

A special meeting of the City Planning Board was held on July 23, 2008 in the City Council Chambers at the City Hall Annex at 7:00 PM.

Present at the meeting were Members Drypolcher (who as Chair presided), Dolcino, Gross, Meyer, Shurtleff, and Alternate Member Kenison as well as Alternate City Council Representative McClure. Mr. Woodward, Ms. Hebert and Ms. Osgood of the City Planning Division were also present.

At 7:06 PM a quorum was present and the Chair called the meeting to order.

The Chair explained that this was a public workshop to discuss the proposal for Transfer of Development Rights. He explained this was intended to be an information-gathering discussion at this time.

Mr. Woodward explained that as part of the recent Master Plan update process, strong public support was received for the concept of preserving rural parts of the community and permitting the development density that would have occurred there to be located in and adjacent to existing neighborhoods. The Transfer of Development Rights was one of the items to be considered for implementation of the Master Plan and would be adopted as an amendment to the Zoning Ordinance. He reported that the City needed to learn about what other communities have done and how they have fared with their efforts in this regard so Hawk Planning Resources LLC had been retained to evaluate the options for such a program. He introduced Roger Hawk who made a presentation on the topic.

Mr. Hawk explained that the Transfer of Development Rights provides a zoning mechanism to create sending and receiving zones in a community, in which development capacity from a property in a sending zone is transferred to another property in a receiving zone. The sending zone property is protected from additional development through the direct donation of land or conservation easement to the municipality or a conservation organization. A developer in a receiving zone can then acquire approval to add housing units in relation to the reduced number of units being transferred from the sending zone. The critical element in the transaction is how the density transfer is structured and managed by the municipality.

He reported that two density transfer structures have primarily been used in the United States. In the first, a developer seeking to build additional housing units negotiates an easement or fee purchase of open space directly with a private property owner and then deeds it to the city in exchange for added housing units in the receiving zone. This could also be initiated by the owner of an open space parcel seeking to sell a conservation easement. This is the more common TDR approach. In the second approach, a developer makes a cash contribution to the city, based on a formula established in the ordinance, so that the city can directly acquire open space or conservation easements in the sending zone. In exchange, the developer is allowed to build additional dwelling units in the receiving zone. This is often referred to as a Density Transfer Credit.

He explained that the advantages of the TDR system are that it places the burden of negotiation directly between sending owners and developers. The real estate market forces dictate the cost of the transfer and the city only needs to establish the ratio of protected land in sending zones to density bonuses given in receiving zones. Disadvantages include that the properties protected may not meet the priorities of the City and the Conservation Commission, developers may be less interested in pursuing this system if the burden of acquiring easements is too high, and individually negotiated protection easements may result in some developers being able to negotiate better deals than others, creating the perception of unequal treatment.

Mr. Hawk explained some advantages to the Density Transfer Credits program are that the city is able to manage the entire density transfer process through the establishment of transfer ratios, density bonus levels, and prioritization and acquisition of conservation easements. Developers have certainty about the cost of density bonuses, and they don't have to negotiate with individual property owners. However, the disadvantages include that the city is responsible for negotiation and acquiring conservation easements, and must manage the transfer credit funds until they are used. Also, if the program is not sufficiently attractive to developers, the program may not be utilized, resulting in little or no open space protection.

He reported that a TDR program needs to provide adequate developer incentives to take advantage of receiving area density bonuses if any significant open space preservation is to occur.

He reported that the success of a TDR program is dependent upon the strength of the local economy and real estate market, the relative financial attractiveness of a TDR receiving zone as compared to other opportunities in the local real estate market, the size of the receiving zone and whether there are enough properties available, the relative ease of obtaining approval for TDR credits in the receiving zone, and whether there are sufficient disincentives for property owners in the sending zones to not develop their land.

He explained that, to make the city's development regulations thoroughly consistent with the goal of maximizing open space protection outside the Urban Growth Boundary, the zoning ordinance, site plan and subdivision regulations need to be carefully scrutinized and any density or development incentives in either the sending or receiving zones that compete or conflict with the TDR approach should be repealed.

He reported that if a comprehensive density bonus provision is adopted, a developer should be assured that he can work through the approval process more quickly than under conventional zoning, and that the bonus units cannot open for debate as part of the development approval process. In order to achieve this degree of confidence, the City will need to be committed to the entire TDR process that is adopted.

Mr. Hawk reported that the traditional application of TDR is too cumbersome to effectively secure open space preservation easements on the land parcels that are most highly valued by the City and the Conservation Commission. The Density Transfer

Credit approach would remove the need for a developer to have to negotiate the acquisition of a preservation easement with a private owner and would allow the City to manage and implement its open space protection priorities. However, it does place a burden on the City and the Conservation Commission to identify and negotiate easement purchases. A properly structured density transfer credit should motivate developers to take advantage of it and the City will then have the financial resources to preserve its rural landscape.

He explained that if the City chooses to pursue this system, the zoning ordinance needs to be amended to establish the Conditional Use Permit structure and conditions for a DTC. The zoning ordinance needs to establish density and dimensional standards that are appropriate for the development of higher density DTC projects, and the City's site plan and/or subdivision regulations need to be amended to establish detailed design criteria required for all DTC projects.

Mr. Gross clarified that Mr. Hawk was suggesting the DTC program over the TDR program, in which case there would be no direct link between the number of units protected outside the Urban Growth Boundary for development inside the UGB. Mr. Hawk agreed that was the case.

Mr. Gross noted that this system would require that the City create a scarcity of developable units outside the UGB to discourage development. He also noted that the Planning Board should review existing density standards by right within the UGB and perhaps consider reducing them to encourage the market for the purchase of bonus units.

Mr. Hawk indicated the challenge would be to decide how much the City wants to encourage the program.

Mr. Gross understood that the City would be trying to find the right price for the bonus units in the UGB. Mr. Hawk responded that the point would be to make the receiving area more desirable than the sending areas.

Mr. Gross asked if a system could be devised whereby the credits would vary depending on where the development is proposed to occur. Mr. Hawk responded there are a number of objectives that could be achieved by lowering or eliminating the number of credits that would be required for a project.

Ms. McClure asked how the City would guarantee that the open space would be protected. Currently a purchase of open space is subject to approval by the City Council. Mr. Hawk responded that it would be critical to establish a fund specifically for this money. If there is a change in public attitudes such that there is less interest in protecting space, then it would be appropriate for the City to move to disband any DTC or TDR program it had established.

Ms. McClure asked Mr. Hawk what successful DTC programs he had found and what details made them work. Mr. Hawk responded that the DTC program is relatively new

but it seems to be a simpler mechanism to follow. Only a couple of communities have used the DTC program and there is not much information from which to draw significant conclusions.

Ms. McClure asked which elements of the zoning ordinance would need to be reviewed for this program. Mr. Hawk responded that the planned unit development and the new cluster zoning district would have to be reviewed, at a minimum.

Mr. Gross noted that the process for determining receiving areas would be driven by their infrastructure or the City's ability to improve the infrastructure.

Roy Schweicker expressed concerns about what the City would be getting for its money in this program. He asked if the only purpose of TDR was to protect open space or were there other reasons like reducing the amount of new roadway being constructed that will then need to be maintained. He asked if the credits could be transferred to a new village scenario such as in the Garvins Falls area. Mr. Hawk responded that could be done if that is what the City wants to do. This is a tool to accomplish the City's goals. The slate is entirely open as to how the City may choose to implement or locate these density bonus areas.

Mrs. Schweicker noted that his observation is that there is a need for green space in the inner city. He has already seen two pocket parks disappear near him over the years.

In answer to a question by Mr. Schweicker, Mr. Woodward explained that if there was a transfer of rights for units, the parcels in question would be evaluated to determine buildable lots available in both the sending and receiving areas and allocated accordingly.

John Langille, president of the Concord Area Builders and Remodelers Association, and principal of Cherry Hill homes, spoke in favor of the transfer credit as a builder/developer as well as a Concord taxpayer. However, one of his concerns is the effect of this system on the tax base of the city. He was concerned that this would have the effect of down zoning. He also noted that his experience over the last year or so, and in talking with others in the development community, is that the 60%/40% open space provision in the cluster zoning now is onerous. The receiving area was the key in this, in his opinion. One of the biggest problems from a developer's standpoint is the abutters to a project. He has heard nothing of a public relations program to educate citizens about how this would work. Before moving forward, the City needs to determine whether people in the receiving area are willing to have this affect their properties. The City will have to come up with a policy where abutters understand that a developer has these bonus credits by right.

Ms. McClure asked Mr. Langille what he thought of the dollar numbers in this report and whether he felt they were reasonable. He responded that developers generally are not as concerned about the financial issues as with the time and energy involved in a project. If a project is easy and moves through the process smoothly, that is more

important usually to a developer. He thought the proposal was pretty accurate as far as the numbers were concerned, and could be used as a guideline.

There were no further questions or comments and the Chair declared the hearing closed at 8:30 PM.

Ms. Meyer asked if there were any other options that the Board could pursue.

There was a discussion about using an existing project as an example of what happened and what could have happened under the proposed ordinance.

Staff was asked to find areas that could be receiving areas and to look at issues that need to be resolved.

The point was made that there is density but there is also design that needs to be addressed. It will be important for architectural design guidelines to be launched simultaneously with a TDR program.

It was also noted that it might be more accurate to explain that the City is trying to control sprawl rather than just protecting open space. Members agreed that the sprawl message sometimes gets lost.

If an existing neighborhood could see a benefit such as new park or improved infrastructure, it might be more palatable to them as a receiving area.

There was no further business to come before the Board and the meeting adjourned at 8:45 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward  
Clerk

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