



PLANNING DEPARTMENT

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March 01, 2005

Mr. Michael Yarne
Farella Braun + Martell
235 Montgomery Street
San Francisco, CA 94104

RE: Request for Written Determination
ADDRESS: 200 - 220 Golden Gate Av
BLOCK/LOT: 0345 / 004
ZONING: C-3-G / 80-X
PROJECT: Central YMCA Building
SUBJECT: Replacement of TDR

Dear Mr. Yarne:

This letter is in response to your request for a Zoning Administrator determination whether Transferable Development Rights transferred from the subject site can be repurchased and restored to the site, enabling the building's current not-for-profit Owner to sell the building unencumbered by the requirement that it be occupied by a non-profit organization.

The property is, according to information you provided and to Planning Department records, a Category I building from which, pursuant to Section 128 of the Planning Code, 81,795 TDR units (the floor area of the non-profit YMCA, exempt from FAR inclusion per §102.9(b)(15)) have been sold and transferred.

In response to your questions, I have made the following determinations:

At the time of this transfer of development rights, I informed the YMCA that they should retain enough development rights for future use. However, the YMCA had proposed a major rehabilitation project for YMCA purposes that has apparently proven infeasible.

Since the building has had most of its development potential transferred, only a non-profit meeting the requirements of Planning Code Section 102.9(b)(15) can occupy it. Thus the constructed floor area of an historic building might become unusable as a result of having sold the rights to it.

You contend that because the Code is silent on the issue of transferred TDR being repurchased and restored to a site, it is within the power of the ZA to clarify the intent of the Code on this issue. It could be argued that the Code is silent because it does not intend for TDR transfer to be reversible – the Certificates of Transfer of TDR specifically state that “[t]he transfer of TDR from the site of a Contributory Building ... **permanently** restricts development of that site ...” (emphasis added).

However, because the Code does not explicitly prohibit “re-transfer,” and because the intent of Article 128 is to encourage the use and preservation of historically significant buildings, and, although Section 128(c)(2) prohibits *transfer* of TDR to a site which does (or has) contain(ed) a Significant or Contributory building, I have determined that TDR may be restored to this site, because that does not represent a transfer of TDR but is a replacement of existing floor area, provided that TDR is purchased in a quantity equal to the developed floor areas of the existing building, and that no TDR deriving from the existing structure is transferred from the lot so long as the existing building remains standing on the site.

Please direct questions regarding this letter to Senior Planner Craig Nikitas of my staff at (415) 558-6306, or via e-mail at craig.nikitas@sfgov.org.

Any aggrieved person may appeal this decision to the Board of Appeals within 15 days of the date hereof. For further information, please contact the Board of Appeals in person at 1660 Mission Street, Room 3036, or by telephone at 415/575-6880.

Yours truly,

Lawrence B. Badiner
Zoning Administrator