

## Meeting summary

### Regional Transfer of Development Rights Policy Advisory Committee

Thursday, August 14, 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, Leonard Bauer.

Staff: Heather Ballash

Guests: Dick Dorsett, Karena Houser, Mark Beardslee, Bill Blake, Nicholas Bratton, Skip Swenson, Taylor Carroll, Jeanette McKague, Carla Okigwe, Pete Lymberis, Dennis Meier, Darren Greve, Brynn Brady, Sam Hobson.

#### **Actions for next meeting on September 22:**

- **Heather will revise the *Possible Options for a Market Framework* to reflect provisional consensus of the Committee.**
- **Heather will draft a proposal for how CTED would provide technical assistance and operate an informational clearinghouse.**

#### Public comment

Prior to the meeting, comments were submitted to the Committee for consideration as follows:

- Cover memo and proposal from Tayloe Washburn, August 11, 2008. (note, the attached proposal is the same as the proposal submitted by Cascade Land Conservancy and distributed to the Committee in the meeting materials)
- AWC IDEA on TDR's, "How to make them Attractive to cities", from Dave Williams, Association of Washington Cities.

Jeanette McKague presented oral comments on behalf of the Washington Association of Realtors. Ms. McKague stated that the Realtors support TDRs, but are concerned about a market-based program that is implemented through mandates. She said that we need legislative tools for cities to support TDRs. A mandate for a 10% housing target in cities using TDRs flies in the face of a market-based program. Regarding exemptions to the State Environmental Policy Act (SEPA), Ms. McKague state that we need to look at a number of things. It is time to revamp SEPA to make things happen in urban areas. We need new tools for local governments, such as model ordinances for transit-oriented development. A note of caution regarding using the real estate excise tax (REET) – in good times it is a great source of funding, but it is not there for long-term programs when the market goes south. When the REET is raised, it raises costs and makes it hard for first time home buyers and some sellers without enough equity in their homes.

### Staff report

Heather Ballash reported on a number of other work groups and committees that are looking at TDRs and CTED's efforts to ensure that those conversations are coordinated. Other groups looking at TDR programs include the Climate Action Team's Forestry and SEPA Implementation Work Groups, and the Land Use and Climate Change advisory committee. The common thread of these conversations is compact development in urban centers. Heather also noted a number of presentations she was making on TDRs, including presentations to various Puget Sound Regional Council forums, and the Washington Chapter of the American Planning Association's conference in October.

### Seattle's TDR Program

Nathan Torgelson and Dennis Meier made a presentation regarding the City of Seattle's TDR program (see handouts on web site). The current focus of the program is on preservation and affordable housing downtown – 75% to housing and childcare, and 25% for open space, landmark, public amenity, and within-block TDR. A fee has also been established for affordable housing that a developer can pay in lieu of buying TDRs. TDRs have run from \$18-20 per square foot, versus the fee of \$22 per square foot. If TDR is available, they can usually get it cheaper than paying the fee, but the bulk of floor area gained as part of the 75% share for housing has generally been gained through the payment option.

Once commercial TDRs have been transferred from a low-income housing site, the owner must maintain the housing for residents for 50 years. The housing market is not currently providing this type of housing.

Many TDRs have been purchased from the bank, which allows sales when the market is right. The City has certified 1.6 million square feet of development rights since the program started over 20 years ago. Approximately 1.3 to 1.5 million square feet have been used.

It would be simple to add rural TDRs to the menu for Seattle. However, for Seattle to participate in a regional program, the City would want a commitment from other cities to affordable housing using TDRs.

The City's program for downtown housing came together in 2001 because both the neighborhoods saw the advantage of using incentives, and were willing to consider height and density to address their concerns. Developers could align with the neighborhoods because they were interested. There was something for everybody, with some compromises.

What about the Denny Triangle experience taking TDRs from King County? The City received amenity funding for public open space improvements. It was an opportunity to provide incentives. The program was started during a lull in the market, and got going when the market picked up. Then other downtown incentives came up regarding affordable housing, that resulted in a sunset of the Denny Triangle program.

The City has also sold development rights from public property, a historic fire station, to provide seed money for the bank.

#### TDRs That Work in the Marketplace

Judd Kirk made a presentation to the Committee on what developers need to participate in a TDR program (see handout on web site). He stated that the lack of predictability for developers is a quantifiable cost. We need to look at the offsetting costs of increased density – is the cost of increased risk offset by the added value of a TDR? Not all costs are proportional. The biggest cost for suburban development is parking. The decision to build is often based on the ability to construct parking – a developer designs parking before deciding what to build. If parking requirements are reduced, then we must look at the impacts including long-term impacts.

The sweet spots for TDR are: (1) dense urban areas with transit and less parking requirements; and (2) suburban areas with low density and the ability to do cheaper surface parking.

The construction type can affect cost – for example, wood versus concrete/steel construction about 4 or 5 stories. For both commercial and residential, density bonuses will need to be significant to make the projects pencil in some situations (i.e., needing to get to 10-12 stories for commercial and around 8 stories for residential) given the increased requirements which affect construction costs.

Developers assign a large value to the mitigation process, including risk and predictability. Most developers dismiss TDRs as too complicated, creating delays and extra costs. If TDRs add to the process and create more uncertainty, it is not worth it to them. SEPA exemptions drop hundreds of thousands of dollars from the cost.

The development community needs to be educated. Local planners also need to get their input locally on receiving areas. Planners need to see where the value is and isn't. Developers need to see some examples of success in order to want to participate. There are some sweet spots – TDRs could be tremendous tool if local government could address issue of timeliness and predictability. Regional agreement on clarity and predictability is needed.

#### Market Framework for a regional TDR program

Prior to continuing the market framework discussion from the last meeting, Michelle Connor briefly presented a proposal from the Cascade Land Conservancy (CLC) that was distributed with the meeting materials (see handout on web site). The proposal was presented as a way to get the discussion started. CLC feels that the program needs to have an aggressive stance to be successful. The 10% housing target is ambitious, but could be done with existing population targets.

*Committee discussion that followed:*

We need to be thinking about local flexibility and a regional program, like it is under the Growth Management Act (GMA). GMA gives some direction with local discretion. Likes targets and incentives, but can get stuck on a 10% target because areas are so different. Regionally, at least within one county, cities and counties need to figure it out and decide what are the priority sending and receiving areas. If they can pull it off, they would get some benefits. Counties and cities have been figuring it out under GMA for 20 years with county-wide planning policies, population allocation, etc. There must be something we can do to get cities and counties to deliver and receive incentives.

The carrot for Seattle would be affordable housing.

Concerned about the 10% target, as it presumes that TDRs are available. If they are not available, it would drive up the cost. It is then just a fee. It would be simpler just to call it a fee rather than market-driven TDRs.

At the last meeting we learned that there is little existing state funding for TDRs unless we rearrange chairs on the titanic. We need to find new funding. Giving the local government the ability to raise taxes alone won't work. Using the state sales tax and REET would be OK. Local governments will oppose a mandate. If we recommend something that is not tested, it may not work. It is just a substitute for talking to counties and cities. We need some success stories. Counties don't want more GMA mandates. Position versus interest – the interest is in conservation and the position is TDR. TDRs are not the only way to do it and may not work. But they may be part of a bigger solution. If this were an optional program with state technical assistance, we could make some progress.

What would make it work in the counties? We haven't built the model yet. We need the technical assistance from CTED that we don't have now. We could have the conversation about protection of natural resource lands, and TDR is one tool.

We have invested in the King County program, but have had trouble getting cities interested. How do you get cities interested?

Not sure you can get there by a mandate.

Not talking about a mandate. Counties and cities could discuss receiving areas when they work on population allocation. Need to provide a common framework so that it is easy to do.

90% of the challenge is about receiving sites. We need outreach programs to mayors and councils with specific benefits to them. For example, Arlington. They need specific examples of areas near them with a benefit.

We need financial incentives per the King County letter. People need to want to save something.

The lynchpin of TDRs are people who accept TDRs because they want to do it. We need to get to the people in the communities and convince them it is important. We need a mechanism/institution to do it.

There is an interesting collision of interests – the legislative finding of compelling public interest and the need for receiving areas to see an interest. There is a disconnect because there is not a natural empathy in the logical receiving areas for conservation – do we use sticks or carrots? A carrot is not just financial, but a self interest in conservation.

\*\*\*\*\*

The Chair then led the Committee through a continuation of the discussion from the July 17, 2008, meeting regarding a market framework. The *Possible Options for a Market Framework* paper distributed in the meeting materials was used to guide this discussion.

- 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?<sup>1</sup>**

The Committee reached provisional consensus around option (a) with revisions as follows:

(a): Conservation priorities for sending areas should be regionally and locally determined with guidance from the state similar to the goals of the GMA. Broad criteria for sending area designation would be developed in statute. For example, criteria could include:

- Type of land - natural resource lands, including land designated rural that is being farmed or managed for forestry.
- Land whose conservation meets other state and regionally-adopted priorities (for example, state and regional priorities adopted as a result of the Puget Sound Partnership action agenda, salmon habitat plan, Climate Change Challenge, and state allocation of infrastructure funds).

Then, local governments with receiving areas can prioritize within these lands, which they prefer to receiving from. And, they can still have their own local programs addressing other priorities such as critical areas, open space, salmon habitat, etc.

- 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?**

Transfers should not be restricted to one county. Receiving area cities should be able to choose which sending areas they will receive TDRs from, outside of the UGA. State

---

<sup>1</sup> Questions #1 and #2 had significant overlaps, and so are treated together.

incentives will be for inter-jurisdictional programs, but cities will not be prevented from having internal TDR programs if they choose. Working Principle #3 and the legislation direct CTED to encourage and enhance existing programs. The state would have to figure out how to allocate funding based on TDRs received from a priority sending area.

There is provisional consensus for this, consistent with #1 and 2.

*Outstanding question raised by Committee member in reviewing the summary: Have we decided to restrict receiving areas to cities, or are we going to include unincorporated UGAs?*

**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 with the development and implementation of TDR programs**
- b. A clearinghouse that would issue and track TDR certificates, provide outreach, and bring together buyers and sellers of TDRs.**

There was provisional consensus that it would be simpler to have the same entity provide technical assistance and the clearinghouse functions. CTED would control these functions, but could contract some of them out (for example, it may work through a contract with PSRC or another entity). This would allow easier expansion to the rest of the state. CTED would work directly with the counties and cities to market the program. CTED would also work with the county and city associations, the family forest landowners association, etc. Some TDRs could be sold to get the program going, and possibly to get the bank going.

*Action item: Heather will develop a description for the Committee of how this might work.*

- c. A bank to purchase and sell TDRs.**

There was quite a bit of discussion about how a regional bank would fit with existing banks (i.e. King County, Seattle and Issaquah). Should there be one regional bank, a regional bank with programs and accounts for each county, or one bank in each county? If funding is coming from a local source, it should not be used to fund a regional bank – funds for a regional bank should come from the state.

The decision about a bank is based on what we want it to do. It could be there just to address market timing issues. Or, it could take a more active role in purchasing development rights.

There was provisional consensus around option (1). Per the consultant's recommendation, CTED should contract with a private nonprofit to operate the bank. The bank should be governed by a board consisting of representatives from CTED and

local governments in central Puget Sound. The bank would have a limited role in enabling private transactions by addressing timing issues. It would not be active in buying rights and would not influence existing county banks. It would address issues of equity in where the funding is spent among the different jurisdictions.

- d. **Private transactions.** Private transactions should be allowed. There was consensus of the Committee to allow and encourage private transactions.
- e. **A fee in lieu of purchase of TDRs.** There was provisional consensus that a fee in lieu of purchase of TDRs be allowed as an option for developers. Payments in lieu would be made to the bank. The consultant recommended that the regional program not use a fee in lieu because it could delay conservation of land and increase the cost. However, the consultant did not address whether it would be appropriate to include a fee in lieu as an option in addition to purchasing TDRs.

*Outstanding question raised by Committee member in reviewing the summary: Do we want to limit the use of the fee in lieu to when there are no TDRs available for sale?*

**f. A framework for establishing an allocation ratio(s).**

There was provisional consensus around the following:

1. An allocation ratio should not be included in legislation. It would be too difficult to come up with a single ratio and could not be easily changed to respond to the market.
2. The TDR bank should establish allocation ratios. An allocation ratio framework could be developed that would apply to small projects. However, larger or local priority projects should be able to negotiate an allocation ratio. The framework should be kept flexible to allow values to be defined locally, depending on sellers' asking price and developers' willingness to pay.
3. Don't limit the allocation ratio to residential density. Allow translation to floor area ratio, parking, carbon offsets, etc.

**g. Statutory authority for local governments to transfer TDRs without an interlocal agreement.**

There was provisional consensus around this idea.

**5. What incentives should be provided to cities and counties to encourage them to designate receiving areas and accept TDRs?**

The Committee skipped this question and went on to incentives for developers.

**6. What incentives should be provided to developers to participate in a TDR program (that would require state legislation)?**

Options:

- a. Create a SEPA categorical exemption for receiving areas that have undergone a programmatic EIS that includes analysis of TDRs.
- b. Fund and prioritize access to the Planning and Environmental Review Fund (PERF) for SEPA environmental analysis in TDR receiving areas.
- c. Provide funding to jurisdictions for SEPA environmental analyses in TDR receiving areas.

There was no consensus on any of the options or recommendations. The discussion was as follows:

SEPA exemptions are a difficult topic for the environmental community and need more discussion. There should be a study of changes to SEPA related to potential exemptions. The SEPA Implementation Work Group may not get to this as they are focused on how to measure project-specific impacts. We would need to ask them to address this.

There are a range of development regulations that need to be addressed, such as building code issues. Also, the cost of studies, and the process of variances and appeals. Legislation could include an intent statement regarding keeping the permit process timely and predictable for TDRs.

Planned actions are one approach. It is better than an exemption because the neighbors will be pretty upset. We should recommend funding PERF for receiving areas.

Local governments could charge late-comer fees for environmental review. The developer who uses TDRs would not have to pay the late-comer fee.

UGA expansions should require the use of TDRs. De-designation of natural resource lands should also require TDRs. *(Note: further clarification of the de-designation idea was submitted after the meeting. De-designation of natural resource lands should also require TDRs, particularly if the re-designation is to urban (thereby triggering the above-noted UGA expansion requirement for using TDRs); De-designations to rural are different than to urban, and will require a different approach as they do not change into a typical receiving area.)*

\*\*\*\*\*

The Committee did not get to the remaining questions. It should be noted that questions 7 and 8 are included because the legislation requires that they be addressed. Questions 9 and 10 are information we will need to develop to support the Committee's recommendations.

- 7. Should the state consider facilitating and funding a series of pilot projects?**
- 8. Should the state be supporting private initiatives that foster TDRs?**
- 9. How do we define success? What are the performance measures we would be using to determine whether the program is effective?**
- 10. What additional information do we need to support our recommendations?**

**Next Meeting:**

**September 22, 2008, 12:00 p.m. – 5:00 p.m., (Puget Sound Regional Council)**