

TDR Statewide Policy Task Force
Committee #1: Municipal Fiscal Impact Committee-Preliminary Recommendations
February 19th Meeting

Present: Brian Kelly, Kevin McManimon, Matt Johnson, Keith Henderson, Phil Caton, Jeff LeJava, Susan Craft, Chris Sturm, Diane Strauss.

General

1. Identify all categories of costs for towns doing TDR: public education, planning, design and market studies, exposure to litigation, infrastructure, building new schools, maintaining receiving districts. The latter three categories become acute in TDR towns due to the rapid pace of growth.
2. Recommend financial and commitment phasing -- Identify financing needs of each stage of TDR planning and implementation.
3. Make TDR more attractive fiscally for towns than the status quo; and reduce the risk of proceeding to implement TDR.

Cost of planning/education/design/market studies

1. Reduce planning costs by limiting statutory requirements to what is essential, depending on the type of community and on the type of TDR, whether voluntary or mandatory.
2. Raise the ceiling on the size of Planning Assistance Grants from the TDR Bank Board from \$40,000 to \$100,000. Maintain 50% local match. Consider providing 50% grants and 50% loans for planning costs.
3. Authorize regional Planning Assistance Grants for counties, Metropolitan Planning Organizations (MPOs) and other regional entities who are planning regional TDR programs.
4. Recommend that DEP use the Local Government Greenhouse Grant Reduction Grant Program to make grants for TDR planning.
5. Consider whether staff at the TDR Bank Board could more efficiently conduct some of the initial municipal planning activities related to TDR, such as build out analyses. Need agreed upon predictive models to assure reliability and address potential distrust of state staff.

Educational/planning materials

1. Conduct and publish a study comparing municipal fiscal impact of TDR versus traditional zoning.

2. Create a planning manual for TDR towns that:
 - a. Includes TDR ordinances, examples of transfer ratios, etc.
 - b. Discusses the fiscal impacts of different types of development (such as the cost to build, maintain and service roads for different densities) and provides predictive models for future costs.
 - c. Describes how school costs vary by different housing types.
 - d. Suggests formulae for calculating developer contributions for their share of district-wide improvements necessitated by development.
3. Create education materials that visually depict different densities.

Infrastructure

1. Amend the Municipal Land Use Law (MLUL) to clarify the authority of towns to charge receiving district developers for their share of district-wide improvements such as recreation and roads (as was done in Chesterfield Township.)
2. Provide TDR towns access to the New Jersey Environmental Infrastructure Fund's (NJEIT's) "smart growth financing" program that provides loans for water infrastructure at 75% below market rate. (Note that there are no state *grants* available for water infrastructure projects at this time.)
3. Consider the use of State School Construction Funds to reduce property tax impact of school construction necessitated by TDR development.
4. Consider increasing "Green Acres" share of funding for open-space acquisition and/or assign funding priority status to applications from TDR municipalities.

Infrastructure/schools/other early costs

1. Provide transitional financial support for TDR towns to cover the immediate/early costs of accelerated growth that arise before new taxpayers are in place. Phase out this support when towns near build-out. (This addresses the fairness issue, so that existing homeowners are not excessively burdened).
2. Use proceeds from the existing realty transfer fee to support TDR in one or more of the following ways:
 - a. Authorize municipalities to assess a municipal realty transfer fee either by direct action or subject to referendum, with all additional proceeds being redirected to the town for TDR-related costs. (Consider having the state match this amount.)
 - b. Dedicate state realty transfer tax proceeds raised in a TDR town for TDR, with 50% going to the statewide TDR Bank and 50% going back to the town for TDR-related costs.

3. Expand the role of the TDR Bank Board to provide bridge loans to towns for infrastructure and other early costs. Consider allowing towns to access loans even if they have exceeded their debt ceiling. Capitalize the loan program with revenues from the dedicated realty transfer tax. (See 9 (b) above.) Involve EDA to manage finances and structure program. Allow for flexibility to renegotiate terms should development within TDR zones stall.

Incentives for Developers

1. Consider using UEZ model to create incentives for developers (corporate tax credits, sales tax reductions).
2. Consider expedited review and approval schedules for development within a TDR scheme.

Legal Protection to Reduce Risk

1. Establish a heightened legal “presumption of validity” for TDR plans and ordinances.
2. Limit the time period during which TDR ordinances can be challenged.
3. Consider whether state staff could provide informal legal support to TDR towns (as with the Pinelands Commission) or whether the state Attorney General’s office could assist with legal defense regarding an approved TDR ordinance.

Other

1. Amend the MLUL to grandfather municipalities as they gain approvals through the TDR planning process so they are vested for certain number of years. Need to reduce risk for towns and developers by exempting the TDR partnership from changing rules midstream.
2. Create TDR ombudsman at high state level to provide one-stop portal for TDR municipalities, as well as developers, to encourage responsiveness on pending approvals and coordination among multiple state departments involved in the development.

TDR Statewide Policy Task Force
Committee #2: Receiving District Infrastructure - Preliminary Recommendations
February 18, 2010

Present: Tony DiLodovico, Matt Blake, Liz Semple, Rick Brown, Chris Sturm, Dianne Brake, Anthony Soriano, Joy Farber, Jim Coe, Lawrence Baier, David Fisher, Steven Bruder, Diane Strauss.

If towns are to pursue TDR, they must see it as an answer to a problem, rather than creating a host of new problems, which is how it is perceived now:

- The process and requirements for getting infrastructure permits and/or approvals for TDR receiving districts must be simplified.
- Small towns especially are overwhelmed by Plan Endorsement.
- Providing certainty in regulatory requirements for TDR towns would be a major incentive.
- Financial assurances, public and/or private, must be obtained at certain milestones

The committee recommends that the state:

1. Eliminate uncertainty in wastewater planning process by identifying different types of receiving areas according to:
 - a. Location
 - i. In an existing Sewer Service Area or not
 - b. Size of receiving district – “hamlet” vs. larger
 - c. Wastewater capacity issues:
 - i. Capacity is adequate, inadequate, or unclear
 - ii. Can use existing plant or need a new one
 - iii. Discharge possibilities: discharge to the ocean, discharge to groundwater, discharge to a stream within anti-degradation limits
2. Create a phased planning process, where the state and municipality progress from early exchanges to a commitment to make TDR work. Use romantic relationship analogy between the state and a municipality, where each stage has a straightforward checklist with clearly defined standards for state review:
 - a. Dating period: Town shares TDR concept; gets feedback (“reality check”) from state agencies (regarding any likely permitting constraints) and also from the real estate market analysis. Town uses this information to refine TDR concept with community.
 - b. Engagement: Town presents preliminary TDR plans (including receiving district size and location) to the state for “initial determination of TDR viability” based on likelihood of TDR project getting needed permits from DEP and DOT (and perhaps COAH). (DEP and DOT identify any issues with water/wastewater (including engineering feasibility of any wastewater solutions), highway access, etc.), and help town refine concept

if needed until they can approve the concept as “viable”. Involve the county.

- c. Marriage: State and town commit to work together to implement the approved TDR plan as reflected in the municipal ordinance. Explore possibility of providing pre-permitting within receiving district area, as long as agreed-upon conditions are met. Once a town’s TDR program is approved at this level, agencies should have the authority to go out of their way to see that it succeeds.

Throughout the process, there should be a single point of contact at the state that can coordinate communication with different agencies for the town.

3. Give priority to towns conducting TDR infrastructure capacity testing and planning for DEP grants and other available financial assistance.
4. Clarify that through the WMP process, that towns need not actually build all of the water and wastewater capacity needed for full build-out up front, but be allowed to phase it. Clarify what towns must do to meet the requirement that they demonstrate that water and wastewater solutions are feasible, cost-effective and can be constructed when needed.
5. Many towns are not willing to pursue full-scale TDR because it is too complicated but are interested in a TDR “light” option. However, it is unclear what if any wastewater treatment options are acceptable to DEP for hamlet-scale development. DEP should provide criteria for decentralized waste water treatment options scaled for TDR hamlets that include acceptable management alternatives.
6. Appoint someone or some office powerful enough to resolve TDR obstacles that arise at agencies, provided the town is proceeding consistently according to the approved plan.
7. The state should act expeditiously to provide clear, public information on where water and wastewater capacity exists, in order to clarify where TDR will work best. .
8. Consider recommending to the DOT that they create a waiver process for access permits for TDR receiving districts based on performance criteria that balance access with regional mobility. Ensure that DOT does not deny access permits simply because a project increases traffic congestion, especially if it is also becoming “transit ready”.
9. Recommend DOT prioritize TDR receiving districts in the Local Aid formula.
10. Explore authorizing the creation of stormwater utilities for large TDR receiving districts.

TDR Statewide Policy Task Force
Committee #3: Coordinated State Agency - Preliminary Recommendations
February 19, 2010

Present: Bob Melvin, Tom Borden, Keith Henderson, Karl Hartkopf, Brent Barnes, Courtenay Mercer, Roberta Lang, Susan Craft, Chris Sturm, Tim Dillingham (phone), Diane Strauss, Elizabeth Semple.

To make TDR work, the town and the state must share joint ownership of the plan. The state must move from a mode of regulation to one of partnership.

We need to find a way to lock in support for a plan, at both the local and the state level, so it can transcend election cycles.

11. Create a phased planning process, where the state and municipality progress from early exchanges to a commitment to make TDR work. Use romantic relationship analogy between the state and a municipality, where the reviews and commitment are phased, based on the decision trees already in place:

- a. Dating period: Town and state get to know one another, share essential information, including environmental constraints. Town shares TDR concept; gets feedback (“reality check”) from state. Town uses this information to refine TDR concept with community. Town might get small planning grant to explore TDR concept as in the Highlands.
- b. Engagement: Town presents preliminary TDR plans (including receiving district size and location) to the state for more in depth investigation and feedback. Greater commitment. Second phase of planning grant.
- c. Marriage: Town has passed detailed review. State and town commit to work together by contract or MOA and are now collaborative partners working together to implement the approved TDR plan. State committed to working through permit process, providing flexibility as needed, as allowed within existing rules. Ideally state will share in infrastructure costs. Need to establish consequences if either side backs out. (Town could be charged for the cost of state involvement or refund planning grants if it backs out after this stage.)

State should provide single point of contact for town. The state should spell out the requirements for this process based on the type of community seeking TDR approval. Requirements should specify ranges of acceptability, not absolutes. Shouldn't be one size fits all. But it should not be arbitrary either.

12. Discussion, but no resolution regarding plan endorsement: committee should make two sets of recommendations – one that relies on OSG and plan endorsement, and one that is independent.

- a. Concerns: To work effectively, PE needs a higher level of support from within agencies to ensure follow-through. It requires a higher-level person to resolve conflicts.
 - b. Many of the PE requirements can be waived, but this is not understood at the local level. There is a trade-off between flexibility and predictability.
 - c. Suggestion: OSG could allow TDR towns to move forward with TDR ordinance once they have reached the “Action Plan” stage. (That could be considered “Initial plan endorsement”)
13. Promote TDR concept to Governor’s Office and recommend Governor sign an Executive Order detailing how state agencies will support TDR.
 14. Establish a structure like a TDR Czar or TDR Implementation Group with high level membership and quarterly meetings to make state accountable for TDR, to be an advocate for TDR before the agencies, to remove obstacles, and to mitigate the impact of political changes.

Or, alternatively, improve coordinating process by giving Office of Smart Growth the power to effectively compel state agencies to support TDR.

15. Once state and town are committed to a TDR plan, the state should facilitate permits as follows:
 - a. Make each agency accountable to a TDR authority to resolve permit issues within a specified timeframe. If they fail to resolve issues within the timeframe, the permitting responsibility could shift to the TDR authority.
 - b. Work within the flexibility allowed under existing regulations.
 - c. Within the agencies, make division directors accountable for progress within timelines. Incorporate performance into their annual review.
 - d. Change the agency culture at DOT and DEP that supports regulators who interpret rules narrowly and intentionally block progress. Educate all permit staff on the agency’s policy toward TDR, the TDR review process (and how it is different from a project advanced by political connections), the appropriate range of permitting flexibility within existing regulations, etc.
 - e. Within DEP, implement the recommendations of the permit efficiency task force for priority projects, by assigning a “team leader” for each approved town to shepherd it through the permitting process. Create a permitting team of the best staff from each permit program. Assign timelines for each permit. Make the team accountable to an assistant commissioner (and give them access.)
 - f. Identify point people from the other agencies as well.
 - g. Pilot this approach with a few high profile projects.

16. Some general recommendations:
 - h. Establish basic environmental standards for protecting resources from the beginning of the TDR planning process. (There was a suggestion that more regional planning be done to provide more detailed environmental standards to guide TDR plans. This was countered by the assertion that DEP can clarify standards now, by working one on one with the towns.)
 - i. Comments on environmental mitigation:
 - i. From the DEP perspective: Avoid the need for environmental mitigation where possible. DEP lacks the biology staff to do wetlands mitigation plans and habitat conservation plans and is uncomfortable hiring consultants to work on them.
 - ii. From the town perspective: It's difficult for towns to do habitat conservation plans since it's not clear what the guidelines are.
 - j. The lack of funding at the local level and/or the economy can impede progress at building infrastructure. It seems that these concerns can impact getting DEP permits. If so, that needs to be clarified.
 - k. State agencies should jointly apply for new federal planning funds to implement the State Plan in several municipalities, some of which might be promoting TDR.

TDR Statewide Policy Task Force**Committee #4: Market Viability - Preliminary Recommendations
Based on February 9, 2010 committee meeting**

1. Consider adding a new purpose to the Municipal Land Use Law that would provide better legal protection to TDR programs, such as “To save environmentally sensitive areas and farmland in a fair way”.
2. Recommend that the state provide a service to towns that are in the early stages of exploring creation of a mandatory TDR program. The service would:
 - a. Estimate the maximum number of units that could reasonably expected to be absorbed in the receiving district within thirty years’ time, based on likely market demand.
 - b. Determine the maximum size of the sending area, based on receiving district capacity.
 - c. Task towns with assessing whether there would be enough sending area property owners to create a competitive market for selling credits.

The State might tackle this in a slightly different way. The State should tell the town what it thinks is a reasonable total housing absorption for the town in 30 years, and then have the town perform a preliminary assessment to show (1) what portion of that absorption is being dedicated to the receiving area; (2) how big the sending area can be with the potential receiving area absorption; and (3) justify enough sellers and buyers to create a real market.

3. Explore creation of additional TDR options that might include the following. Ensure they have clear statutory authority.
 - a. Today’s clustering on non-contiguous lot program that authorizes transfers between parcels within a zone, but does not designated sending or receiving areas, nor creates a severable credit. (Common ownership required? Density bonus allowed?)
 - b. An “enhanced” noncontiguous clustering program that authorizes voluntary transfers between designated sending and receiving areas, where receiving area densities might not require sewers, and density bonuses may be used to incentivize transfers. A simple real estate market analysis test could be required to assure that the transfers would be likely to occur. Severable credits would not be authorized. (Set limit on size?)
 - c. A “voluntary” TDR program, with designated sending and receiving districts, where sending area landowners can extract equity from their land by selling TDR credits or selling to a developer. (Can the TDR sale be incentivized, and if so, to what degree?) The REMA requirements would be simpler, and the final report not needed. The receiving district

infrastructure would have to be planned for, as with a mandatory program. Could the ratio of sending area and receiving district credits be relaxed? Consider risk that participation levels may be unpredictable.

- d. A mandatory TDR program, similar to what is authorized by the statewide TDR Act.
4. Explore holding certain regulations constant, for five years after a TDR ordinance is adopted. Include those regulations that directly affect the REMA, including some or all COAH requirements.
5. Seek changes to COAH rules so that TDR towns are not subject to COAH minimum presumptive densities, provided they meet the REMA's recommended densities.
6. Create two educational brochures:
 - a. For municipal leaders – Explain the TDR program, including: the TDR planning process, and iterative nature of community input and the “economic reality check”; the pros and cons of various sized programs, including the market limits on the receiving district and thus the sending area; the need to prioritize preservation goals; a methodology to estimate the cost savings of TDR to the public sector that compares planning costs to the avoided cost of land preservation.
 - b. For landowners – Explain how they are likely to be impacted by TDR under various economic scenarios, how they can borrow against TDR credits, options for their land, rights of ownership once credits are severed, role of the TDR bank, etc., etc. Include case studies.
7. Recommend that DEP communicate what wastewater solutions it will approve for developments of 50 – 100 homes, 100 – 200 homes. (Note that Buena Vista in the Pinelands has an approved community wastewater system.)
8. Consider mechanisms to ensure that developers have access to TDR credits. This might include the role of the statewide TDR bank, the ability to transform development rights purchased by teh SADC in TDR sending areas into TDR credits, or loosening the relationship between the ratio of credits in the receiving area vs. sending area.
9. Ask the SADC to recommend a shorter list of up to three incentives for sending area landowners to participate in TDR.

TDR Statewide Policy Task Force
Committee #5: Transfer Program Options - Preliminary Recommendations
February 17th Meeting

Attendance: Monique Purcell, Tom Beaver, Steve Bruder, Phil Caton, Fred Hardt, John Hasse, John Stokes, Joy Farber, Candy Ashmun (phone), Diane Strauss.

1. Give towns as many options as possible for preserving farmland and open space, as long as equity in sending area is addressed, property owners understand how program works and there is minimal process involved.
2. The non-contiguous cluster tool, as provided for in the Municipal Land Use Law (MLUL), should be broadened to provide municipalities with a simplified alternative to TDR. This would be an enhancement, not a replacement, of the existing non-contiguous cluster. As such, it would:
 - a. Be voluntary on the part of landowners, as it is now.
 - b. Not require common ownership of both sending and receiving parcels, as it does now.
 - c. Allow municipalities to designate receiving areas for non-contiguous clustering, maybe called something else like: cluster growth area.
 - d. Allow receiving district developer to preserve sending parcel through an easement purchase (as distinct from floating credit purchases as used in traditional TDR), not just through a fee simple purchase, which would still be permitted.
 - e. Be easier, since subdivision approvals are not required for purchase of easements.
 - f. Require, or give option to towns and/or land trusts, etc., to hold easements on restricted land.
 - g. Not have to be or result in a Planned Unit Development (PUD).
 - h. Be subject to review and approval at time of subdivision and site plan application for development parcel, as identified non-contiguous sending lots would be considered part of the development application for calculation of density.
 - i. Allow municipalities to determine density bonuses associated with noncontiguous cluster.
2. Decentralized waste water treatment solutions need to have a reasonable permitting path and be fully considered and applied judiciously for TDR and non-contiguous clusters.
3. Affordable housing issues need to be addressed beforehand to ensure that towns are not overburdened with housing obligations due to the cluster.

4. Transfer goals need to be regional in scope to avoid checkerboard development patterns.
5. Monitor research on alternatives for transfer programs that might be appropriate for future implementation through a pilot program, such as the Lake Tahoe model which is based on impervious surface area and water recharge goals.

DRAFT – SUBJECT TO COMMITTEE CHAIR REVIEW

**TDR Statewide Policy Task Force
Affordable Housing / COAH Committee #6
Preliminary Recommendations after February 24th Meeting**

Present: Ed Schmierer, Keith Henderson, Jennifer Feltis, Phil Caton, Dianne Brake, Sandy Batty, Diane Strauss.

Affordable housing rules should not further complicate TDR.

If a town wants to participate in TDR, they have to be in compliance with their constitutional obligation to provide affordable housing.

Affordable housing regulations should not penalize towns for implementing TDR. To the extent that TDR speeds up growth and increases density, growth share obligation penalizes towns for accepting growth and planning receiving areas. There should not be an increased obligation due to bonus units that arise from a transfer ratio greater than one.

Both Statewide and Burlington TDR regulations require a match between sending and receiving areas. In order to help towns handle accelerated growth, and with TDR Bank's participation buying, holding and/or selling credits, allow mismatch between receiving and sending areas under a voluntary TDR framework, so that the receiving area can be smaller than the sending area. This change would allow towns to phase in designation of receiving areas and preclude the need for timed-growth ordinances.

Allow flexibility in calculations of how much affordable housing is required to be provided in receiving area, as long as town meets its overall obligation.

Allow Real Estate Market Analysis (REMA) to override COAH presumptive minimum densities, based on financial feasibility of project.

Allow towns to offer developers density bonuses in TDR receiving districts in exchange for more low/mod units.

The state must address school / education funding issues upfront to encourage towns to designate TDR growth areas and accept accompanying affordable family housing.

Recognize that TDR receiving areas are likely to be more affordable than what might otherwise be developed, due to increased density.

TDR receiving areas should get priority for State government financial subsidies for affordable housing, since receiving areas are relatively compact, and developer already achieving state goal of protecting open space by compensating sending landowner.

General Affordable Housing Recommendations:

There should be an affordable housing obligation for commercial and mixed use, appropriate to number of jobs created.

Towns should be required to provide a range of permitted housing opportunities through its zoning ordinance.

Affordable housing obligations should not be one size fits all. There should be different requirements for different types of communities, depending in part on the affordability of a town's existing housing, and its employment and cost of living profiles.

Memo To: Chris Sturm, New Jersey Future
From: Candace M Ashmun
Re: Ideas posed to Task Force Subcommittee
Date: February 28 2010

In no particular order herewith some thoughts on TDR at the municipal level.

1) Why TDR?

Hopefully New Jersey has finally put in place some controls over publicly financed infrastructure which leads to sprawl development and wasted resources. The state is too close to buildout to waste its ability to provide potable water at low cost; fresh, energy efficient, food products; healthy air; and recreational opportunities. Cultural and historic amenities are also at risk.

Valid or not there is a perception that every landowner in New Jersey has the right to exploit his/her land at the expense of over all goals. If, as noted, we need to save our resources to better serve future generations of New Jersey residents two actions must be taken immediately. First we must save our farms, our forests, our water supply and our environmentally sensitive lands using the survival of threatened and endangered plants and animals as our "canaries in the mine" to check our progress. Secondly, infrastructure e.g. sewers, water supply and transportation facilities, largely publicly financed, must be built and maintained to serve centers of appropriate densities of development to be efficient and less costly.

These actions will provide upgraded development densities and therefore values for land owners in these centers while limiting development opportunities in other areas. The way to even out those values and opportunities so that landowners in non-infrastructured sensitive areas have the same development values as their "city" counterparts is to Transfer Development Rights.

An overly simplistic description of such a program is to build infrastructure in centers to accommodate redevelopment and higher densities of development. Restrict densities in other areas and require developers to acquire development rights from outlying properties in order to achieve whatever density is provided for in the center. In this scenario each set of landowners is subject to market conditions but fairness prevails. If the landowner in the center doesn't have a good market the restricted landowner doesn't either. Conversely good market conditions benefit both and can be developed quicker.

The incentive for center landowners is the increase in density and the use of publicly financed infrastructure. The incentive for outlying land owners is the possession of a totally liquid asset which can be borrowed against, left in a divided estate, held for better times, sold to a developer or sold to a bank.

2) Calculation of Density on Non-Contiguous lots.

The ownership of land provides a somewhat confusing bundle of rights. Among these are the right to develop homes as provided for in New Jersey by local zoning. For example in some areas the use of land is controlled to one house on 10 -25 acres others may be 4-15 houses to an acre and so on. It is these particular rights that are transferred in a TDR program and in other similar programs across the states. In New Jersey there is an enabled program which probably can help a town to start transferring rights in a less cumbersome manner than setting up a full scale TDR program. It is called the calculation of density on non-contiguous lots.

In these programs lots where no development can take place e.g. wetlands lots, historic sites etc. can be paired with an undevelopable lot due to size restrictions and the permitted density achieved on the combination. For example, a developer with a one acre lot in a 2 acre zone could team up with an historic site purchasing that sites development rights to develop his site while permanently restricting the historic site from further development.

Some ideas for moving forward to improve the existing Statewide program.

1. Get rid of the Real Estate Analysis requirement. – It is hideously expensive, can't be timely and is an ineffective measure better left to the market.
2. Make the use of TDRs in receiving areas mandatory..
3. Planning for center development should include pre permitting allowing for development utilizing TDR's to move ahead quickly.
4. Do not require the use of TDRs for affordable units.
5. Ensure the number of allotted TDRs match the number of required TDRs.
6. Down zone and restrict uses of land in sending areas commensurate to the public values intrinsic in its protection.
7. Create an effective bank structure with the goal of not only buying rights at market rates but overseeing the paper work and marketing.
8. Encourage towns to start by using the non-contiguous density calculation to experiment with send receive areas.