

NEW JERSEY STATE TDR BANK BOARD

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

October 10, 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
Douglas H. Fisher, Chairperson (arrived at 10:08 am)
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) (arrived at 10:08 am)
Sandy Batty (rep. Nelson Dittmar, Jr., ANJEC)
James Requa, Ed.D. (rep. DCA Commissioner Richard Constable)
Robert Swanekamp, President, N.J. State Board of Agriculture

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

Others in Attendance: Timothy Brill, Steven Bruder, Sandy Giambrone, SADC/TDR Bank Board Staff

APPROVAL OF MINUTES:

Ms. Purcell requested a motion for approval of the minutes from the February 8, 2013 meeting. It was moved by Mr. Requa and seconded by Mr. Kennedy. The motion was approved. (Ms. Batty and Mr. Swanekamp abstained.)

CHAIRPERSON'S REPORT:

Ms. Purcell stated she did not have a report and that Secretary Fisher would be present momentarily.

EXECUTIVE DIRECTOR'S REPORT:

Executive Director Payne thanked everyone for coming and noted staff has been busy assisting towns with TDR implementation, Woolwich and Berkeley Townships in particular.

Ms. Payne informed the Board of recent SADC activities. The SADC adopted regulations regarding the construction of solar facilities on preserved farmland. Additional discussions regarding the development of wind energy facilities on preserved farms will take place at the next SADC meeting. The Committee also published a proposed rule regarding On-Farm Direct Marketing facilities under the Right to Farm Act. The SADC is hoping for a final rule adoption at its December meeting.

COMMUNICATIONS

There was nothing in communications at this time.

PUBLIC COMMENT

None at this time.

NEW BUSINESS

A. Fiscal Year 2014 Proposed Budget

Ms. Payne referred the Board to the FY2014 Administrative Budget proposal sheet. The sheet reflects allocations in the FY2014 state budget and includes a \$50,000 line item for Board administration. The \$44,000 allocation for salaries is based on an estimate of staff time but actual expenditure will depend on hours allocated to the program. The FY2013 figures reflect documented staff time during this period.

The FY 2014 Administrative budget was moved by Mr. Hughes and seconded by Ms. Batty. The motion was unanimously approved.

B. Planning Assistance Grants

1. General Update

Mr. Bruder updated the Board on the status of its Planning Incentive Grants. These grants provide up to \$40,000 to municipalities to perform the planning work required to establish TDR ordinances under the State TDR Act.

Since the last meeting Berkeley Township, Ocean County adopted its TDR ordinance following submission of the ordinance and associated documents to the State Planning Commission. The Planning Assistance Grant is a 50/50 cost share grant with half of the allocation distributed at the time of grant approval and the remainder following submission of the ordinance to the State Planning Commission. Following adoption, Berkeley Township submitted to the Board municipal expenditure documentation justifying distribution of the second \$20,000 in grant funding. Berkeley's grant is now considered completed.

Mr. Bruder referred the Board to the grant funding sheet under Tab 3 in the packets. To date there have been 16 municipalities approved for Planning Assistance Grants. Four have adopted TDR ordinances and completed their grants, five are considered active and seven inactive.

Since the last meeting two (Ocean Township, Ocean County and Frankford Township, Sussex County) have gone from being active to inactive as grant terms expired and the municipalities did not seek extension of the grant. Two of the active grants, Mannington Township, Salem County and North Hanover Township, Burlington County, have applied for grant extension.

2. Grant Agreement Extensions

Mannington Township, Salem County

Mr. Bruder introduced Mannington Township as having the fifth largest agricultural land base in the state with almost about 18,000 farm assessed acres. The Township is very supportive of farmland and open space preservation having roughly 45% of the township preserved.

When Mannington was approved for its Planning Assistance Grant in 2006 it performed a TDR feasibility study which included a municipal build out analysis. This analysis lead to a master plan reexamination where mandatory clustering, a rezoning from 1.4 to 3 acre minimum lot sizes and a number of other minor zoning amendments were implemented. In addition to the downturn in the housing market major farmland preservation purchases have relieved pressure to implement TDR in recent years. More recently the Township performed an analysis of development potential under the NJDEP's nitrate dilution standards to reassess its zoning, the effectiveness of its cluster ordinance and feasibility of TDR.

Representatives from Mannington Township have participated in numerous TDR workshops including the State TDR Task Force assembled 3 or 4 years ago to examine ways to facilitate TDR development in New Jersey and discussions regarding regional TDR development in Salem County.

Mannington Township has indicated its desire to keep TDR as an option as evidenced by its August 27, 2013 packet letter and have requested an extension of the grant for an additional two years.

Chairman Fisher questioned what an extension of the grant would provide the Township. Mr. Bruder stated Mannington already submitted documentation of matching cost share for the initial \$20,000 and extension of the grant would allow it to remain eligible for the remaining \$20,000 should it decide to complete the TDR planning process, submit it to the Office of Planning

Advocacy and adopt an ordinance. It would not make them eligible for more funds than they have already been approved for.

Mr. Steindel questioned whether extension of this grant would limit funding availability for additional municipalities. Ms. Payne noted that grant extension keeps money encumbered for the municipality and despite limitations on Board funding there remains money available should additional municipalities seek grants. She noted TDR is often a long term planning process which can be difficult for municipalities to implement.

Mr. Kennedy noted that one of the major issues municipalities implementing TDR face is uncertainty regarding wastewater management planning, an issue over which they have little control.

It was moved by Mr. Regua and seconded by Ms. Semple to approve the grant extension for Mannington Township. The motion was unanimously approved.

North Hanover Township

Mr. Bruder described North Hanover Township as an agricultural community working under the Burlington County TDR Demonstration Act to implement TDR. The Township is receiving planning assistance from the Burlington County Bridge Commission. The Township is seeking a two year extension of its grant which was initially approved in 2008.

North Hanover is located adjacent to Joint Base MacGuire-Dix-Lakehurst which has been the focus of a regional planning study focused on preventing incompatible land development around the base. Part of this discussion has involved provision of a regional wastewater solution which would be necessary for North Hanover's TDR program.

Since approval of its Planning Assistance Grant, North Hanover Township performed a buildout analysis of the municipality and amended the land use element of the master plan to implement non-contiguous clustering as an interim solution until TDR can be developed. The Township is looking to transfer development from the R-A district into two receiving areas, the North Wrightstown receiving area and North Cookstown receiving area. Mr. Bruder noted that following the municipal build out analysis, the Township decided to narrow the focus of the sending area to areas north of Jacobstown. The Township has a draft real estate market analysis and a draft development regulation plan for the two receiving areas. Mr. Bruder noted again that uncertainty on wastewater provision is the primary issue holding up completion of the TDR program.

Chairman Fisher asked about the status of the wastewater plan. Mr. Bruder answered that the second phase of the Joint Land Use Study examined the feasibility of regional wastewater provision to Cookstown, Wrightstown and New Egypt and identified where lines and pump stations would be located and what would be forced main or gravity fed. Mr. Bruder noted that although discussions lead by Burlington and Ocean Counties remain positive, management turnover at the Base has slowed discussions.

Mr. Kennedy noted that Wrightstown Borough recently completed the State Planning Commission's Plan Endorsement process and has a good deal of clarity on wastewater provision. Absent a regional solution, the Borough has plans for accommodation on land it owns with developers agreements for commercial and retail development.

Mr. Lewis questioned why the Burlington County Bridge Commission is involved. Mr. Bruder noted that Burlington County has been proactive with regional planning having encouraged TDR for many years and worked closely on Chesterfield and Lumberton Townships' TDR programs. Ms. Payne added that the County transferred its Planning Office to the Bridge Commission within the last few years.

A motion to approve the grant extension for North Hanover Township was moved by Mr. Kennedy and seconded by Mr. Hughes. The motion was unanimously approved.

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 underdeveloped 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.

There are several issues the Township must still resolve. First it needs to complete the administrative documents needed to effectuate transfers. Second, it must discuss who on staff is going to administer the program day to day and how involved in the market the Township will be. Third it must still determine who is going to own and/or manage the deed restricted parcels.

Mr. Bruder noted that nonprofits in the area may be interested in holding land in this area as it is an important area for protection of the Barnegat Bay watershed and proximate to areas identified by the Trust for Public Land and parcels owned by US Fish and Wildlife Service. Almost half of

the parcels are already are publicly owned so there may be the ability to put together decent sized parcels that would entice a non-profit or governmental agency to take ownership.

Ms. Payne indicated that the need for consolidation of the sending area parcels is what is unique about this program. She also noted that although the statutory requirements to implement the program are completed the Township has a great deal more to do to implement the program.

Mr. Brill indicated that the Township been challenged by Hurricane Sandy clean up over the past year so the Township should be given credit for staying on the TDR implementation process.

Given the flooding Hurricane Sandy caused, Ms. Batty questioned why Berkeley's TDR program didn't include land adjacent to the Barnegat Bay. Mr. Bruder answered that the Township and County have been very active with open space preservation along the bayshore. As part of its master plan revision the Township also prepared a build out analysis of the entire municipality. Although there remain some parcels east of Route 9 and many in the Pinelands portions of the Township worthy of preservation, it was determined the Pinewald section was the area whose growth could be managed with a reasonably sized TDR program.

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.

Mr. Bruder noted some updates since the Boards last meeting.

Woolwich received Plan Endorsement in April of 2008 and passed its municipal TDR ordinance in October of that year. Is it has been nearly 5 years since ordinance adoption and, as required in the State TDR Act at N.J.S.A 40:55D-156, the Township is currently preparing a report which will review the development transfer ordinance and real estate market analysis to determine the continued viability of the program. This report is to be completed by October 30th.

Mr. Bruder also noted discussions by the Township regarding redesign of the U.S. 322 Corridor Receiving Zone concept plan. The original idea for implementing TDR in Woolwich Township began with a builders remedy decision on a parcel on the north side of Route 322 just to the west of the New Jersey Turnpike, known as Woolwich Adult, LLC. This decision required sewer service provision to the site. The sites location also dictated that initial plans for the Township's Route 322 Corridor Receiving Area be placed further west along Route 322. Since adoption of the TDR ordinance, Woolwich Adult, LLC's approvals lapsed and it was determined by the Township that the location was appropriate for receiving area development. In addition to be closer to the N.J. Turnpike, the site is also adjacent to proposed commercial developments with general development plan approval. Following completion of the 5-year review process a more comprehensive master plan review will be completed.

Ms. Payne noted that the goal is to take the design standards and design concepts established in the original center approval and translate them over to the new concept plan.

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 uncertain but it was anticipated to be provided partially through developers agreements with the Logan Township MUA. The Regional Center was included in Gloucester County's sewer service area in 2012. Discussions with Logan MUA, as well as discussions with the Gloucester County Utilities Authority, have not materialized to date. 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.

Mr. Bruder also noted continued discussions between the Township, County, NJDOT and the Delaware Valley Regional Planning Commission regarding improvements to U.S. Route 322. Approved commercial development along Route 322 require several improvements including intersection improvements at Kings Highway. A solution for the entire corridor is being discussed, possibly via a center-wide access management plan.

Chairman Fisher asked how landowners know now whether they are going to be in sending or receiving areas? Mr. Bruder replied that there is landowner investment back expectation based on the existing plan which is why the Township is inclined to try to keep the entire Center with some development potential. Due to the rapid residential development the Township has experienced they want to encourage commercial development and see the Route 322 corridor as an appropriate location. Ms. Payne added that until a revised plan for development of the Regional Center is complete there will be uncertainty for landowners.

Mr. Bruder noted that the existing receiving area plan is a highly detailed, mixed use concept. The Township has indicated desire to carry that concept over. It was stressed that design is going to drive desirability of the receiving area and therefore sending area credit prices.

Mr. Requa questioned the impact this projected development will have on property taxes.

Ms. Payne stated that they currently suffer under a heavy tax burden and are very focused on creating commercial opportunities. Mr. Kennedy stated that the Office of Planning Advocacy has been working with the Township to understand what commercial opportunities are best suited to Woolwich and what incentives are available. DVRPC has also provided Woolwich with information and examples of similar development occurring in the region.

Chairman Fisher mentioned that Logan Township, an adjacent municipality, houses a great deal of commercial development, including the Pureland industrial park. This left Woolwich to absorb a great deal of residential development.

Mr. Kennedy noted that the original plan relied heavily on a great deal of public investment to implement a boulevard concept along Route 322. It is possible that a new Regional Center concept could lower the public cost significantly. Mr. Brill added that Woolwich has developed largely with single family homes and that the addition of commercial development and the mixture of housing types proposed in the Center will help address the tax situation. Typically, the variety of housing types proposed do not generate the number of schoolchildren that single family homes do. Mr. Brill also emphasized the scale of the proposed Center, its ability to access sewer and water infrastructure and its' uniqueness in terms of proximity to the New Jersey Turnpike and Philadelphia.

Ms. Payne noted Woolwich's interest in approaching the State TDR Bank for grants to purchase sending area credits. The message to date from staff has been that the Township must

demonstrate a wastewater provision solution before the Board can entertain such a request. Mr. Bruder noted that the commercial developer, Wolfson, has obtained sewer capacity from the Logan MUA for the first phase of development on Rt. 322 but the source of capacity for the remainder of the Center is uncertain. At some point in the near future the sewer line will need to be placed down Route 322 from Logan and the Township will make sure is sized to accommodate the needs of the Center.

Cluster Bill Update

Mr. Bruder updated the Board on amendments to the Municipal Land Use Law (MLUL) approved in August. These amendments, A3671/S2608, improve a municipalities ability to offer alternatives to traditional development through enhanced provision for clustering, noncontiguous cluster and lot size averaging. They originated from recommendations of the State TDR Task Force. To date, traditional clustering has not been as widely implemented, nor does it provide the scale of preservation desired by many municipalities and full scale TDR is seen as costly and time consuming. The need for alternatives to full scale TDR and purchase of development rights were demonstrated during the SADC's work with its Planning Incentive Grant municipalities as they drafted Comprehensive Farmland Preservation Plans.

Mr. Bruder explained the clustering, non-contiguous cluster and lot-size averaging concepts to the Board noting that noncontiguous clustering had been permitted in the MLUL within planned development but little used. There were a number of municipalities that tried to implement it outside of planned development in the recent past but they lost legal challenges. These challenges contended the municipalities were attempting TDR without following requirements under the State TDR Act. Mr. Bruder noted the differences between noncontiguous cluster and TDR. With TDR sending and receiving areas are designated and sending area development rights are turned into credit form which can be sold to developers of receiving area parcels. With noncontiguous cluster there is some common ownership between the parcels involved whether it is fee interest or an option. Rather than purchasing credits the developer effectuates the development potential transfer through the subdivision approval process including all parcels involved.

Chairman Fisher asked how property preserved through non-contiguous cluster stay preserved in perpetuity?

Mr. Bruder answered that the law calls for permanent protection of land as public or common open space, a historic site or agricultural land. As such the SADC, State Historic Preservation Office and Green Acres will have to draft a model deed restrictions for municipalities to adopt. For farmland preservation, the Township has the option to either adopt the SADC's model deed restriction or have a deed restriction they draft approved by the SADC.

Mr. Bruder noted that the amendments now allow municipalities to designate areas to be developed and those to be preserved through non-contiguous cluster. This was an option available only through TDR previously. The bill also allows for bonus density to encourage developers to participate and it allows for both minimum and maximum lot sizes or floor area ratios which provides for greater efficiency.

Ms. Batty asked whether towns are going to use this as a stepping stone, or a replacement for, TDR. Ms. Payne indicated it will be case specific. For example, there is great development pressure, and a goal is township wide conservation and large investments in infrastructure, the Township may want to associate downzoning with the transfer mechanism. This will require use of TDR. If, however, growth pressure does not dictate the need for downzoning, use of non-

contiguous cluster may be appropriate. The idea is to provide municipalities with as many tools as possible and let them select which is best for their community.

Ms. Payne credited New Jersey Future for its work on the bill and that there will be much discussion about it at the League of Municipalities Conference, N.J. Land Trust Rally and other upcoming planning and conservation forums.

Readoption of the TDR Bank Board Rules

Ms. Payne indicated the Boards rules were due to expire in January and at the previous meeting the Board approved a draft for readoption with minor clarifying amendments.

Mr. Bruder noted that there were no public comments on the rules.

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

TIME AND PLACE OF NEXT MEETING:

To Be Determined

It was moved by Mr. Requa and seconded by Ms. Batty to adjourn the meeting at 11:22 am. The motion was approved.

Respectively Submitted,



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

S:\TDR\TDR BANK\MINUTES\TDR Bank Minutes 10 10 13 .doc