

Meeting Summary

Regional Transfer of Development Rights Policy Advisory Committee

Thursday, July 17, 2008

Attendees: Chair Mike Flynn, Kitsap County Commissioner Steve Bauer, Dick Carkner, Mary McCumber, Judd Kirk, Michelle Conner, Nathan Torgelson, Mayor Margaret Larson, Don Stuart, Ivan Miller, and Leonard Bauer.

Staff: Heather Ballash

Guests: Mark Sollitto, Jim Fox, Bill Blake, Levon Yengoyan, Nicholas Bratton, Erica Schmitz, Libby Hudson, Taylor Carroll, Darcy Newsome, Carl Schroeder, Karen Richter, Kelly Snyder, Jeanette McKague, Steve Carley, Brynn Brady, Steve Gorcester, Mark Beardslee, Elizabeth Robbins, and Darren Greve.

Actions for next meeting on August 14:

- **Heather will distill the matrix of the programs that was distributed for the meeting down to information regarding opportunities in each of these programs.**
- **Heather will follow up on the following:**
 - **Find out how much new revenue would the funding sources discussed in the paper on *Local Funding Ideas* generate.**
 - **Find out how much infrastructure funding would be needed for likely projects. Ask the cities of Seattle and Redmond what their experience has been with projects.**
 - **What would be enough of an incentive for cities?**

Public comment

Darren Greve, King County Transfer of Development Rights Program Manager, presented oral and written comments to the Committee regarding infrastructure funding for TDRs. He commended the Committee for their discussion of the topic. Linking infrastructure funding to TDRs is key and will create a win/win situation for the state and counties. He has met with most of the 39 cities in King County about TDRs. Most, if not all, end with wanting to protect land but not at the expense of economic development. They can only exact so much from developers. Cities want to know what is in it for them. For TDRs to be acceptable to cities:

1. The land to be protected is compelling to the city.
2. Infrastructure costs for cities and developers are defrayed, especially for current infrastructure needs.

Mr. Greve stated that King County has pursued agreement with cities, but the amount of funding the County has to offer is too small. TDR shouldn't be a barrier to development,

but stimulate development. Cities need ready access to state infrastructure funding and funding from counties. This could “flip” the perception of TDRs by cities from an obstacle to development to an incentive.

Mark Sollitto, Yarrow Bay Development, supported the ideas presented by Mr. Greve. He urged the Committee to be bold with their recommendations, starting with amendments to the Growth Management Act (GMA) to encourage the use of private market forces to accomplish public conservation of key lands. The state should:

1. Capitalize a TDR bank that operates at the local level, for Arlington for example.
2. Adjust the criteria for infrastructure funds in receiving areas.
3. Require that any requested rezone that increases density be required to use TDRs for 50% of the rezone.

Market Analysis for Regional Transfer of Development Rights in Central Puget Sound

Heather Ballash briefly summarized the recommendations from the consultant report, completed June 13, 2008. The report is available on CTED’s web site.

Market Framework for a regional TDR program

The Chair led the Committee through a discussion of the key questions and elements needed to make a TDR program work. The discussion was based upon a list of questions in the paper entitled *Market Framework and Funding for a Regional TDR Program: Key Discussion Points*.

1. What is the conservation goal of the program? For example, is it to conserve the highest priority lands or the maximum amount of acres?
2. Who should be designating sending areas?¹

At least three counties have agricultural protection plans. Use the existing plans to answer the question.

The goal is to conserve it all, but it will take a long time. Some lands are at risk right now. Would like a priority for those at risk to conversion – near existing development or a freeway. Look at the King County priorities for purchase of development rights. County elected officials and priorities change. What about a more objective look by PSRC regionally?

We need to make sure that local governments have some ability to choose. Some lands are at higher imperilment. There is a delicate balance between a too constrained and a broader marketplace. Local governments should be allowed to prioritize, but priority should be with conservation of natural resource lands.

¹ Questions 1 and 2 appeared to have been addressed together.

We probably all agree that we should have some priorities – what are they, who determines them, and how is it administered?

There is a potential conflict with UGA expansions if we want to conserve lands at risk of conversion adjacent to the UGA. But not with natural resource lands as they are not usually next to the UGA.

Who determines the priorities? A county decides but a city can choose from that portfolio.

How do county priorities work with cross-county transfers?

We do need priorities, such as:

- Threat of conversion.
- Natural resource lands.
- Proximity to urban centers.
- Contribution to the community – access from urban areas to open space within a reasonable commute, even by bus.
- Variegated landscape.

It is so complicated. The distance between the urban edge and farther out impacts costs to the public, including infrastructure costs for the urban edge.

With respect to agricultural lands, there are still questions of soil quality and contiguity. The question of this is better left to the local governments because each one will be different.

The Arlington situation proves that. All of the mayors are interested in TDRs, but for different reasons. The criteria should be broad.

Yes. We need to develop a tool that local governments can use to accomplish their plans. If it is too directive, they won't be interested and it will push people away. We need to somehow value TDRs for different kinds of property.

The group is saying that we need to prioritize for natural resource and sensitive lands within local plans that make the best use of infrastructure and can accommodate growth.

We are talking about receiving areas getting benefits. It is a way to accommodate growth with other incentives – they can come out ahead with these incentives.

The only way TDRs work is to preserve sensitive land. The potential behind TDRs is to have the market pay. The objective then isn't to increase density alone, but also to preserve land. By creating a path of least resistance for developers, we will have a winner.

There are reasons other than TDRs to increase density – can't do it without infrastructure funding. If local governments get the benefit from public funds, the state should be able to give some direction to local governments on the priorities. There should be some guidance for local decisions.

If cities take this on, to the extent they can show they are buying an amenity they can sell outside priorities. Cities should help determine sending areas.

The county and city may not agree on sending areas. If a city wants to spend funds on something the county doesn't want to protect, the city should be able to spend the funds.

Cities have to do density anyway. They need the infrastructure funding that TDRs could provide. We are also talking about state funding.

Don't preclude rural lands because a city may want to protect them. But, focus on natural resource lands. There is no population allocation in natural resource lands. Cities don't have to take population from sending areas. The city may be interested in land outside of the county. Tacoma gets water from land in King County under a Habitat Conservation Plan. There should still be a conversion ratio.

There should be threshold criteria with some local discretion:

- Type of land.
- Amount of pressure to convert.
- Local identification of land.
- County ability to push for contiguous land.

80 – 90% of the challenge is getting receiving areas to accept TDRs. That means more local control. What will work will be large transactions. Where there is a compelling piece of property and a willing receiving area, it should be encouraged.

3. Given the market analysis for central Puget Sound, at what jurisdictional level is it appropriate to create a market for TDRs? I.e., what should be the focus of an effective program that meets the Working Principles?
 - a. By individual city or county – internal TDR programs.
 - b. Between counties and cities in each county.
 - c. Between counties and cities in another county.
 - d. Some combination of the above.

Don't restrict it to within each county. Allow cross-county transfers. It will be a regional program.

A four-county plan and willing participants versus a purely specific interest in sending areas. We are not at a four-county vision, even though would like to see the program be statewide. A city can extract funding from a developer. The state can provide incentives for a city to participate. We should get leverage from state funding if it is made available. With state funding, the program should be broad.

A regional program is important as an option, but it shouldn't be mandated.

The framework should not alter existing programs, but provide inter-county exchanges if desired. Maybe permissive inter-county transfer with the mechanics and funding to facilitate them.

Could local governments select where TDRs come from?

Support a permissive approach. Cities' needs for economic development versus changing for TDRs. If the PSRC region is an entity, all could participate in TDRs without being disadvantaged.

4. What are the key elements/functions needed to make a regional TDR program function? Which are needed to build upon existing programs?
 - a. Technical assistance.
 - b. A clearinghouse that would issue and track TDR certificates, provide outreach, and bring together buyers and sellers of TDRs.
 - c. A bank to purchase and sell TDRs.
 - d. A framework for establishing an allocation ratio(s).
 - e. Statutory authority for local governments to transfer TDRs without an interlocal agreement.
 - f. Other elements/functions needed?

Certainty, speed and flexibility.

Keep in mind the overall goals. If we assume there is inadequate funding, this is a tool for locals to create value at no cost. There are plenty of sending sites. The more that is put into regulations to make it less permissive the less it will work. Don't limit transactions to the appraisal value. Should be able to increase a conversion ratio if a developer is willing to pay more for the density. A regulator won't make a seller sell. The ratio is the incentive for the buyer to buy. Allocations ratios must be local to make it work. An overall ratio could work for smaller transactions.

Local flexibility on large projects and more framework for smaller projects could work.

If the legislature thinks it is important, make it a good deal for everyone. What are the incentives regardless of the ratios?

The state legislature could provide guidance on priorities like the goals of the GMA. Talk about the importance of local decision-making. PSRC would provide guidance for the region through the multi-county planning policies, including inter-jurisdictional transfers. Counties would identify sending areas in their county-wide planning policies that would provide additional direction. Counties and cities would still have some flexibility in determining how to do it. Or, leave it out of the GMA and it will go faster.

The Pierce County program has a framework for standard transactions. The TDR Committee can also respond when transactions don't work.

What if the county and a city disagree?

The city wouldn't get incentives without the regional program.

Focus on who is designating sending areas versus the incentives discussion for receiving areas – how do we reconcile them?

What if we just chose designated agricultural and forest land?

While there is a lot more forest than agricultural land, there are not a lot of development rights in forest lands. So it may not be a problem.

Not sure TDRs will work. Put a tool in the kit, but don't make it mandatory. Local governments already have too much to do. Don't add more mandates for people doing the right thing.

Summary of where we are:

- Need someone to issue and track TDRs.
- There should be no required link between sending and receiving areas.
- There should be a bank that is a revolving fund. There should be seed money provided to facilitate the process and provide liquidity for continuing the program.
- The bank should charge an administrative cost on sales of TDRs (per the consultant study).
- Private transactions should be allowed.
- Allow fee-in-lieu if locals are comfortable with using it (the consultant's concern regarding lag time in the process is not an issue for the Committee). The fee could be paid to the bank.
- There should be a framework for small projects. Larger ones can negotiate an allocation ratio. Don't mandate an allocation ratio in proposed legislation – limit it to broad language. Keep framework flexible to allow values to be defined locally, depending on sellers' asking price and developers' willingness to pay.
- Don't limit to residential density. Allow translation to floor area ratio (FAR), parking, carbon offsets, etc. Remove as many obstacles to locals using the tool as possible.

What about guidance/criteria for bank investments? Look at the Recreation and Conservation Office's requirements for a local plan. The criteria must be part of the local plan.

Note: The Committee did not finish working through the questions. They tabled the remainder of the discussion in order to move on to the next agenda item.

Infrastructure and transportation funding panel

A panel of state and regional agencies talked about their infrastructure and transportation funding programs. The panelists were:

Kelly Snyder, Public Works Division, CTED

Steve Carley, Water Quality Program, Centennial Clean Water Fund and Water Pollution Control, Department of Ecology

Steve Gorcester, Transportation Improvement Board

Karen Richter, Transportation Planning, Puget Sound Regional Council

Jim Fox, Washington Wildlife and Recreation Program, Recreation and Conservation Office

Each panelist was asked to answer the following four questions:

1. What key aspects of your program does the Policy Advisory Committee need to understand in order to consider its possibilities as a TDR funding source?
2. How do you see a regional TDR program in central Puget Sound - with a mission to conserve rural, agricultural and forest land by creating more compact growth in urban receiving areas - fitting with the mission, purpose and legislative intent of your program?
3. For those of you with a statewide program, can your process for allocating funds be different for the four Puget Sound counties and the 71 cities within them from the rest of the state?
4. Who is the decision maker for allocating your funds, and what is the likelihood that they would agree to incorporate consideration of local TDR programs into their decision-making process?

Some key themes that emerged from the presentations:

- The state is having a broader conversation right now about how to allocate state infrastructure funds. The Office of Financial Management must come up with a plan by December 2008.
- All are suffering from “criteria fatigue” where criteria keep getting added to their programs that result in dilution of their funds and mission.
- The need for funds substantially exceeds the amount of funding available. Some funding sources are decreasing, such as state gas tax funds for the Transportation Improvement Board.
- There are issues of customer fairness if not every city has a receiving area.
- There are challenges to adding criteria and determining competitiveness for only a portion of the state, four central Puget Sound counties and the cities within them, with a statewide program.
- There are some opportunities within these programs for TDRs. TDRs may be a tool that meets some of their program and mission objectives. For example, the Washington Wildlife and Recreation Program currently has a policy prohibiting use of funds for TDRs, but it is not prohibited by the statute.

Heather will distill the matrix of the programs that was distributed for the meeting down to information regarding opportunities in each of these programs.

Committee discussion regarding funding

What about Local Infrastructure Financing Tool (LIFT) criteria for TDRs? They are currently awarding projects for more density. LIFT is small – only \$5 million. There are also discussions about a housing infrastructure financing tool (HEFT). Heather will check on these programs.

Concerned about adding more criteria to state programs. Cities will get funding and counties won't. The size of the grants would be minimal for most projects. There is not much infrastructure cost for one project, unless it is really big. What about an LID?

We are probably talking about new funding for districts with TDRs. Districts make it worthwhile.

Two other concerns:

- Under GMA, we should already be doing something to accommodate growth and are doing it. Kitsap County is looking at some upzones right now. What will TDRs do beyond what we are doing politically already? Constraints on density for TDRs will be needed.
- Need incentives for the neighborhood.

It is assumed that incentives for a city would be for the neighborhood.

We don't have the ultimate density mix that we need yet – Seattle, for example. One of the things we have to do is incrementally increase density over time. TDR incentives are a reward for doing that. Ten years from now Kitsap will have to densify again. TDRs could be a requirement for UGA expansion.

The funding is not going to be there based on the information from the panel. Need to focus on where we want to create value and neighbors want to conserve the land. The hardest place to do it is where it is the most dense. Need to go where existing development is less dense. The biggest value will be a new city – it would provide the most uplift in value.

That will depend on whether the perceived value in a receiving area will be conservation of the project and its amenities. Preservation will be limited by receiving areas.

Concerned with local participation that is discretionary – they won't participate unless there are incentives. We need some directives, some requirements.

What about a new city? What is the objective of the program? How do we get the funds from the market to conserve natural resource land?

Comparable conditions in cities for redevelopment – sites that can be used to prime the pump. What can you do to help them get ready for redevelopment?

We have a huge UGA based on previous sprawl. How do we reinvent those communities? We already have a mess to clean up.

We could recommend that jurisdictions look for these areas. Annexations would require TDRs. Look for opportunities to create a new city. There are opportunities on I-5.

Vision 2040 has lots of room, but speaks to "avoiding new fully contained communities." Executive Sims said he wouldn't do fully contained communities over again. When Executive Reardon asked PSRC to remove the "avoid" policy the PSRC Executive Board said no. There is room in the Vision for growth in rural areas and unincorporated UGAs, with UGA growth to be focused into potential annexation areas.

Not sure that we need to give guidance regarding receiving areas to local governments because not sure it would be helpful.

Any new UGA would require TDRs, along with all other currently required UGA expansion requirements.

Also need to look at affordable housing.

If TDRs are fungible in receiving areas, the problem begins to solve itself.

Regarding criteria fatigue, we just need to talk to our legislators.

Heather will follow up on the following questions for the next meeting:

- Find out how much new revenue would the funding sources discussed in the paper on *Local Funding Ideas* generate.
- How much infrastructure funding would be needed for likely projects? Ask the cities of Seattle and Redmond what their experience has been with projects.
- What would be enough of an incentive for cities?

Agenda for next meeting

It was agreed that we need a meeting in August in order to meet the deadline for recommendations. To ensure we finish our discussions and make some decisions, the Committee agreed to a longer meeting. We will meet from 9:30 to 3:00 on August 14 (location to be determined). Agenda items for the meeting should include:

- Affordable housing from the Seattle perspective – Nathan Torgelson
- A paradigm for TDRs – Judd Kirk
- Continuance of the discussion to address the questions regarding a regional TDR market and funding, with the expectation that decisions can be made. This will include discussion of "Brainstorming list of local funding incentives".

Next Meeting:

August 14, 2008, 8:30 a.m. – 2:00 p.m., Seattle City Hall, Boards and Commissions Room.