

NEW JERSEY STATE TDR BANK BOARD

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

September 8, 2015

The meeting was called to order at 2:06 p.m. by Secretary Douglas Fisher, Chairman. 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

Douglas Fisher, Chairman (Secretary, Department of Agriculture)
Mitchell Jones (N.J. State Board of Agriculture)
Karl Hartkopf (rep. Edward J. McKenna, Jr., State Planning Commission)
Roger Cohen Ph.D. (rep. State Treasurer Andrew P. Sidamon-Erstoff)
Susan Weber (rep. NJDOT Commissioner James S. Simpson)
Dan Kennedy (rep. DEP Commissioner Robert Martin)
James Requa, Ed.D. (rep. DCA Commissioner Richard Constable)

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

Members Absent

Jennifer Coffey (rep. Nelson Dittmar, Jr., ANJEC)
Paul Macchia (rep. Banking and Insurance Acting Commissioner Badolato)

Others in Attendance: Steven Bruder, Sandy Giambrone (SADC/TDR Bank Board staff), Jane DiBella, Alan Schwager, Matthew Blake, Tim Kernan and William Pine (Woolwich Township)

APPROVAL OF MINUTES:

Chairman Douglas Fisher requested a motion for approval of the minutes from the October 21, 2014 meeting. It was moved by Mr. Requa and seconded by Mr. Cohen. The motion was unanimously approved.

CHAIRPERSON'S REPORT:

Chairman Fisher stated his belief that transfer of development rights remains a tool with tremendous potential to impact land use and preservation in New Jersey and that he was looking forward to the discussion.

EXECUTIVE DIRECTOR'S REPORT:

Ms. Payne updated the Board on the recent amendment to the state constitution allocating a portion of the corporate business tax as a dedicated funding source for the state's preservation programs (farmland, open space, flood prone areas and historic preservation). Access to these funds, and determination of program allocation, will require approval of an appropriation bill once the Legislature reconvenes.

COMMUNICATIONS

There was nothing at this time.

PUBLIC COMMENT

None at this time.

NEW BUSINESS

A. Fiscal Year 2016 Proposed Budget

Ms. Payne referred the Board to the FY2016 administrative budget sheet. The sheet reflects actual expenditures for FY14 and FY15 and requests \$50,000 for FY15 administration. This number is reflected in the Governor's FY2016 adopted budget.

The FY2016 administrative budget was moved by Mr. Hartkopf and seconded by Mr. Jones. The motion was unanimously approved.

B. Request for Final Approval of Matching Funds for Purchase of Development Potential

1. Woolwich Township, Gloucester County

Ms. Payne provided a history of Woolwich Township's TDR proposal. In brief, the Township adopted their TDR ordinance in 2008 at which point sending area zoning was changed from 1.5 – 2 acres / unit to 15 acres with TDR credits allocation as the mechanism for equity compensation. Since that time we witnessed the economic downturn in addition to several amendments to the TDR program. Most notably, approvals for the Woolwich Adult, LLC project lapsed leading the Township to conclude its location more appropriate for receiving area development than the

original center plan location. The Township is looking to begin a comprehensive master plan review to address redesign of the Woolwich Regional Center. The Township has also continued to investigate options for sewer provision to the regional center and TDR receiving area.

Woolwich Township is requesting funds to match those provided by their recently established municipal TDR bank. The Township intends to hold a reverse auction to purchase credits from landowners who are unable to wait until a private market for TDR credits develops. Ms. Payne noted the tests the State TDR Bank Board previously discussed as a condition of funding. These include the statutory requirement that the Board find the ordinance viable and a firm solution for provision of sewer to the receiving area.

At its last meeting the Board suggested staff assist the Township to: establish procedures for the auction; research the designation of a maximum auction credit value; and make necessary amendments to the deed of easement. Ms. Payne noted progress made and that the Township has been anxiously awaiting a final answer as to whether the Bank Board will provide the grant and what the conditions of that approval will be.

Ms. Payne referred the Board to her pre-meeting memo which outlined the questions before them:

- Whether to grant final approval to the funding request;
- If approved, the total amount of the grant;
- The maximum TDR Bank cost share toward in each transaction (maximum of 80%);
- Any conditions of our participation;
- TDR credit valuation – the maximum equivalent TDR credit value upon which the Board will provide a cost share grant. (to be discussed in closed session)

In order to provide a grant to purchase TDR credits, the TDR Bank Board must determine that the Woolwich TDR plan is “viable”. A detailed description of this was presented in the Boards February 14, 2014 letter to the Township. At our last meeting, there was substantial discussion with particular attention paid to 1) whether the TDR plan is in compliance with the TDR enabling act, as administered by the NJ Office for Planning Advocacy (“OPA”); and 2) the need for firm evidence that sewer/water infrastructure will be available to service TDR development.

The uniqueness of the Woolwich request for funding stems from the fact that the TDR plan adopted in 2008 (and approved by the State Planning Commission) is substantially different than a new TDR plan contemplated by the Township. In its Five Year Review Report submitted in October of 2013, the Township provided appropriate justification as to why the TDR receiving area should be moved, however, the final location and associated details (minimum and maximum development densities; unit-to-TDR credit ratios; transportation improvement plan; cost of sewer/water infrastructure, etc.) are not yet resolved. Many of these details would be resolved when the Township amends its master plan and TDR ordinances.

Mr. Hartkopf outlined the history of coordination between the Office of Planning Advocacy (OPA), formerly Office of Smart Growth, and Woolwich Township. He noted that once Plan Endorsement is achieved the procedure to address amendments is somewhat unclear. To address review of the Woolwich TDR program OPA has relied on the one, three, and five year reviews required in the State TDR Act. In this regard, Woolwich has been responsive in fulfilling requirements of the Act and requests made by OPA. Mr. Hartkopf noted that because Woolwich Township pursued both Plan Endorsement and TDR there are two plan implementation agendas of which they have fulfilled approximately 80% of the items.

Mr. Hartkopf stated that the State Planning Commission is comfortable that Woolwich is pursuing TDR in good faith and will continue to work toward master plan and TDR ordinance amendments to effectuate proposed program changes. Ms. Payne asked if there were any questions on the issue of ordinance viability.

Mr. Bruder provided the Board an overview of the projected changes to Woolwich's TDR receiving area proposal and its relation to an adjacent three phase General Development Plan (GDP) that envisions 1.5 million square feet of commercial space. The developer, Steve Wolfson, has sewer credits available, equivalent to 60,000 gallons per day, from the Logan Township Municipal Utilities Authority (LTMUA).

Mr. Bruder noted that the entire regional center is in the sewer service area.

Chairman Fisher questioned whether LTMUA is charged with provision of service to the center and whether service capacity exists.

Mr. Kennedy replied that typically sewer service areas have assigned flow to a certain treatment facility but in this case the Wastewater Management Plan was written to recognize a range of options. Three options are contemplated: the LTMUA, the Gloucester County Utility Authority and expansion of the facility that currently treats Swedesboro. Onsite disposal has been discussed as well.

Mr. Kennedy stated that the NJDEP evaluated questions Ms. Payne raised on the feasibility of sewer provision to the TDR receiving area. Mr. Kennedy felt that the LTMUA proposal being currently discussed is a viable sewer option and noted that the LTMUA applied to the NJDEP for an expansion of permitted capacity.

Ms. Payne stated her understanding that the LTMUA has 2 million gallon per day (mgd) capacity with 1.955 mgd committed to other projects. This would require expansion of the facility to accommodate Woolwich. In April 2015 LTMUA entered into an agreement with a Woolwich developer known as Summit Ventures and Aqua New Jersey, Woolwich Township's wastewater franchise holder. This agreement contemplated LTMUA initiating expansion of between 0.25 and 0.5 million gallons a day. Ms. Payne noted that the capacity is on a first come first serve basis and although the Woolwich regional center would be eligible to receive this capacity it is not reserved for this purpose. This agreement is the change that has occurred since the Board's last meeting. The agreement states that if LTMUA does not begin start construction in 24 months either Summit Ventures or Aqua New Jersey have the right to build the expansion.

Mr. Blake noted that this 4th amendment of the sewer agreement represents a substantial amount of capacity and reminded the Board that their need has been reduced as nearly 25% of the original TDR credits have been retired. Engineering and the design work is underway. It was also noted that Mr. Wolfson has purchased over 270 acres within proposed receiving area.

Ms. Payne asked the Board whether their questions regarding ordinance viability and sewer provision were satisfied. Hearing no further questions Ms. Payne refocused on the magnitude of the grant and the cost share percentage the Board would provide. At the last meeting the Board made a \$3 million commitment to Woolwich Township, the Township has requested \$5 million.

Chairman Fisher questioned whether approval of funds would prohibit the Township from requesting additional grant funding in the future. Ms. Payne replied it would not.

Ms. Payne referred the Board to a table showing hypothetical funding scenarios in terms of state contribution and percentage. For example, if the Bank Board committed \$5 million at 80% it would require a \$1.25 million match by the Township. It was noted that the Township made a funding commitment of \$2 million at the last meeting.

Chairman Fisher questioned by what criteria the state cost share percentage would be determined. Ms. Payne stated that the Bank Board is authorized to consider the match provided at the local level, availability of funds and how well state funds are leveraged. She noted that Woolwich Township is asking for roughly half of what the Bank Board has capacity to provide. They are however the only municipality eligible to make such a request at the moment.

Mr. Blake noted the Township's public outreach efforts regarding their online municipal TDR registry and how it has generated interest among sending area landowners. There are currently a total of 895 existing credits. Many landowners have been waiting since 2008 to monetize their equity and have not been willing to participate in traditional farmland preservation due to 15 acres/unit TDR zoning.

Ms. Payne noted expiration of the dual appraisal provision everywhere except the Highlands has meant appraisals for farmland preservation could consider only the existing zoning.

Mr. Kennedy noted that the Board already determined there was a good reason to initiate an auction and was trying to understand what the appropriate grant amount would be. The Board can provide up to 80% of the cost per the statute.

Mr. Blake stated that assuming the Township would get \$5 million they would be willing to put forth more than 20%. Township Committee granted authority to bond up to \$2 million for this purpose.

Ms. Payne noted that the Board made a commitment of \$3 million at the last meeting subject to the sewer and ordinance viability issues being resolved.

Chairman Fisher noted that the Board must now decide what the total amount of the Boards commitment will be and the maximum cost share percentage.

Ms. Payne stated this would be an open session conversation however determination of the maximum per credit purchase price would be an item for closed session.

Mr. Kennedy acknowledged that the more money the Board dedicates the more risk it assumes. He noted comfort committing to more than \$3 million if the municipality is committed to providing \$2 million. He also noted that if the Board decides to assume more risk and commit up to \$5 million perhaps the Township should commit to a master plan reexamination schedule. Mr. Kennedy felt that once details of the revised TDR program are clarified as part of master plan reexamination risk to the Board would be further minimized. If agreement on a reasonable schedule could be established he would be comfortable extending the grant to \$5 million noting that it would take several weeks or months to set up the auction.

Mr. Kennedy asked when the auction could be scheduled. Mr. Blake responded that the Township was hoping that it could take place in October.

Ms. Payne noted that timeline was overly ambitious given the need to draft auction mechanics, provide 60 notice to landowners and hold public meetings. Given these considerations Mr. Blake indicated that the auction would be established as soon as possible and that positive action out of the Board is what the Township needs.

Mr. Kennedy agreed that the Township should provide sufficient time for public information and education. Mr. Kennedy noted that with the Township's consultants in place a master plan examination should not take long. The Board could condition the \$5 million upon completion of the reexamination by the time of the auction as a way to minimize the State's risk and accommodate a \$7 million auction with the money the municipality has committed.

Mr. Kennedy asked if there was any reason the Township could not immediately engage in the reexamination process.

Mr. Blake indicated that the reexamination process has already been done, there have been delays because the Township was not sure what was happening with TDR.

Mr. Kernan stated that reexamination could be completed within 3 to 6 months but he would hope that the auction could happen before then and asked whether the condition could be revised with the understanding that the Township will complete the reexamination within a finite period of time.

Mr. Blake noted that if the auction doesn't happen as soon as possible the governing body has made a strong indication that it would consider repealing the TDR program.

Ms. Payne asked why the tie between the auction and pursuing TDR is being made. The reexamination isn't dependent upon the auction, the credits to be purchased at the auction are not getting retired.

Mr. Blake noted that with their involvement in the 5-Year review process and Urban Land Institute Technical Assistance Panel the State knows a good amount of what the Township is planning as part of reexamination.

Chairman Fisher questioned what would happen to the Board's allocated funds if the Township holds the auction but does not make the master plan amendments. He noted that the Board cannot expend money and hope that the Township continues to pursue TDR.

Mr. Blake stated that if that were to happen TDR utilizing the current receiving area and ordinances would remain in place.

Chairman Fisher asked if the expectation would be that someone would want to develop the original location. Mr. Blake answered yes.

Ms. Payne pointed out that the TDR statute requires the Township to make sure that there is sufficient receiving area to absorb whatever credits have transferred. If 200 of 900 credits get transferred at the auction, the Township has an obligation to create the planning framework to absorb those 200 credits regardless of what happens.

Mr. Schwager stated that Woolwich has committed three quarters of a million dollars and 10 years into TDR implementation. If he knew there was \$10 million available they probably would have asked for all but they are only asking for half which he believes is fair considering

Woolwich is the only municipality actively pursuing TDR. The Township is at a crossroads, the planning has to stop.

Mr. Schwager noted that they are contemplating moving the receiving zone because it made planning sense. It was never the intention of Woolwich to take the Boards money and run. If the Board needs a commitment they will continue planning for TDR that is fine but to make them wait and show proof before they are given the money is not fair.

Mr. Blake commented that at the Board's last meeting these issues were discussed and they did not recall master plan reexamination being a condition of funding. The Township has continued to move along with reexamination but was focused on the deliverables associated with preparation for the auction and showing the viability of a sewer plan.

Mr. Bruder noted that at the last meeting the TDR concept plan discussion was much different than what is currently proposed. At that time the plan still contemplated requiring credit use for commercial development and a sewer solution utilizing the Gloucester County Utility Authority. It was also discussed that master plan reexamination would begin the following month. Hearing now that this Boards approval is a condition of the Township moving forward or not is concerning.

Mr. Kennedy mentioned that the Board is trying to respond to the Township's request for funding in excess of what was previously discussed. When the Board voted in October 2014 \$3 million was contemplated, now we are talking now about \$5 million. The risk associated with use of these public funds has increased but the Board is not backtracking on its commitment.

Mr. Kennedy noted that it will take some time to stage the auction and several months to conduct the real estate transactions. This gives at least six months which is likely the longest it should take to conduct the reexamination given the resources already in place. All the planning scenarios conducted to date are inconsequential until they are integrated into the master plan. Mr. Kennedy does not doubt reexamination will happen but he does not want it to drag on. The details of the new receiving area and the ordinances amendments need to be worked out to enable a credit market. Only a portion of landowners will have credits purchased in the auction so it is important to the rest that the receiving area be viable.

Mr. Kennedy recommended the Board consider a \$5 million grant with the requirement that the master plan reexamination be adopted by the municipality before closing takes place. This would not delay the auction. He noted that when he says reexamination he means Land Use Board acceptance of the reexamination report, not that all the zoning and implementing ordinances be in place.

Chairman Fisher asked if this not a risk for the buyer and the seller?

Mr. Kennedy said that it would be and that it was a good observation. It would lower the Board's risk and get sellers attention. Just like any other real estate transaction there are conditions. He noted that the Board would not be locking in a State percentage in per se. If the municipality wanted to have more than \$7 million available he would not want the Board to have to reconsider the request.

Mr. Blake stated that he thought this was a great compromise.

It was moved by Mr. Kennedy and seconded by Mr. Requa to approve the grant of \$5 million. The maximum percentage cost share could not to exceed 80% on a transaction but that this percentage could go lower depending on how much the Township commits to the auction. The auction can be held as soon as possible but that state funds would not be available for closings on individual properties until the Township completes the master plan reexamination process.

Mr. Cohen asked if the maximum grant share is part of the motion.

Ms. Payne replied that the maximum the statute permits is 80%. If the Township puts in \$5 million than it would be a 50% cost share.

Mr. Cohen wanted to make sure that it was correct that he understands that the municipality is putting in \$2 million.

Township representative replied that they are prepared to move forward with a \$2 million commitment.

The motion was amended to include \$5 million of state dollars with a matching minimum municipal contribution of \$2 million with the proportionate share calculated accordingly.

Ms. Payne mentioned that the additional conditions discussed included finalizing the reverse auction procedures and the deed of easement. Ms. Payne noted that much progress has been made on these documents but that there has to be an agreement before the Bank Board could commit funds. Chairman Fisher noted that the Board would authorize Ms. Payne to sign off on these documents.

Ms. Payne mentioned that the Board talked about the requiring the municipality maintain permanent capacity for all credits purchased at the auction using State funds. Would that be a condition of the approval?

Mr. Kennedy mentioned that it was noted previously that it was a statutory requirement.

Ms. Payne noted that one condition staff considered was requiring that no portion of the recently proposed receiving area be preserved such that it would interfere with the ability for this area to function as a TDR receiving area. Staff has received calls asking whether the State be interested in preserving part of the receiving area.

An additional condition is that Woolwich continue to take all necessary and reasonable steps to ensure the adequacy and availability of public sewer and water to the TDR receiving area. Amendment to the sewer agreement has created a window of opportunity and we know the additional capacity is not enough to accommodate all the uses proposed on the US 322 corridor.

Mr. Kennedy noted that Ms. Payne's pre-memo recognized that preservation doesn't mean the open space or parks created as part of the overall design of the receiving area, so pocket parks, trails, paths, buffers, and recreational amenities are not what is meant.

Mr. Kennedy stated his belief that the new receiving area could create connectivity between the commercial, residential and the civic uses and could create TDR program viability through marketability of the end product. Design will drive a lot of this and creating this viability is still a work in progress. Connectivity and good design aspects will be essential for the Board to get their money back.

Ms. Payne stated there is a motion and a second on the table for a \$5 million commitment matched by a minimum \$2 million municipal commitment with the conditions just discussed and that closings would not occur until the master plan examination is completed.

Chairman Fisher asked for a roll call vote on the motion as follows: it was moved by Mr. Kennedy and seconded by Mr. Mitchel.

James Requa –	Yes
Dan Kennedy –	Yes
Roger Cohen –	Yes
Susan Weber –	Yes
Mitchel Jones –	Yes
Karl Hartkopf -	Yes

The vote was unanimous.

Mr. Schwager noted his appreciation for the vote of confidence of the Board and that he looks forward to continuing to work with our State partners.

Ms. Payne thanked the Township on behalf of the Secretary and all the state agencies for their effort.

Chairman Fisher noted the shared commitment to make the TDR program successful and asked for a motion to go into closed session.

Action as a Result of Closed Session

It was moved by Mr. Hart Kopf and Mr. Requa to approve the maximum equivalent credit value discussed in closed session.

There being no further business adjournment of the meeting was moved by Mr. Hartkopf and seconded Mr. Kennedy at 4:15 pm.

Respectively Submitted,



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