thereof which is paid for the purchase price of the property (inclusive of the value of any lien or encumbrance remaining thereon at the time of sale), or development rights, which tax shall be payable at the time of making, execution, delivery, acceptance or presenting for recording of the instrument. In the absence of an agreement to the contrary, the tax shall be paid by the grantor.

(b) In the event no consideration is actually paid for the lands, tenement, ~~or~~ realty, or development rights, the instrument of conveyance shall contain a statement to the effect that the consideration is such that no documentary stamps are required.

(c) The tax administrator shall contribute to the distressed community relief program the sum of thirty cents (\$.30) per one dollar and forty cents (\$1.40) of the face value of such stamps to be distributed pursuant to § 45-13-12. The balance of the tax shall be retained by the municipality collecting the tax.

APPENDIX D

*Amendment to Bristol Zoning Ordinance***Section 809. TRANSFER OF DEVELOPMENT RIGHTS****Section 809.1 Purpose.**

The protection of natural, scenic, recreational and agricultural qualities of open lands, including critical resource areas, and enhancement of sites and areas of special character or special historical, cultural, aesthetic or economic interest or value is of primary importance to the health, safety, and welfare of Bristol residents. Additionally, the purpose of this section is to achieve the community's open space preservation goals expressed in the Comprehensive Community Plan. Further, this section implements the findings of the General Assembly found in R.I. Gen. Laws § 45-24.6-1 *et seq.*

Section 809.2 Definitions. -- The following words shall have the following meanings.

(1) *Conservation Easement.* A recorded land-use agreement in which the property owner conveys to the Town of Bristol, or their designee, certain rights to be enforced by the holder for public benefit. Historic, scenic, natural and open space characteristics are fully identified and protected against intentional or inadvertent destruction. The agreement shall bind current and future owners in perpetuity.

(2) *Development Rights.* The rights permitted to a lot, parcel, or area of land under a zoning ordinance or local law respecting permissible use, area, density, bulk or height of improvements executed thereon. Development rights may be calculated and allocated in accordance with such factors as area, floor area, floor area ratios, density, height limitations, or any other criteria that will effectively quantify a value for the development right in a reasonable and uniform manner that will carry out the objectives of this section.

(3) *Receiving District.* One or more designated districts or areas of land to which development rights generated from one or more sending districts may be transferred and in which increased development is permitted to occur by reason of such transfer.

(4) *Sending District.* One or more designated districts or areas of land in which development rights may be designated for use in one or more receiving districts.

(5) *Transfer of Development Rights.* The process by which development rights are transferred from one lot, parcel, or area of land in any sending district to another lot, parcel or area of land in one or more receiving districts.

Section 809.3 Sending and Receiving Districts Boundaries.

The sending and receiving district boundaries are as mapped on the Official Zoning Map. Each individual parcel identified by ordinance is included in these districts.

Section 809.4 Conditions for Receiving District Site:

A. Every receiving district site, to which transfer of development rights may be authorized, shall, after evaluating the effects of potential increased development which is possible under the transfer of development rights provisions, be found to contain adequate resources, environmental quality and public facilities including transportation, water supply, waste disposal and fire protection, and that there will be no significant environmentally damaging consequences and such increased development is compatible with the development otherwise permitted by town and by the federal and state agencies having jurisdiction to approve permissible development within the district.

B. The developer of a receiving district site shall conform to the existing residential requirements and restrictions of that zoning district, except for any density bonuses offered by section 809.6.

C. Any Development Plan proposed using transferred development rights shall be reviewed by either the Technical Review Committee or the Planning Board as set forth in the Article V of the Zoning Ordinance. The review process shall be in accordance with the procedures set forth in the Subdivision and Development Review Regulations.

D. The Technical Review Committee, or the Planning Board as the case may be, may require a Traffic Impact Study, prepared by a RI Registered Professional Engineer, for projects which generate new or additional parking of more than twenty (20) new cars. The purpose of this traffic study is to determine the proposed development's impact on traffic and level of service as well as specific mitigation measures for same. The scope of the traffic study shall be the same as required by the Planning Board.

E. Notwithstanding any provision of this subsection, all entrance and exit driveways onto Route 136 (Metacom Avenue), a State Road, shall be in accordance with the requirements of the RI Department of Transportation (RIDOT) and shall require a Physical Alteration Permit from the RIDOT.

Section 809.5 Conservation Easement.

The owner of the sending district site shall, as a condition of approval, record a perpetual Conservation Easement with the Town Registry of Deeds simultaneous to the recording of the sale of the development rights. This recording must be made within three (3) business days of the sale. Failure to record within this period shall void the Boards approval. The grantee of the conservation easement shall be the Town of Bristol.

Section 809.6 Density Bonus.

A. Residential and non-residential density shall generally be guided by the permitted uses of this code. A density bonus of (insert ratio) shall be given to each residential transferred development right, and a density bonus for non-residential maximum floor area ratio of (insert ratio) shall be given to each non-residential transferred development right, sold from a designated sending district. Not later than Master Plan stage, the owner of the sending district site shall submit a “conventional” plat for the entire development parcel, complying with the Bristol Subdivision and Development Review Regulations and showing the maximum number of lots that could be created. This plan shall not avail itself to any bonuses offered until any other provisions of this code. The plat must be certified by a professional engineer, registered land surveyor or certified biologist, as required for the areas described in subsection B hereinafter.

B. When computing and determining the maximum number of lots or dwelling units to be permitted, the Planning Board shall consider the criteria set forth in Appendix F, Section F.1(C)(2) of the Bristol Subdivision and Development Review Regulations, together with all zoning restrictions, and any other applicable restrictions within its regulations. The Board shall also consider a street allowance which shall be that area actually occupied by areas of public and/or common vehicular access.

C. The Planning Board shall compute the maximum number of development rights which shall be permitted by evaluating the conventional plan submitted by the sending district site owner on the basis of what would be practicable and feasible for the developer under the Bristol Subdivision and Development Review Regulations.

Section 809.7 The Bank.

The town council may establish a development rights bank or such other account in which development rights may be retained and sold in the best interest of the town. The town, or its designee, shall be authorized to accept for deposit within the bank any gifts, donations, bequests of cash or development rights. All receipts and proceeds from sales of development rights sold by the town, or its designee, shall be deposited in a special account to be applied against expenditures necessitated by the development rights program. The town, or its designee, may use proceeds from the sales of development rights sold by the bank, local funding, grants, gifts, donations or bequests, to purchase additional development rights. The maximum purchase price that the bank may expend for the purchase of an individual development right is (insert value) dollars ((insert \$ value)).

APPENDIX E

Sample Conservation Easement

UNDER AND SUBJECT, to the following protective covenants and restrictions, said covenants and restrictions being deemed to run as binding and enforceable servitudes in perpetuity, with the land, to do (and refrain from doing) upon the Premises each of the following stipulations, which contribute to the public purpose because they assure that the natural, cultural, historical, scenic, agrarian and rural environmental features of :

(insert property description here: hereinafter Premises)

will be protected to the maximum extent possible for benefit of future generations:

1. Grantor may not erect any additional dwelling units on the Premises.
2. Grantor may erect one or more agricultural structures subject to the Grantee's prior written as to the design, location and suitability for the permitted farming; nothing herein shall be deemed to permit or contemplate permitting erection of quasi-industrial agribusiness structures of a scale and type inconsistent with the scenic, historic and environmental setting of the Premises.
3. Grantor does hereby covenant with the Grantee that no one shall be permitted to hunt with or without dogs, to shoot with gun, bow and arrow or other weapon, nor shall anyone be permitted to trap and take any wild bird or wild animal on said land and premises herein conveyed.
4. Without the prior written approval of the Grantee, no permanent boat dock, mooring facility or other riparian improvements shall be permitted.
5. Without the prior written approval of the Grantee, there shall be no excavation, dredging or removal of loam, gravel, soil, rock, sand or other material nor any building of roads or other topographical changes, except as necessary to maintain presently existing foot trails, fire breaks, and roadways.
6. Without the prior written approval of the Grantee, there shall be no removal, destruction, or cutting of trees, shrubs, or other vegetation except as may be necessary for the maintenance of existing foot trails, fire breaks and roadways, or in conformity with sound horticultural and silvacultural practices.
7. No activities, actions or uses of the land shall be permitted that would be detrimental or adverse to erosion control, soil conservation, or fish and wildlife habitat preservation. In particular, no practice, substance, device or activity which would be detrimental to any rare species of flora shall be permitted on the Premises.

8. No industrial or commercial activities not in existence on the date of transfer shall be carried on on the Premises. Notwithstanding this limitation on industrial and commercial activities, the Premises may be used for the commercial raising of grains, grasses, legumes, other forms of annual or perennial crops, shrubs, trees, fruits, vegetables, cattle, sheep, horses and other forms of livestock provided such activities are conducted in conformity with sound horticultural, agricultural and animal husbandry practices.

9. The premises shall not be subdivided, nor shall it ever be devised or conveyed except as a unit.

10. Without prior written approval of the Grantee, no utility transmission lines, except those required for existing improvements, may be created.

11. No dumping of ashes, sawdust, bark, trash, garbage, rubbish or any other unsightly or offensive materials shall be permitted.

12. There shall be no commercial advertising of any description permitted.

13. Grantor hereby agrees that representatives of Grantee, its successors or assigns, shall be permitted at all reasonable times to inspect the Premises. In the absence of evidence of violation of these covenants inspection will not take place more often than annually.

14. In the event of a violation of any covenant or restriction herein, the Grantee, its successors or assigns, may, following reasonable notice to Grantor, institute a suit to enjoin such violation by ex parte, temporary, or permanent injunction and to require restoration of the Premises to their prior condition. In the alternative, representatives of the Grantee, its successors and assigns may enter upon the Premises, correct any such violation, and hold Grantor, its successors and assigns, responsible for the cost thereof. Grantee, its successors and assigns, shall also have available all legal and equitable remedies to enforce Grantor's obligations hereunder and in the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee, its successors and assigns, for any costs or expenses incurred in connection therewith, including court costs and reasonable attorneys fees.

15. Grantor agrees that these restrictions will be inserted by it in any subsequent deed or other legal instrument by which it divest itself of either fee simple title to or its possessory interests in the Premises, or any part thereof.

16. Grantor, for itself, its successors and assigns, agrees that the Grantee, its successors or assigns, may provide and maintain a plaque or plaques on the Premises giving notice of the natural, cultural or historic importance of the Premises and that the premises is subject to the protective covenants and restrictions herein contained.

17. No other signs, billboards, or advertisements shall be displayed or placed upon said lands, except (a) such plaques or other markers as are appropriate for commemorating the historic importance of the property; (b) such signs or markers as are necessary to direct and restrict the passage of

persons or the parking of vehicles upon said grounds; and (c) a sign or signs stating solely the address of the property.

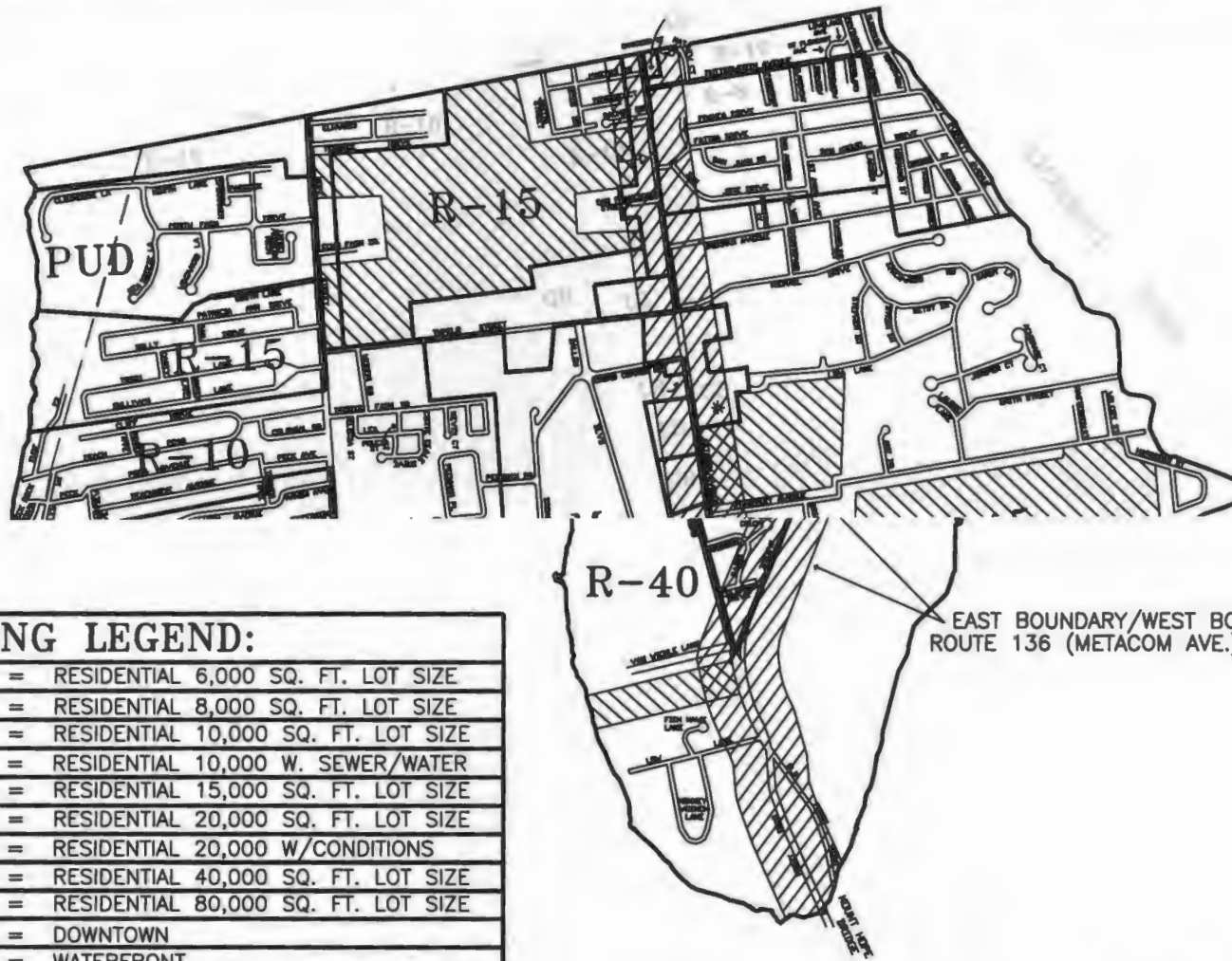
18. Grantor, its successors or assigns, will do and perform at all costs all acts necessary to the prompt recording of this Deed among the land records of the Town of Bristol, Rhode Island in the office of the Registry of Deeds.

The covenants agreed to and the restrictions imposed as aforesaid shall not only be binding upon the Grantor but also upon its successors and assigns, and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the above described land and shall survive any termination of Grantee's or Grantor's existence. All rights reserved herein to Grantee shall run for the benefit of and may be exercised by successors or assigns, or by its designee duly authorized in a deed or appointment executed by its duly authorized officer(s).

TO HAVE AND TO HOLD the land and improvements above described, and intended to be conveyed, unto and to the proper use and benefit of the said Grantee, its successors and assigns, subject to the foregoing covenants, conditions and restrictions.

(National Trust for Historic Preservation in the United States, 1990:62).

APPENDIX F

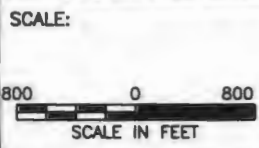


NORTH



| ZONING LEGEND: | |
|----------------|---|
| R-6 | = RESIDENTIAL 6,000 SQ. FT. LOT SIZE |
| R-8 | = RESIDENTIAL 8,000 SQ. FT. LOT SIZE |
| R-10 | = RESIDENTIAL 10,000 SQ. FT. LOT SIZE |
| R-10SW | = RESIDENTIAL 10,000 W. SEWER/WATER |
| R-15 | = RESIDENTIAL 15,000 SQ. FT. LOT SIZE |
| R-20 | = RESIDENTIAL 20,000 SQ. FT. LOT SIZE |
| R-20SP | = RESIDENTIAL 20,000 W/CONDITIONS |
| R-40 | = RESIDENTIAL 40,000 SQ. FT. LOT SIZE |
| R-80 | = RESIDENTIAL 80,000 SQ. FT. LOT SIZE |
| D | = DOWNTOWN |
| W | = WATERFRONT |
| OS | = OPEN SPACE |
| PUD | = PLANNED UNIT DEVELOPMENT |
| RPUD | = REHAB. PUD |
| WPUD | = WATERFRONT PUD |
| LB | = LIMITED BUSINESS |
| GB | = GENERAL BUSINESS |
| M | = MANUFACTURING |
| //// | = R.C. & C.D. OVERLAY |
| //// | = RTE 136 (METACOM AVE.) OVERLAY |
| * | = ORIGINAL ZONE CHANGE CONDITIONS APPLY |

EAST BOUNDARY/WEST BOUNDARY
ROUTE 136 (METACOM AVE.) OVERLAY













UNLESS OTHERWISE NOTED OR CHANGED BY REPRODUCTION

TOWN OF BRISTOL, RHODE ISLAND
OFFICIAL MAP OF
ZONING DISTRICTS
APRIL 15, 1999 AS AMENDED

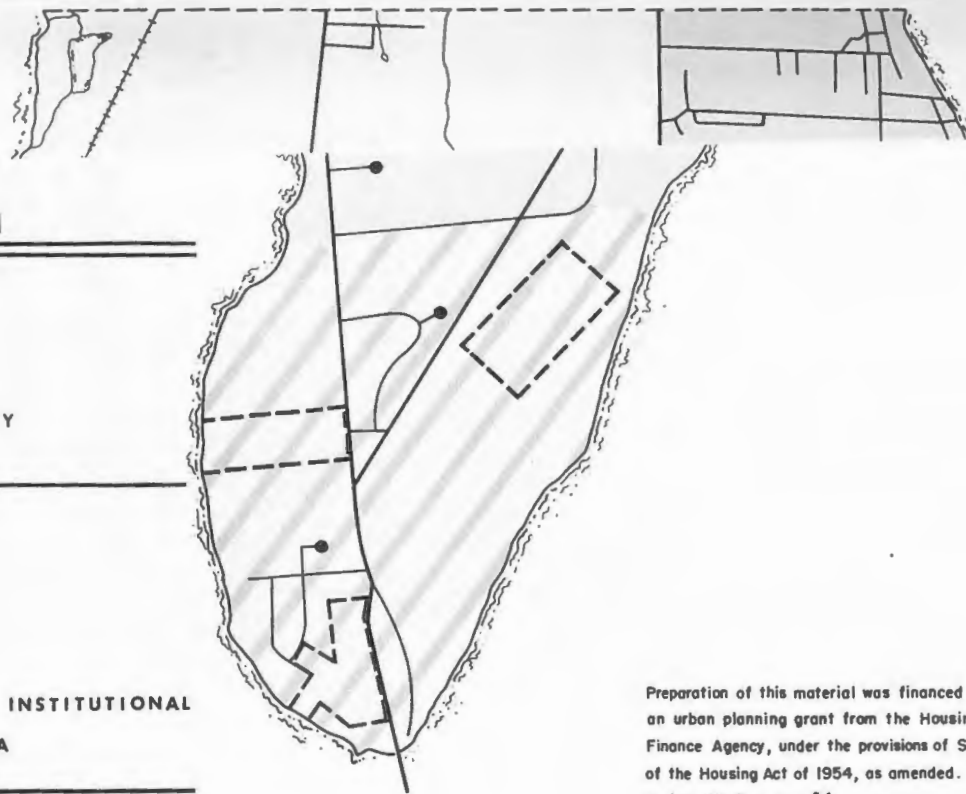
APPENDIX G



RIDC
LAND USE PLAN

| | |
|---|--------------------------------|
| RESIDENTIAL: | |
|  | HIGH DENSITY |
|  | MEDIUM DENSITY |
|  | MEDIUM-LOW DENSITY |
|  | LOW DENSITY |
| COMMERCIAL: | |
|  | GENERAL |
|  | LOCAL |
|  | INDUSTRIAL |
|  | RECREATIONAL |
|  | GOVERNMENTAL AND INSTITUTIONAL |
|  | REDEVELOPMENT AREA |

C. C. P. - 1964



Preparation of this material was financed in part through an urban planning grant from the Housing and Home Finance Agency, under the provisions of Section 701 of the Housing Act of 1954, as amended.
Project No. R. I. P - 16

APPENDIX H

Metacom Avenue

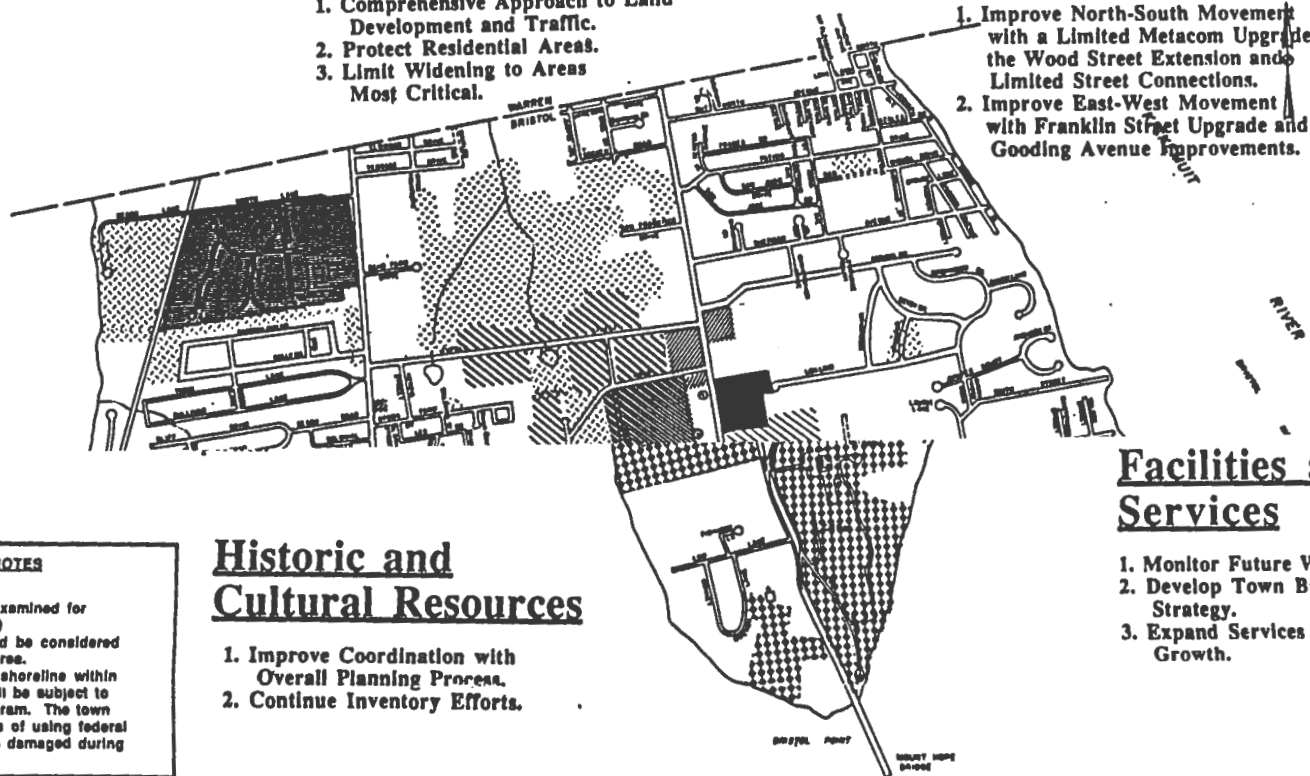
1. Comprehensive Approach to Land Development and Traffic.
2. Protect Residential Areas.
3. Limit Widening to Areas Most Critical.

Circulation

1. Improve North-South Movement with a Limited Metacom Upgrade, the Wood Street Extension and Limited Street Connections.
2. Improve East-West Movement with Franklin Street Upgrade and Gooding Avenue Improvements.

Industry

1. Protect Industrial Land from Conversion to Other Uses.
2. Provide Industrially Zoned Land for Expansion of Local Industrial Firms.
3. Encourage Reuse of Older Manufacturing Buildings.



Facilities and Services

1. Monitor Future Water Plans.
2. Develop Town Building Reuse Strategy.
3. Expand Services Gradually with Growth.

Historic and Cultural Resources

1. Improve Coordination with Overall Planning Process.
2. Continue Inventory Efforts.

INTERPRETATIVE NOTES

1. This area of the mill should be examined for residential use. (See map for #1)
2. An academic overlay zone should be considered for the Roger Williams College area.
3. Future land uses along Bristol's shoreline within federal flood insurance zones will be subject to restrictions imposed by that program. The town will evaluate the appropriateness of using federal programs to purchase properties damaged during future floods and/or storms.

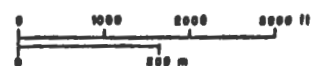
BRISTOL COMPREHENSIVE PLAN 1990

FUTURE LAND USE PLAN Figure F

This Future Land Use Map supercedes all other maps and graphics in the Comprehensive Plan in terms of defining policy. The text of the Comprehensive Plan shall supercede this Future Land Use Plan in cases of potential policy conflicts.

LEGEND - Current and Future Land Use

| Current Land Use | Future Land Uses |
|----------------------|---|
| Residential | Mixed Residential/Recreational Uses with Protected Open Space |
| Commercial | Intensified Commercial Use |
| Industrial | Industrial Park Expansion |
| Institutional | Protected Open Space with Mixed Residential/Academic/Office Use |
| Government | Major Wetlands |
| POD | Waterfront Mixed Use District |
| Protected Open Space | |





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R.I. Gen. Laws § 44-5-12.

R.I. Gen. Laws § 44-5-39.

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