

NEW JERSEY STATE TDR BANK BOARD

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

October 21, 2014

The meeting was called to order at 10:08 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)
Gerard Scharfenberger (rep. Edward J. McKenna, Jr., State Planning Commission)
Roger Cohen, Ph.D. (rep. State Treasurer Andrew P. Sidamon-Erstoff)
James Lewis (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)
Richard Norz, President, N.J. State Board of Agriculture

Others in Attendance: Timothy Brill, Steven Bruder, Sandy Giambrone (SADC/TDR Bank Board staff), James Humphries (New Jersey Highlands Council), Tim Kernan (Kernan Engineers), Bill Harrison (Genova Burns), Gerry Scharfenberger (New Jersey Office For Planning Advocacy), Matthew Blake, Will Pine, Jane DiBella and Alex Elefante (Woolwich Township).

APPROVAL OF MINUTES:

Ms. Purcell requested a motion for approval of the minutes from the October 10, 2013 meeting. It was moved by Mr. Requa and seconded by Mr. Lewis. The motion was approved. (Mr. Cohen abstained.)

CHAIRPERSON'S REPORT:

Ms. Purcell stated she was pleased the State TDR Bank was again convening and looking forward to the discussion.

Ms. Purcell mentioned that the New Jersey Agricultural Convention is scheduled for February 3rd-5th, 2015 in Atlantic City and that the New Jersey State Board of Agriculture and the delegates were preparing resolutions.

EXECUTIVE DIRECTOR'S REPORT:

Ms. Payne noted that items on the agenda are new discussion topics for the board and that these policy discussions will require the board to meet more than once a year. She noted that the majority of staff time has been related to helping Woolwich Township implement its TDR program.

Ms. Payne also mentioned the upcoming ballot question regarding dedication of a portion of the corporate business tax to farmland, open space, blue acres and historic preservation. The outcome will have a profound impact on the SADC's future and perhaps that of the board.

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 FY2015 Administrative Budget sheet. The sheet reflects actual expenditures for FY13 and FY14 and requests \$50,000 for FY15 administration. This number is reflected in the Governor's FY2015 adopted budget.

The FY2015 Administrative budget was moved by Mr. Hughes and seconded by Mr. Lewis. 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.

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, four are considered active and eight inactive. Additional grant funds to examine feasibility and implement TDR have been provided by the Office for Planning Advocacy (OPA) and the N.J. Highlands Commission.

2. Grant Agreement Extensions

A. Hopewell Township, Cumberland County

Mr. Bruder noted that despite correspondence with Hopewell Township a request for extension of the Planning Assistance Grant was not received and therefore no action is required.

B. Jersey City, Hudson County

This is the first request for extension of Jersey City's grant which was approved in 2009. The city is attempting to use TDR to preserve historic structures, create open space and recreational areas and transfer rights to areas designated for redevelopment.

Jersey City's TDR project includes several distinct sending and receiving concepts. First, a "self-contained" TDR program will be created for the Jersey Avenue neighborhood where sending and receiving areas are confined to the neighborhood boundaries. The city also proposes to define critical resources, such as historic landmarks, environmentally sensitive lands and open space, which will become scattered site sending areas. The development potential from these areas will be sent to designated receiving areas that are currently underutilized.

Mr. Bruder noted that the city has completed the majority of the planning documents required by the State TDR Act, including the real estate market analysis, and proposed zoning code amendments. There are two statutory hurdles they have struggled with. The first, involves the requirement for State Plan Endorsement. Discussions have been had with the OPA. As Jersey City is part of the Hudson County Urban Complex, a currently endorsed area, it is possible the city can meet the statutory requirement accordingly.

The second issue is involves the State TDR Act requirement that parcels for which variances increasing density by more than 5% are sought are to be designated as receiving areas. This language arose from TDR pilot projects in largely agricultural municipalities. This creates difficulty for Jersey City where the entire city is not designated as sending or receiving area and has caused the city to delay adoption of their ordinance.

Although there is some interest in continuing with a comprehensive plan involving TDR Jersey City has indicated progress towards preservation through implementation of their existing redevelopment plans. Staff recommendation to extend the grant for an additional year.

A motion to approve the grant extension was made by Mr. Kennedy and seconded by Mr. Hughes. The motion was unanimously approved.

C. TDR Implementation Discussion

1. Woolwich Township, Gloucester County

Ms. Payne informed the board of Woolwich Township's request that the State TDR Bank participate in the purchase of TDR credits. This is the first time the bank has received such a request. The enabling statute authorizes the bank to purchase, or provide matching funds for the purchase of 80% of, the value of development potential. This important bank function can help stimulate the implementation of TDR and provide relief for landowners when the TDR market is inactive. Bank participation must not interfere with private sector credit market.

Mr. Bruder provided a brief overview of the Woolwich TDR proposal. Woolwich Township is approximately 15 miles from Philadelphia and until the downturn of the economy was the fastest growing municipality in the northeast. It is bisected by U.S. Route 322 and has the last remaining undeveloped access to the New Jersey Turnpike at Exit 2. The original TDR proposal involved the transfer of credits from about 4,100 primarily agricultural acres to two planned receiving area, the U.S. 322 Corridor Receiving Zone within the township's 1,696 acre Woolwich Regional Center and the 125 acre Auburn Road Village receiving area adjacent to the Township's Weatherby development.

Mr. Bruder provided a summary of TDR establishment in Woolwich starting in 2005 and credited the township for staying committed to TDR through the lengthy statutory process and subsequent downturn of the economy.

The original idea for implementing TDR in Woolwich Township began with a builders remedy decision on a parcel north of Route 322 and west of the New Jersey Turnpike, known as Woolwich Adult, LLC. This decision required sewer service provision to the site. The site's 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 its 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 (GDP) approval. The township is looking to begin a comprehensive master plan review to address redesign of the center.

Mr. Bruder mentioned that developer Steve Wolfson has three phases of commercial development along U.S. 322 west of the NJ Turnpike entrance with GDP approval. The first phase, Woolwich Commons, has planning board final approval and in November 2012 Mr. Wolfson purchased 60,000 gallons of sewage capacity from the Logan Township MUA which would accommodate this phase.

Beside the economic downturn, sewer service provision has been the primary reason TDR is not yet being implemented. At the time of initial plan endorsement the regional center was not identified as sewer service area. An amendment to the Tri-County Water Quality Management Plan in 2012 rectified this however the question of access to capacity remains. Discussions with Logan MUA, as well as discussions with the Gloucester County Utilities Authority, have not materialized to date.

TDR in Woolwich is "mandatory" meaning that upon ordinance adoption zoning of sending area properties was reduced from 1.5-2 acre minimum lot sizes to 15 acres, with equity compensation addressed through credit sale. Since TDR ordinance adoption there has been a high degree of participation in farmland preservation for farms with development approvals that reflect the prior

zoning. This, in addition to township open space preservation activity, has decreased the amount of credits that necessitating accommodation in the receiving area. A number of credits associated with the GDP approval for the Auburn Road receiving area have effectively been “locked up” during this time as well.

As a result of the reduction in the number of sending area credits and availability of the Woolwich Adult site, the township is looking to reassess the overall design of the regional center, and the receiving area within it.

Mr. Bruder noted that during 2013 the township developed a series of conceptual designs for the center. Concurrently, there were meetings with the New Jersey Department of Transportation (NJDOT) regarding design and access to the Route 322 corridor for the center and the Wolfson property specifically. The original design of the corridor contemplated a boulevard concept to facilitate pedestrian connections between the two sides of U.S. Route 322.

Mr. Bruder noted that State TDR Bank Board staff, along with staff of the OPA, was invited to participate in discussions regarding the center concept design. Meetings were also held with Delaware Valley Regional Planning Commission staff regarding real estate market opportunities for the center and availability of funding for, or assistance with, urban design.

Mr. Bruder noted that the State TDR Act requires a review of the viability of a TDR program 5 years after ordinance adoption. The township underwent this review in October of 2013. This review examines the extent to which transfer of credits has occurred and must include a finding that the ordinance continues to be valid and the program workable. The report found that the credits to be encumbered by the Auburn Road receiving area GDP and those retired through farmland preservation encompass 28% of the original credit allocation. The township found that the down real estate market, not the structure of the TDR program, was the primary reason market credit transfers have not occurred. The SPC concurred with this finding.

As Ms. Payne mentioned, Woolwich has requested the Bank’s participation in the purchase of credits. The township has a list of sending area properties they would like acquired for open space and whose landowners have expressed a hardship as a result of the 15 acre TDR zoning. Earlier in the year discussions were held regarding the Bank’s ability to purchase credits and the conditions under which it could participate. That discussion is outlined in the packet letter dated February 14, 2014. Based on these discussions the township amended its TDR ordinance in August, in part, to establish a municipal TDR bank, a requirement for establishing a municipal average credit value. The township developed hardship and ranking criteria for purchase of credits as well.

Mr. Bruder noted that Woolwich Township had the Urban Land Institute hold a Technical Advisory Panel (TAP) in July of this year. The TAP involved volunteer professionals touring the township and meeting with stakeholders to discuss the proposed design and mixture of uses in the center. The goal of the TAP was to assess regional market needs that the center can fill and provide design recommendations consistent with the walkable mixed use concept envisioned in the original plan. These recommendations were provided in September of this year. Mr. Bruder noted that the Delaware Valley Regional Planning Commission also recently awarded Woolwich a \$100,000 Transportation and Community Development Initiative grant to perform the master planning necessary to effectuate the township’s vision for the regional center.

Township representatives addressed the board. Mr. Blake noted that the 5 year TDR ordinance review process demonstrated that the program was still viable and operable. This review found

that a little over 300 credits were found to be retired through farmland preservation or set aside as part of the Auburn Road GDP. Today, approximately 1,000 credits are to be accommodated in the US Route 322 regional center. The original center plan anticipated approximately 2,700 mixed residential housing units and 325,000 square feet of non-residential. At that time the Woolwich Adult agreement was going to bring another 1,100 units and a million and a half square feet of non-residential to the regional center.

Mr. Kernan noted that the new concept plan anticipates approximately 2,300 residential units and about 360,000 square feet of commercial. This may change slightly however to reflect recommendations from the Urban Land Institute TAP. They no longer have the additional 1,100 associated with the Woolwich Adult settlement agreement. The existing non-residential GDP approval (Steve Wolfson properties) totals about 1.5 million square feet.

Mr. Blake discussed sewer provision. As mentioned previously, sewer service provision was uncertain at the time of plan endorsement 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. Several discussions have taken place over the years including creation of a package plant within the regional center and continued negotiation with the Logan Township MUA. Steve Wolfson has secured 60,000 gallons per day for his Woolwich Commons project (aka Phase I) from the Logan MUA. In order to obtain further capacity for the regional center however it was determined that Woolwich would have to fund expansion of the MUA plant which proved to be cost prohibitive.

Recent discussions with OPA and NJDEP have led to renewed contact with the Gloucester County Utility Authority. It appears there is existing capacity at the GCUA facility in West Deptford and the township seems to be moving in a positive direction toward an agreement.

The township desires to accommodate sending area landowners in the short term. Nearly all the farms with existing approvals have been preserved. There are many more however that are interested in preservation but are limited to valuation through the Farmland Preservation Program based on the underlying 15 acre zoning. Many of these are elderly landowners.

As an alternative to deriving an average credit value, soliciting applications and then ranking them for purchase, the township is proposing a "reverse auction". This approach would allow the market to help derive the value for credits and provide equal opportunity for landowner participation. He also noted the development community's interest in credit value determination. To accomplish this, the township is willing to partially fund the auction but is requesting assistance from the State TDR Bank. Woolwich would like a commitment of funds from the bank as well as the conditions for release of these funds. Mr. Pine noted that the township committee granted authority to bond up to \$2 million for this purpose.

Mr. Blake indicated that if the State TDR Bank is willing to offer \$3 million, or more, with an 80% cost share percentage a healthy auction could be held. At \$5 million approximately 120 credits (@ \$40,000/credit) could be purchased although 200+ credits would be ideal to accommodate landowners with hardships.

Ms. Payne acknowledged the need to accommodate landowners until a viable market for TDR credits is created. She referred the board to the February 14th letter outlining the conditions under which the board could participate in the purchase of TDR credits or the SADC in easement purchase. These recommendations led to the township's establishment of a local bank.

As outlined in the February 14th letter, N.J.A.C. 2:77-3.1 requires the bank determine that the municipal TDR ordinance is “viable”. This viability test includes requirements for consistency with the State Highway Access Code and, where applicable, SPC approval of the development transfer ordinance as an amendment to a previously approved petition for plan endorsement. This viability determination could be made following adoption of the revised master plan, and ordinances reflecting the amended receiving area concept. In addition to a finding that the ordinance is viable the board would also need a degree of certainty regarding sewer provision.

To move forward the bank must determine program viability, determine a funding amount and work out auction logistics. In advance of this request Ms. Payne noted submission of a capital request to Treasury for \$5 million to help support Woolwich’s program.

Mr. Kennedy inquired as to whether other municipalities have sought this funding. Ms. Payne answered that none have and that only Chesterfield and Lumberton townships in Burlington County have adopted ordinances and are therefore eligible. These programs functioned ultimately through the private market. She noted that Berkley Township recently adopted a TDR ordinance but no request for credit purchase has been discussed. This is the first time the bank was asked to capitalize another TDR bank in this manner. Mr. Kennedy noted the limited number of municipalities with which these funds apply and mentioned that if aid to Woolwich led to success of their program it would help demonstrate the viability of TDR.

Mr. Harrison noted that the program was deemed viable at the time of plan endorsement and remains viable according to the 5 year statutory review. Enhancements to the program have been identified, and will be solidified in the upcoming master plan review, but these amendments do not affect viability of the existing program.

Mr. Kennedy noted the OPA’s involvement to date and his belief that the State has a level of obligation to assist the township. He made a motion for staff to work with the municipality to determine an appropriate level of funding and then work out auction details. Mr. Requa seconded the motion.

Ms. Payne noted that if the township has committed \$2 million she would not hesitate making a recommendation to commit an additional \$3 million. Viability remains a concern. The current plan is very different plan than that endorsed by the SPC. To determine viability the board will have to know the location and extent of the receiving area, the densities, number of credits, credit requirements, value and how sewer is to be provided.

Mr. Blake relayed concern that, at an estimated value of \$40,000 per credit, \$5,000,000 will allow for the purchase of only 120 credits. There are many more landowners in hardship than this will accommodate. Ms. Payne stated that the Board could make a commitment for \$3 million and if that auction is oversubscribed the township has the right to discuss additional funding.

Ms. Purcell questioned what the SPC would require of the township since the plan is being amended.

Mr. Kennedy referenced the OPA’s January 29, 2014 letter which was sent with the expectation that a center boundary was proposed. If the township were to send a letter clarifying that the boundary will remain the same and that the original design concepts are to be translated to the reconfigured design the office may be able to satisfy this requirement during the biennial review. Mr. Scharfenberger noted that formal action by the SPC is not normally required for biennial reviews.

Mr. Lewis questioned what is required of NJDOT. Ms. Payne answered that the regulations governing the banks decision to participate require a finding that the municipal TDR ordinance is consistent with the State Highway Access Code.

Mr. Lewis mentioned that the only formal determination the NJDOT provides regarding the access code is association with access permits. Any comment otherwise would be informal staff review. They do not normally comment on the likelihood of the viability of future permit applications as there may be many contingencies associated with an individual permit.

Ms. Payne indicated that if NJDOT is willing to review Woolwich's concept plan and issue a letter indicating that it is substantially consistent with the code we could consider that requirement met.

Mr. Lewis stated that NJDOT has been supportive of township's move to reconfigure the center plan because it removes complications associated with the previous plan. It would continue to give direction to the township in terms of the planning concept but will be unable to commit to a funding level until the concept is fleshed out and reviewed against other department priorities.

Mr. Kennedy amended his previous motion to include a commitment of \$3 million provided the conditions Ms. Payne recommended, including evidence of agreement on sewer provision, are provided. Mr. Kennedy agreed with Ms. Payne that the township must provide firm evidence of a viable sewer solution but not to the extent that infrastructure be in place. Mr. Scharfenberger seconded the motion amendment. The motion was approved.

Mr. Requa asked whether the sale of bonds for \$5 million was authorized. Ms. Payne stated that Treasury indicated their intent to offer \$5 million at the next bond sale.

Highlands Development Credit (HDC) Program Update

Mr. James Humphries gave an update regarding the HDC program.

Mr. Humphries noted that the Highlands Commission's focus has been on the establishment of receiving areas. The Highlands Act provides incentives to participation but the fact that receiving areas are voluntary makes it a challenging program to implement. In 2010 the Highlands Act was amended to allow municipalities in the entire state to participate as receiving areas.

Mr. Humphries described the incentives provided to municipalities for becoming receiving areas for HDCs. To date the Commission has provided feasibility grants to Sussex Borough, Vernon Township, the City of Clifton and Passaic City. There are four additional municipalities interested in these grants.

Mr. Humphries discussed the eligibility of sending area credits noting that there have been 98 applicants for credit allocation equating to 1,960.75 HDCs on 3,772 acres. To date the only sale of HDCs has been to the Highlands Development Credit Bank.

Executive Order 114 mandated the State TDR Bank provide \$10,000,000 to the Highlands Development Credit Bank to establish an initial purchase program. To date they have purchased HDCs from seventeen property owners. This equates to the preservation of 597 acres and retirement of 511 development credits.

Over the next few years the commission will be undertaking a comprehensive review of the Highlands Regional Master Plan, including the TDR program. They are also looking to expand the initial purchase program using mitigation funds from the Susquehanna Roseland Powerline Transmission Project.

Pinelands Development Credit (PDC) Program Update

Ms. Grogan provided an overview of the Pinelands Development Credit Program and presented a chart of PDC sale and value trends. The program began in 1982 and peaked in 2001 when the State received funding to purchase credits itself. Although the number of requests for Letters of Interpretation (LOIs) are not what they once were, demand remains steady. The Pinelands Commission has allocated over 11,000 rights to date. Nearly 52,000 acres have been preserved through the sale of PDCs to date.

Ms. Grogan noted the Pinelands Commission’s concern with the level of demand for PDCs and lack of opportunities for PDC use in relation to supply. In 2006 the Commission estimated a future supply of about 8,100 rights and demand of only 5,200 rights. A 2014 update of this analysis showed an estimated supply of 6,750 rights however it is suspected that opportunities for credit use have dropped as well. As a result, the commission has been examining designation of additional receiving areas and expanding PDC use requirements.

TIME AND PLACE OF NEXT MEETING:

To Be Determined

It was moved by Mr. Lewis and seconded by Mr. Hughes to adjourn the meeting at 11:52 am. The motion was approved.

Respectively Submitted,



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