CONDITIONAL LAND USE TRANSFER (PA 425)

Public Act 425 of 1984, as amended, is the conditional land use transfer statute that allows two or more municipalities the option of conditionally transferring land to one another. PA 425 came into being because annexation is legally difficult, tends to pit neighbor against neighbor, and because important economic development projects for regions became victims of a lack of annexation cooperation.

A conditional land use agreement allows municipalities involved in land negotiation great flexibility. Land transfer is sometimes needed for properties that lack infrastructure necessary to support economic development projects. The agreement should provide the least expensive infrastructure possible to the proposed site. PA 425 has also been used to gain economic incentive tools that only core or distressed communities can offer toward support of economic development projects.

WHO IS ELIGIBLE?

Cities, villages or townships may voluntarily enter conditional land transfer agreements. The agreements are normally between cities and townships but there have been city-to-city and township-to-township agreements.

HOW DOES IT WORK?

Two or more municipalities agree to develop a conditional transfer of land agreement. It may be for a specific economic development project or it may be done to prepare the property for future economic development. Incremental agreements may also be reached that outline areas that will fall under a PA 425 agreement (the agreement itself will actually be written and prepared), but it will not be implemented until a point in the future.

The agreement must include the following points:

- The municipality to which the land is being transferred.
- The length of the contract, which can be 1–50 years. Agreements typically last 50 years. However, any year can be agreed upon. Some suggest that the length should match the length of the bond needed for the infrastructure improvements.
- The methods by which the contract may be terminated by either municipality prior to the stated date of termination. For instance, language may include that if the project does not occur within two years of the PA 425 agreement being signed, the land will automatically revert back to its original status.
- Specific arrangements for sharing the tax revenue or any other revenue. Agreements can also include a clause that cities will guarantee a payment equal to whatever final millage rate is agreed upon even if something were to occur during the life of the agreement that may eliminate personal property tax laws in the state. In addition, other revenue sources, including city income tax or other city fees, could be negotiated.
- The adoption of ordinances and their enforcement by or with the assistance of the respective municipalities.
- The way in which purchases shall be made and contracts entered into.
- The way of responding to liabilities that might be incurred through the life of the agreement and insuring against such liability.
- The manner of employing and managing personnel required to complete the actual economic development project.
- The local unit that will have jurisdiction over the transferred land upon the expiration of the agreement.

WHAT IS THE PROCESS?

Once the written agreement is completed, each municipality's governing board must hold a public hearing on the agreement. Notice of the public hearing must abide by the Open Meetings Act No. 267. A majority of each governing board, from each municipality, must then formally approve the agreement.

An agreement cannot take effect if any of the following conditions occur:

- If a majority of the board or council from either municipality calls, by resolution, for a public referendum on the agreement, then the agreement cannot take effect until a majority of the citizens of that municipality vote and approve of the agreement.
- If, within 30 days after the public hearing, a petition signed by more than 20 percent or more of the registered voters residing within the proposed property for conditional land transfer is filed with the local clerk in which the property is located, a public referendum on the agreement shall then be held in that municipality.
- If no registered voters reside within the proposed conditional land transfer property and, if 30 days after the public hearing a petition is signed by persons owning 50 percent or more of the property that will be transferred, a public referendum on the agreement will be held in that municipality.

©2016 Michigan Economic Development Corporation℠

Otherwise, the PA 425 agreement takes immediate and complete effect and must be filed with the county clerk and the Secretary of State.

Zoning changes, the addition of an Industrial Development District for future tax abatements under PA 198, as well as agreeing upon which building department, planning department, code enforcement, police department, fire department and/or any other municipal services provided to the property, should be agreed upon. Zoning changes and the creation of districts can all be included in the PA 425 agreement, thus avoiding lengthy and necessary public hearings for all of these additional steps. They all can be fully addressed and discussed, by the public, during the public hearing for the PA 425 agreement.

To conclude, PA 425 agreements:

- Allow neighbors to remain neighbors
- Smartly develops property from a more regional perspective
- Increases everyone's revenue
- Creates jobs which lead to more people paying taxes, shopping at local businesses and sending their kids to schools in both municipalities
- Opens a door to more dialogue and cooperation with a region

WHY WOULD A COMMUNITY WANT TO CONSIDER A PA 425 AGREEMENT?

PA 425 is a win-win for all participating municipalities. Typically, a township may have available land for economic development, but not the infrastructure or funds to provide that infrastructure. Available and viable infrastructure may exist very nearby in another municipality that has already been paid for or is under utilized. From a regional and cost perspective, it makes sense to utilize infrastructure that already exists.

A municipality may have adequate infrastructure, but not have the necessary land for economic development. Thus, the project must locate on the available land elsewhere and the municipality loses out on generating any new revenue. The project may provide jobs to residents and prospective residents to shop, live and invest in the community. None of these conditions will occur for a municipality if the project does not take place.

To entice the township to allow the property to become conditionally transferred, the neighboring municipality should provide infrastructure and/or other services and economic incentives to the property. In addition, a township will typically receive more than 1 mill of revenue, paid by the city to the township over a 1–50 year period of time. Thus, the township's revenues are increased from what they ever could have been while the city also enjoys new revenue. Businesses and residents in both municipalities should enjoy direct benefit. At the end of the agreed upon length of the PA 425 agreement, the land will either revert back to the original municipality or transfer to the neighboring municipality.

SUPPORTING STATUTE

Public Act 425 of 1984: Conditional Land Use Transfer Agreements

CONTACT INFORMATION

For more information, contact the MEDC customer contact center at 517.373.9808.

©2016 Michigan Economic Development Corporation℠