

NEW JERSEY STATE TDR BANK BOARD

**Health/Agriculture Building
(Auditorium)
Market & Warren Streets
Trenton, NJ 08625**

February 8, 2013

The meeting was called to order at 10:03 a.m. by Monique Purcell, Acting Chairperson. In compliance with the "Open Public Meetings Notice", the following statement was read:

"Pursuant to N.J.S.A. 10:4-6 et seq., adequate public notice of this meeting has been provided by giving written notice of the time, date, location and, to the extent known, the agenda. At least 48 hours in advance, this notice has been posted on the public announcement board, third floor, Health/Agriculture Building, John Fitch Plaza, Trenton, NJ, mailed and/or faxed to the Newark Star Ledger, The Times of Trenton, The Camden Courier Post, and filed with the Office of the Secretary of State.

Roll call indicated the following:

Members Present

Monique Purcell, Acting Chairperson
Christopher Hughes (rep. Banking and Insurance Commissioner Kenneth Kobylowski)
Dan Kennedy (rep. Edward J. McKenna, Jr., State Planning Commission)
Charles Steindel, Ph.D. (rep. State Treasurer Andrew P. Sidamon-Erstoff)
James Lewis (rep. NJDOT Commissioner James S. Simpson)
Liz Semple (rep. DEP Commissioner Robert Martin)
James Requa, Ed.D. (rep. DCA Commissioner Richard Constable)
James Giamarese, President, N.J. State Board of Agriculture

Members Absent

Sandy Batty – Association of New Jersey Environmental Commissions (ANJEC)

Susan E. Payne, Executive Director
Jason Stypinski, Deputy Attorney General

Others in Attendance: Timothy Brill, Steven Bruder, Sandy Giambrone, SADC/TDR Bank Board Staff; Christine Davis, Gene Feyl and Margaret Nordstrom, N.J. Highlands Council; and Rick Brown, N.J. Department of Environmental Protection (NJDEP)

APPROVL OF MINUTES:

Ms. Purcell requested a motion for approval of the minutes from the September 19, 2011 meeting. It was moved by Mr. Lewis and seconded by Christopher Hughes. Ms. Semple was not present for the vote.

CHAIRPERSON'S REPORT:

Ms. Purcell noted that the annual N.J. State Agricultural Convention and the N.J. Vegetables Growers Convention was recently held in Atlantic City. It was the second year that both conventions were held simultaneously. Ms. Purcell stated that the Governor spoke at the convention and recognized the 30th anniversary of the Farmland Preservation Program. He spoke about the importance of the agriculture industry in the State and of Hurricane Sandy relief efforts.

EXECUTIVE DIRECTOR'S REPORT:

Executive Director Payne noted that the SADC recently preserved its 200,000th acre. This represents over 25% of the state's agricultural land base. The day before, Governor Christie signed appropriation bills for the second half of the 2009 Bond funds. Ms. Payne noted that the SADC will never have enough money to preserve all the farmland in New Jersey through easement purchase and that innovative planning tools such as TDR are critical for the successful retention of agricultural land in New Jersey.

COMMUNICATIONS

Ms. Payne directed the Board to articles in their packets regarding TDR implementation in Highlands and an investigation of the State Comptroller's Office regarding Chesterfield's TDR program. Representatives from the Highlands Commission will discuss TDR later in the meeting. The Chesterfield article covers allegations of a conflict of interest on the part of a local official who had an impact on the Township's TDR program. The article talks at length about TDR and is a reminder of the ethical obligations we have in dealing with planning and zoning.

PUBLIC COMMENT

None at this time.

NEW BUSINESS

A. Fiscal Year 2013 Proposed Budget

Ms. Payne referred the Board to the FY 2013 Administrative Budget. \$38,000 is proposed for FY13 year which is much less than was budgeted in FY11 and FY12 (\$125,000) but is in line with what was actually spent in those years. Because bond funds are used, the bond is only charged for as much as is spent. The administration asked that we reconcile our budget with our prior expenditures. The difference from prior years is that some funds were earmarked for professional services this year. The Board anticipates a request from one of the townships pursuing TDR for us to actively participate in purchasing development rights. We anticipate possibly hiring a consultant to help us with this if necessary.

The FY 2013 Administrative budget was moved by Mr. Giamarese and seconded by Mr. Requa.

The motion was unanimously approved.

B. Planning Assistance Grants

1. General Update

Mr. Bruder provided an overview of grant activity.

Three Planning Assistance Grants have been completed with a total of \$60,000 distributed as follows:

- Lumberton Twp., Burlington Co. - \$10,000
- Chesterfield Twp., Burlington Co. - \$10,000
- Woolwich Twp., Gloucester Co. - \$40,000

Nine (9) Planning Assistance Grants are considered active with \$180,000 distributed (\$20,000 each), to date:

- Hopewell Township, Cumberland County
- Berkeley Township, Ocean County
- Frankford Township, Sussex County
- Mannington Township, Salem County
- Ocean Township, Ocean County
- Hillsborough Township, Somerset County
- North Hanover Township, Burlington County
- Mansfield Township, Burlington County
- Jersey City, Hudson County

Four (4) Planning Assistance Grants are considered actively engaged in planning for TDR at this moment. They include:

- Berkeley Township, Ocean County
- North Hanover Township, Burlington County
- Mansfield Township, Burlington County
- Jersey City, Hudson County

Four (4) Planning Assistance Grants that are considered inactive:

- Fanwood Township, Union County
- Montgomery Township, Somerset County
- Borough of Prospect Park, Passaic County
- Oxford Township, Warren County

Mr. Bruder stated that the summary page also lists grants from the Office of Planning Advocacy, formerly Office of Smart Growth, as well as from the New Jersey Highlands Council.

2. Grant Agreement Extension

A. Mansfield Township, Burlington County

Mr. Bruder stated that Mansfield Township is requesting a 2 year grant extension, their second extension since the grant was approved in July of 2008.

Mansfield Township is attempting to use TDR to redirect remaining growth potential on agricultural lands in the Township to receiving areas in proximity to the Village of Columbus. There are 129 sending area parcels (2,187 acres), with a build out of approximately 288 single family residences. The proposal includes two farms from which Burlington County recently purchased development rights without a local contribution. In lieu of a local match the county will retain the TDR credits for the farms with the opportunity to exercise them in the future.

The proposed receiving area encompasses all or portions of 19 parcels with a total of 561.40 gross (452.10 developable) acres. The receiving area includes four parcels for which rezoning is being undertaken to provide for development patterns more compatible with the desired Village development. The majority of receiving area parcels are currently farmland so landowners will also be eligible for credit allocation, a total of 400 credits under this current proposal.

The receiving area includes land set aside for a proposed Columbus Bypass which would provide a new connection between Route 206 and Main Street (Route 543) to reduce truck traffic in the center of town. A separate bicycle and pedestrian trail will run the length of the bypass. In addition to the Bypass trail the plan supports implementation of the planned Kinkora Railroad trail by extending it through the length of the receiving area. An additional commercial area is proposed at the intersection of Route 206 and the proposed Bypass (southwest corner).

Columbus Village is currently served by septic so the Township is working on provision of sewer service to the Village as well as the surrounding receiving area. Amendments to the Tri-County Water Quality Management Plan were approved for areas of Mansfield Township in November 2012. The amendments however stem from long standing litigation and therefore sewer service was extended to the Village but not the receiving area. A separate amendment will be needed to serve this area. The Township will also need to determine additional effluent discharge sites and likely obtain a Treatment Works Approval permit for an additional facility.

Mr. Bruder noted that the Township is proceeding with TDR implementation under the Burlington County TDR Demonstration Act, enabling legislation established prior to the New Jersey State TDR Act. As with other municipalities that have pursued TDR, Burlington County is providing a great deal of planning assistance to Mansfield Township.

A Real Estate Market Analysis was completed in March of last year and the Township has a form-based code drafted which will be used to guide development of the center.

It was moved by Dr. Steindel and seconded by James Requa to approve the 2 year grant extension for Mansfield Township. The motion was unanimously approved.

Ms. Purcell questioned whether there were concerns that an additional amendment to the Water Quality Management Plan would hamper progress on TDR implementation.

Mr. Brown, NJ DEP, noted his concern that the amendment recently approved by the DEP made no provision for the build out of the entire center. He felt given soils, threatened and endangered species and wetlands constraints, finding a new groundwater discharge site may be difficult. Because Mansfield is not involved in the Plan Endorsement process it may be difficult to include any environmentally sensitive area within the sewer service area. He suggested the Township

consider phasing in development of the receiving area as approval for sewer provision for the entire center may not be possible.

Ms. Payne highlighted the need for interagency cooperation to get TDR done and that TDR is important for the creation of jobs and housing and for preservation using private rather than solely public dollars.

C. TDR Implementation Discussion

1. Berkeley Township, Ocean County

Mr. Bruder updated the Board on Berkeley Township's progress toward implementing TDR.

Berkeley Township is attempting to transfer the development rights from more than 231 acres of undeveloped, privately owned, wooded parcels in 5 sending areas (totaling 840 acres) to redevelop four underutilized commercial and industrial areas along and in proximity to U.S. Highway 9. The Township hopes to create several areas of mixed-use development using TDR to provide residential, industrial and commercial bonus density.

The rights to be transferred would be (1) the rights to develop single-family homes on lots ranging in size from 15,000 SF to 3 acres on 1915 parcels zoned R-150, R-400, and CR in the Sending Area and (2) the conversion to residential development rights of current rights to construct commercial space at densities of 0.3 FAR on 58 parcels in comparatively under-developed commercial areas zoned RHB in the Sending Area.

There are four receiving areas being proposed: Town Center 1 (phase II); Town Center 2; the Light Industrial Zone and Node C. All except Node C are State Plan and CAFRA designated centers. CAFRA center designation permits the amount of allowable impervious surface to increase from 30% to 70%. In Berkeley, this increase in permitted density is allowable only through TDR credit purchase.

In total the receiving areas are planned to accommodate 1,543 housing units generated by TDR and 1,540 by-right units. There will also be 260,000 SF of light industrial space and 150,000 SF of commercial space allowable through credit purchase and 147,000 SF of commercial space by-right.

On July 6, 2012 the State Planning Commission granted Berkeley Township Plan Endorsement. The Township's TDR Element, Capital Improvement Plan, Utility Service Plan and Real Estate Market Analysis were adopted on December 6, 2012.

Mr. Bruder noted that a meeting with Chesterfield Township to discuss TDR administration was held January 18th. The Township was interested in discussing its role in the credit transfer process and options for landowners once properties were preserved.

Continued coordination from NJDOT and Ocean County will be necessary to accommodate access to Route 9, a corridor which is currently over capacity, and for extension of Western Boulevard.

2. Woolwich Township, Gloucester County

Mr. Bruder described the Woolwich TDR program as a mandatory program currently involving over 3,800 acres of primarily agricultural sending area and 887 acres of receiving area. There

are two planned receiving areas. One is the 762 acre U.S. 322 Corridor Receiving Zone which is within the Township's 1,696 acre Woolwich Regional Center. The second is the 125 acre Auburn Road Village Receiving Area adjacent to the Township's Weatherby development.

If fully developed, the U.S. 322 Corridor Receiving Zone would include 100 single family homes, 1,000 twin units, 500 apartments/condos and 1600 townhomes in addition to 575,000 SF of first floor retail and 2.6 million additional SF of commercial space. The estimated commercial construction cost of the receiving area portion of the Woolwich Regional Center is \$358.9 million. The Auburn Road receiving area would include: 130 single family units; 162 twin units; 210 townhomes and 60,000 – 70,000 SF of commercial space. The estimated commercial construction cost of this receiving area is \$5.9 million. When non-TDR portions of the Woolwich Regional Center are included in the build out projection it is estimated that a total of an additional 7,000,000 sq. ft. of commercial development, representing approximately 5,155 new jobs, is possible in Woolwich. In all, the cost of construction of the commercial portions of this project is estimated at \$666 million.

Woolwich received Plan Endorsement in April of 2008 and passed its municipal TDR ordinance in October of that year. Aside from the economic downturn, sewer service provision has been the primary reason TDR is not yet being implemented. It is anticipated that 1.79 MGD in wastewater flow will be generated by the Woolwich Regional Center of which 1.3 MGD is needed for the receiving area. The Auburn Road Receiving Area is anticipated to generate 0.151 MGD. At the time Woolwich was given Plan Endorsement sewer service was somewhat uncertain but it was anticipated that it would be provided partially through developers agreements with the Logan Township MUA. These discussions, as well as discussions with the Gloucester County Utilities Authority, have not materialized. Woolwich is closely following negotiations related to regional wastewater planning involving capacity available at the DuPont plant in Carneys Point, Salem County but this solution is a number of years off.

If preserved through the traditional farmland preservation program, the estimated easement cost to preserve the remaining 3,800 sending area acres would be more than \$69,500,000.

Mr. Bruder noted some advancement since the last meeting. A developer with property within the Regional Center, but not a receiving area parcel, recently purchased 60K GPD of Logan MUA capacity from a third party capacity owner. This is enough for the first phase of a three phase commercial project (1.4 million SF; either side of U.S. 322 between Kings Highway and the NJ Turnpike). Discussions are also underway between the Logan MUA and the developers of the Auburn Road receiving area regarding sewer provision for the project approved as a 20 year General Development Plan in December of 2010. The developers in this case are also sending area landowners – there will be 171 credits needed for this receiving area.

Mr. Bruder stated that despite the Township's continued difficulty finding a long term sewer capacity solution the NJDEP recently amended the Tri-County Water Quality Management Plan to include the Woolwich Regional Center within the approved sewer service area.

Recent meetings with NJDOT and the Delaware Valley Regional Planning Commission (DVRPC) have focused on provision for necessary improvements to the Route 322 corridor. Woolwich Township's current plan anticipates a boulevard concept along U.S. 322 for which the Township has reserved the required right of way where new development has taken place. NJDOT's Access Code does not currently reflect this concept however. Creation of an Access Management Plan for the corridor was discussed as a possible solution.

Funding for Route 322 improvements may pose a challenge as well. Both NJDOT and DVRPC have indicated that the first priority for funding is repair and maintenance with congestion management projects facing an uphill battle. It was emphasized that public/private partnerships are key and that County and local officials must continue to emphasize the importance of this project.

DVRPC indicated that the Woolwich project will be identified in their Long Range Plan. This plan is currently being updated and scheduled for completion in July. The project will also be put on their Transportation Improvement Plan. It was noted that the "Gloucester County Transportation Needs Study" (DVRPC, March 2011) looked at the entire county and identified 7 focus areas. The study identified Woolwich as a "2035 Long Range Plan Land Use Center". It also anticipated widening of U.S. 322 from U.S. 130 to the NJ Turnpike.

D. Cluster Bill Update

Mr. Bruder provided a brief update on proposed legislation (A3761/S2608) that would amend the Municipal Land Use Law (MLUL) to encourage use of onsite clustering, lot size averaging and non-contiguous clustering. This legislation was initiated following recommendations of the State TDR Task Force, a coalition of the public, private and non-profit interests brought together in 2009 to examine the NJ State TDR Act and propose amendments to increase TDR use. Given the State TDR Act's extensive planning and approval requirements, the group identified the need to encourage use of clustering and non-contiguous clustering for situations not requiring full scale TDR.

Currently there are provisions for contiguous and non-contiguous clustering in the Municipal Land Use Law but they are not well defined and require that non-contiguous cluster take place within a planned development scenario. This bill removes the cluster provision from under the umbrella of planned development and specifically allows subdivision and site plan ordinances to include provisions for cluster development (residential, non-residential and mixed use).

The bill clarifies that a purpose of the MLUL is to offer municipalities alternatives to traditional development, through the use of planning tools including clustering, transferring development rights, and lot-size averaging. It allows for assignment of bonus density, allows for conveyance of restricted land to a separate person or entity, requires that non-contiguous clustering be optional and allows a zoning ordinance to:

- Regulate minimum and maximum lot sizes, improvable lot area and floor areas to allow compact development
- Provide for areas to be developed and areas to be preserved or establish criteria for such areas
- Provide for consolidation of cluster preserved and developed land for tax and stewardship purposes

Mr. Bruder noted that the bill clarifies where use of non-contiguous clustering conflicts with the State TDR Act. This has been a problem for a number of municipalities who have attempted to use non-contiguous cluster. With non-contiguous cluster you cannot allocate credits and create a credit market like you would with a traditional TDR program. Typically these transfers will be smaller scale efforts on property with some degree of common ownership.

Ms. Payne emphasized the potential impact this legislation could have for municipalities looking to augment traditional preservation efforts with alternative planning tools.

E. Highlands TDR Update

Ms. Nordstrom gave a brief update on the Highlands Development Credit (HDC) Purchase Program. Currently 1,608.25 HDC's (involving 313 acres and 86 applicants) have been allocated. The HDC Bank has closed on 12 properties (392.5 HDCs and 332.21 acres). There are 5 properties pending (an additional 88 credits). The HDC Bank was originally funded with \$10 million and \$6,293,000 has been expended. There are \$1.4 million in acquisitions pending and \$1 million set aside for debt service which leaves a remaining balance of \$1.29 million.

Ms. Nordstrom emphasized the need to make TDR work as an equity protection mechanism in the Highlands. Given that receiving areas in the Highlands are voluntarily by statute, the Highlands Commission has been working diligently with municipalities to encourage participation. Ms. Nordstrom identified the statutory incentives provided and noted that the Commission is working with the Office of Planning Advocacy, Housing and Mortgage Financing Agency and the Environmental Infrastructure Trust to see what additional incentives can be provided to make participation more attractive to municipalities.

F. Pinelands Development Credit Bank Administration

Mr. Bruder directed the Board to an agreement transferring administrative function of the Pinelands Development Credit (PDC) Bank from the Department of Banking and Insurance to the Pinelands Commission. This was done following retirement of the previous Executive Director.

G. Proposed Readoption of TDR Bank Regulations N.J.A.C. 2:77

Mr. Bruder noted that the TDR Bank Board regulations are to expire in July of this year. Staff is proposing minor clarifying amendments that have been submitted and approved by the Governor's Authorities Unit. The proposal must be submitted to the Office of Administrative Law by February 14, 2013 to be published in the New Jersey Register on the 18th of March.

The Proposed Readoption of the TDR Bank Regulations, N.J.A.C. 2:77, was moved by Mr. Giamarese and seconded by Mr. Kennedy. The motion was unanimously approved.

TIME AND PLACE OF NEXT MEETING:

To Be Determined

It was moved by Mr. Giamarese and seconded by Mr. Requa to adjourn the meeting at 12:21 pm. The motion was approved.

Respectively Submitted,

Susan E. Payne
Executive Director
State Transfer of Development Rights Bank Board

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