

TDR Statewide Policy Task Force
Committee Membership and Goals, January 21, 2010

1 Municipal fiscal impact and state assistance

Chair – Brian Kelly

Members: Phil Caton, Susan Craft (Tim, Steve), Kim Ehrlich or other EDA, Keith Henderson, Matt Johnson, Jeff LeJava, Ed (or Kevin) McManimon, Mark Pfeiffer, Rich Reading, Brian Schilling, Bob Wagner

Issue – Municipalities that undertake TDR must first undertake an extensive public education and planning process which culminates in adoption of a TDR ordinance. They must also prepare their communities for rapid growth to full build-out, which requires investments in items such as: 1) comprehensive planning; 2) infrastructure for the receiving district (roads, water, wastewater, parks, stormwater); 3) community facilities such as schools; and 4) affordable housing requirements.

Committee goal - To assess the nature, timing and extent of the costs municipalities face in implementing TDR and to recommend appropriate state assistance to make TDR a sound fiscal choice. State assistance could be in the form of grants, priority funding, and/or authority for new revenues, such as (but not limited to) the following:

- Financial assistance with up-front costs (land use planning, preparing for community facilities, etc.), such as larger planning grants and the authority to impose development application fees to recoup planning costs.
- Financial assistance with infrastructure costs, such as priority for state capital or infrastructure funds (NJEIT, state TIP, etc.), priority for Green Acres funds, and the ability to use a tax-increment financing program such as Revenue Allocation Bonds or the Economic Redevelopment Growth Grant program.
- Longer-term financial assistance to help provide community facilities and services needed for the new residents, such as access to realty transfer fees generated in receiving district, authority to increase the realty transfer tax in the municipality, or a UEZ-like program to redirect sales tax proceeds to municipality.
- Legal assistance to defend against any lawsuits related to the TDR program.
- Assistance reducing other potential risks, such as the risk that a receiving district developer will become insolvent.
- An empirical study comparing the municipal fiscal impact of TDR vs. traditional zoning.

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2 Receiving district infrastructure

Chair: Tony DiLodivico

Members: Larry Baier, Brent Barnes, Matt Blake, Dianne Brake, Rick Brown, Jim Coe, Susan Craft (Tim, Steve), Joy Farber, Dave Fisher, Christine Marion, Liz Semple, Kathy Stuart, Chris Sturm.

Issue - TDR implementation stalls if the receiving district infrastructure (including water, wastewater, and roads) is not in place, or if development is unable to obtain needed permits. To prevent this from happening, municipalities need guidance from state agencies on the viability (from an infrastructure capacity and permitting perspective) of proposed receiving districts early in the TDR planning process. Once TDR plans receive conceptual approval from state agencies (through the plan endorsement process or some other means, which Committee 3 will address), municipalities need proactive, consistent state agency support for infrastructure planning, design and permitting all the way through the process.

This issue is complicated by several factors including:

- Uncertainty in the wastewater planning process, in the status of the Water Supply Master Plan, in requirements related to habitat protection, etc.
- The need for alternative wastewater treatment systems for smaller receiving districts in rural areas. It is not clear what DEP will allow permits for.
- The need for state agency follow-through and commitment over a multi-year time period that may span changes in regulations, staff, administrations, etc.

Committee Goal:

- **To identify the milestones related to receiving district infrastructure (including water, wastewater, transportation and stormwater) that municipalities must reach to fully implement TDR, including an initial analysis of capacity and permitting viability as well as ultimately obtaining the permits.**
 - **To identify the conditions needed to ensure that *development* in the receiving district receives needed permits .**
 - **To recommend specific and practical ways to ensure those milestones/conditions are met in a timely and predictable fashion, provided state agencies and the county have provided preliminary conceptual sign-off for the TDR plan (such as through plan endorsement). Ensure state agencies and counties assume a partnership role with municipalities. Note: Consider holding permitting requirements constant through the TDR planning and implementation process; Committee #3 will be looking at this too.**
- The committee should consider testing the recommendations for a hypothetical municipality.**

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3. Coordinated State agency support/plan endorsement

Chair: Bob Melvin

Members: Brent Barnes, Dianne Brake, Mike Cerra, Susan Craft (Tim, Steve), Tim Dillingham, Karl Hartkopf, Keith Henderson, Courtenay Mercer, Monique Purcell, Chris Sturm, Eileen Swan (Jeff LeJava, alternate), Liz Semple.

Issue: Municipalities that implement TDR must prepare for comprehensive, rapid growth, which is too complex and interdependent to manage alone without major coordination and assistance from state agencies throughout the entire process from planning to implementation. This is compromised in practice by 1) changes to rules and regulations that disrupt the TDR planning process, 2) mid- to lower-level state agency staff that may not be as committed to making TDR work as their leaders are, 3) reductions in state agency staff that limit their ability to assist TDR projects, and 4) the lack of a high-level coordinating entity in state government that is committed to TDR. The plan endorsement process is supposed to result in state agency coordination and support, but it is 1) too time-consuming and complex, 2) less necessary in already-developed, urban areas, and 3) does not always translate into state agency follow-through and commitment to project success.

Committee Goals:

To recommend an appropriate process for coordinated state government review of, and support for, municipal TDR efforts that is simpler, less expensive, and more predictable than the current system. The committee should start with an evaluation of the current plan endorsement process, but also consider other mechanisms such as a TDR champion in the Governor's office or invigorated Office of Smart Growth that could monitor progress and facilitate conflict resolution, and a means of holding regulatory requirements constant during the TDR process. Include:

- **The information state agencies need to evaluate a municipality's initial TDR concept and full TDR plan.**
- **Mechanisms to insure coordinated, consistent, long-term guidance and support from state agencies.**
- **The possibility of different requirements for urban areas.**

Determine exactly what the TDR statute should require municipalities to do before adopting an ordinance.

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4. Market Viability /REMA

Chair: Jim Hartling

Members: Candy Ashmun, Don Asay, Steve Bruder, Phil Caton, Kim Ehrlich or other EDA, Dave Fisher, Helen Heinrich, Keith Henderson, Lou Joyce, Evangeline Linkous, Courtenay Mercer, Bruce Paparone, Todd Zimmerman

Issues:

- Crafting an economically viable TDR plan that has community support is time-consuming:
 - Community leaders and the public need to be educated on how TDR works, its benefits, and the planning requirements.
 - The TDR plan is necessarily complex, combining comprehensive planning at a large scale (typically a significant part of the town) with site-specific detail.
- TDR planning should be informed by a “REMA reality check” early in the process and a more detailed analysis further on. The REMA informs TDR planning by:
 - Ensuring that the receiving district can absorb the credits that will be generated in the sending area, by comparing them and recommending adjustments if needed.
 - Recommending a system of credits that developers will want to buy, recognizing market forces and overall development costs.
 - The REMA’s detailed report provides documentation in the event of a legal challenge, which is needed for mandatory programs.
 - The reliability of REMA declines with time, as markets change.
- Sending area landowners are concerned about equity and their ability to farm.
- Residents may be uncomfortable with higher densities in the receiving area
 - COAH’s minimum presumptive densities may reduce the costs of affordable housingThe higher the density in the receiving district, the more bonus units will be needed.

Committee Goals:

- **Recommend ways to ensure that community outreach and TDR planning are informed by an understanding of the market/economic realities, in order to facilitate an efficient, planning process, and a viable market for credits. Ensure communities have realistic expectations about the TDR planning process. Consider phasing the REMA, issuing better planning guidelines, etc.**
- **Evaluate COAH’s minimum presumptive densities and if TDR towns need more flexibility.**
- **Recommend ways to make the REMA process easier, especially for voluntary programs.**
- **Recommend incentives for sending area landowners to support TDR programs, such as:**
 - **Special Right to Farm provisions, access to water supply, preferential tax assessment for agricultural buildings, priority access to preservation funds, etc.**
 - **Provisions to enable local governments to create and capitalize a TDR bank.**
- **Identify concerns of developers that have not been addressed, if any.**

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5. Creating options for transfer programs; Review of TDR statute

Chair: Monique Purcell

Members: Candy Ashmun, Tom Beaver, Fred Hardt, John Hasse, Bill Purdie, Monique Purcell, John Stokes, Jim Waltman, Todd Zimmerman

Issues to Address:

- The planning requirements are the same for voluntary and mandatory TDR programs.
- The time, complexity and detail associated with a successful TDR planning process deter participation in some towns. They should have simpler smaller-scale planning tools to consider as well, such as clearer authority for clustering on non-contiguous lots.
- Municipalities are not authorized to adopt timed growth ordinances.

Committee Goals: The committee should:

- **Recommend changes to the TDR statute that distinguish between mandatory and voluntary programs vis-à-vis the planning requirements.**
- **Recommend other tools (or improvements to existing tools) to promote development transfer when full deployment of TDR isn't appropriate/warranted/possible, such as clustering on non-contiguous lots.**
- **Conduct an overall review of the planning/ordinance requirements in the statute in terms whether they are too rigorous or could be changed to make TDR implementation more efficient. (Note that Committee 3 will take the lead on the requirement for plan endorsement, and Committee 4 will take the lead on the requirement for the REMA.)**
- **Coordinate statutory recommendations made by other committees.**
- **Consider any other statutory changes that may be warranted.**
- **Consider whether the ability to adopt timed growth ordinances would significantly enhance municipal TDR implementation.**

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6. Affordable Housing and COAH

Chair: Ed Schmierer

Members: Sandy Batty, Dianne Brake, Phil Caton, Jenn Feltis, Keith Henderson, Lucy Vandenberg

Issues to Address:

- Changing COAH rules have disrupted TDR planning processes
 - Increase in growth share
 - Increase in minimum presumptive densities
- COAH minimum presumptive densities are perceived as too high by some rural municipalities
- Growth share requirements penalize towns that increase the number of units when they adopt TDR programs.
- COAH rules are likely to be revised as a result of activity by the new administration, the Legislature, or the Appellate Court.

Committee Goals: To recommend ways to ensure that the COAH requirements do not impede implementation of TDR programs, with a focus on:

- 1) Growth share requirements, considering that TDR programs often result in an increase in build-out. Consider recommending that additional units not incur a growth share.**
- 2) Requirements for minimum presumptive densities**
- 3) Changes in COAH rules which occur during the TDR planning process. Consider recommending that the rules can be frozen during some period. (Note: Committee #3 will be considering this issue for all state regulations.)**
- 4) Priority for affordable housing subsidies**

Work within the context of the current rule, but be prepared to make recommendations for revised affordable housing laws and rules.