

NJ Transfer of Development Rights (TDR) Statewide Task Force

December 2, 2009 Meeting - Minutes

Offices of the NJ Housing Mortgage and Finance Agency
Trenton, New Jersey

Present:

Don Asay, Mannington Township
Larry Baier, NJDEP
Brent Barnes, NJDOT
Sandy Batty, ANJEC
Tom Beaver, NJ Farm Bureau
Matt Blake, American Littoral Society
Dianne Brake, PlanSmartNJ
Tim Brill, SADC
Steve Bruder, SADC
Phil Caton, Clarke, Caton, Hintz
Jim Coe, Hatch Mott McDonald
Susan Craft, TDR Bank Board, SADC
Tim Dillingham, American Littoral Society
Kim Ehrlich, NJEDA
Joy Farber, OSG
David Fisher, Matzel & Mumford/K. Hovnanian
Wilma Frey, NJ Conservation Foundation
Richard Goldman, Drinker, Biddle & Reath
Fred Hardt, Attorney
Karl Hartkopf, OSG
James Hartling, Urban Partners
John Hasse, Rowan University
Helen Heinrich, NJ Farm Bureau
Andrew Johnson, Wm. Penn Foundation

Matt Johnson, Burlington County
Lou Joyce, Salem County Planning Dept.
Jeff LeJava, Highlands Council
Evangeline Linkous, DVRPC
Christine Marion, Morris County
Suzanne McCarthy, DVRPC
Ed McManimon, McManimon & Scotland
Robert Melvin, GroupMelvinDesign
Courtenay Mercer, Mercer Planning Associates
Katherine Otto, Bloustein School
Bruce Paparone, Paparone New Homes
Mark Pfeiffer, NJ Div. of Local Govt. Services
Monique Purcell, NJDA
Brian Schilling, Rutgers University
Ed Schmierer, Mason, Griffin & Pierson
Liz Semple, NJDEP
John Stokes, NJ Pinelands Commission
Kathy Stuart, Office of Sen. Sweeney
Chris Sturm, New Jersey Future
Eileen Swan, Highlands Council
Lucy Vandenberg, COAH
Jim Waltman, Stony-Brook Millstone Watershed
Linda Weber, Brown and Keener

The meeting began at 9:40 am with introductory remarks by co-chairs Phil Caton and Chris Sturm. They were followed by brief comments from Andy Johnson from the William Penn Foundation, which is funding New Jersey Future to staff the effort, and Suzanne McCarthy, Delaware Valley Regional Planning Commission, who is running a parallel process to explore the possibilities for a regional TDR program in Salem County. The Statewide TDR Task Force is a broad group of stakeholders interested in improving implementation of TDR programs in New Jersey. The purpose of the task force is to recommend policy, programmatic, regulatory and legislative changes within nine months that will facilitate the use of TDR at both the municipal and regional levels. The group will work to build consensus within the task force for the recommendations so that members are willing to promote them as “ambassadors”.

Task Force members were asked to introduce themselves and say a few words about their interest in TDR. After the introductions, Chris Sturm and Linda Weber gave a slide presentation on the status of TDR implementation in New Jersey. (The presentation can be found at www.dvrpc.org/tdr/taskforce/newjersey.htm.) The last slide included the following list of obstacles facing TDR implementation and was displayed on the screen for the duration of the meeting:

Obstacles Facing TDR Implementation

- Expensive, lengthy process
- Community concerns with higher density
- Cost and complexity of preparing for rapid growth
- The need for state agency support and coordination
- Potential COAH problems

- Difficulty getting state approvals for infrastructure
- Potentially high costs for developers
- Fiscal disincentive for regional transfers

Following the slide presentation, three task force members were asked to share their thoughts on the issues and obstacles facing TDR in New Jersey.

Dave Fisher, Matzel & Mumford, offered the following comments, based on his experience researching TDR in Montgomery County and as a developer in Chesterfield:

- A community needs to decide whether the program is voluntary or mandatory and whether the market or a TDR bank will set the value of the credits.
- The allocation of credits/rights must be fair. Credits assigned to sending and receiving areas must be balanced and relatively equal.
- The viability of a receiving area is critically important. In Maryland, the receiving areas allowed up to eight times the density of the base zoning, which gave sufficient developer incentive. Also, the receiving areas were guaranteed water and sewer approvals.
- The property owners in the sending area need residual rights so they can borrow against the equity for farm equipment and/or subdivide lots for family or cash.

Bob Melvin, Group Melvin Design, offered the following comments, based on his experience as the planning consultant in Woolwich and Hillsborough:

- The cost of planning and designing a TDR program is expensive, in part due to the amount of public education needed for residents and other stakeholders. For example, farmers need to understand how the program will protect their equity.
- The process requires preparing for the total build-out of the community, an intensive task, especially when compared to preparing for the typical alternative: large lot sprawl.
- State agencies need to offer some level of predictability. The TDR planning process lasts a minimum of two - three years during which state agency rule changes can occur and cause major disruptions. The rules and regulations of state agencies should be predictable throughout this period, similar to the way a developer's approvals under a General Development Plan protects against zoning changes for a period of time.
- Support for TDR implementation needs to be institutionalized within state agencies, so that lower-level staff act consistently with commitments made by their leadership.
- The receiving area must be viable and able to accommodate infrastructure.

Matt Blake, American Littoral Society, offered the following comments, based on his involvement with TDR in Hopewell and land preservation throughout the Delaware Bayshore:

- In order to preserve large contiguous areas of land, TDR programs must be put into place before much suburbanization occurs.
- Relatively high densities in agricultural (sending) areas can require more development in the receiving area(s) than natural and man-made infrastructure can support.
- ALS supported the TDR program in Hopewell in the recognition that it is important for a pilot project to proceed, and because the traditional farmland preservation programs offer complementary tools to TDR that take credits out of the sending area and lower the total build-out.
- Even in a down economy, NJ voters supported preservation and rural lifestyles.
- The new nitrate dilution requirements will likely change the build-out of future sending and receiving areas.

The meeting was then opened to a general discussion on the obstacles to TDR implementation. The following comments were offered by task force members:

Matt Johnson. The profitability and marketability of the receiving area is important. The developer must be able to sell it. People can handle the time and expense of the long process if there is some degree of certainty at the end of the process.

Christine Marion. Many receiving areas will be redevelopment areas – not just areas for greenfield development. To make TDR work, impediments to redevelopment must be addressed. Also, sometimes there is a disconnect between the densities that infrastructure capacity support and the densities that are most marketable.

Diane Brake. The TDR obstacles (referenced in the slide show) are the same structural obstacles and issues endemic to all types of smart growth development. We need to better assess how to implement these types of land use patterns regionally. A top-down state planning effort should identify TDR opportunities rather than just waiting for towns to volunteer.

Jim Hartling. The TDR obstacles (referenced in the slide show) are not unique to TDR, but are unique to any incredibly detailed planning process. Smaller scale transfer programs should be explored.

Helen Heinrich. TDR banks have been instrumental in making the Pinelands and Long Island TDR programs work. The planning grants offered to towns are not enough to do the job.

Jim Waltman. He would like to see more regional projects. Inter-municipal regional planning offers the most opportunities.

John Stokes. The fundamental paradigm explicit in many TDR programs is to offer bonus densities to developers. His experience in the Pinelands is that bonus densities aren't always viewed by developers as a benefit – and many developers opt out of purchasing them. The Pinelands Commission is thinking about offering developers incentives to increase density and asking developers who opt for sprawl to contribute funds to the program.

Dave Fisher. He agreed with Mr. Stokes' comment and said that extra density can cost more, in part because it can make projects more complex to build.

Louis Joyce. Future downzoning and rezoning based upon the nitrate dilution model in the new wastewater planning rule will have a big impact on build-out potentials – and equity is going to take a hit. Towns will need infrastructure capacity to address equity reductions.

Courtenay Mercer. The 2004 TDR Act and companion rules are necessarily complicated to ensure that municipalities create a program that really works. Planning costs are small when compared to the cost of purchasing land for preservation. Also, towns should be required to put some of their own money into the program so that they have an investment in its success. In urban areas, such as Jersey City, that are located only in Planning Area 1, some of the plan endorsement requirements should be waived.

Phil Caton. The statutory requirements for TDR could probably be reduced for voluntary programs.

Brent Barnes. There is a growing shortage of human resources in state agencies to work on projects like TDR.

Tim Brill. Many Planning Incentive Grant (PIG) applicants are interested in pursuing TDR, but will not participate because they are overwhelmed by the thought of the process. Other simpler tools like clustering on non-contiguous lots are also needed.

Susan Craft. Incentives should be provided to sending area landowners to support TDR implementation. In agricultural areas, the tax on buildings and infrastructure could be waived. Maryland offers farmland assessment on structures, in addition to land.

Ed McNanimon. In a regional TDR program where rights are transferred from one town to another, the two municipalities will have to “make a deal” that is mutually beneficial.

John Hasse. The Task Force may want to consider the Lake Tahoe TDR model. Lake Tahoe has a regional TDR program that looks at impervious surface, rather than housing or commercial uses. This might be a good option for regional programs. This concept is being explored at Rowan University.

At the conclusion of the meeting, Chris Sturm described next steps. She will create a more detailed list of obstacles to TDR based on the discussion, and circulate it by email for any additional comments. Then the task force will move on to analyzing issues. Task force members may be called upon to assist in small groups and by email. The next meeting of the Task Force will then be held in late February or early March. A third task force meeting might be held in April/May, with our goal being a final meeting in June to finalize recommendations. Chris will send out more details in the next couple of weeks.

Members were also invited to visit the DVRPC’s TDR webpage at <http://www.dvrpc.org/TDR/> to review resources on TDR including a background paper on TDR in New Jersey authored by Jeff LeJava. From that page, members can visit the statewide task force’s page where meeting materials will be posted.

Chris thanked everyone for their participation. The meeting adjourned at 11:40 a.m.