POLICY COMMITTEE MEETING

January 5, 2011

6:00 p.m.

County Complex, Building F

1. **Roll Call**

Present	**Staff Present**
Mr. Jack Fraley, Chair	Mr. Allen Murphy, Director of Planning/Assistant Development Manager
Mr. Al Woods	Ms. Tammy Rosario, Principal Planner
Mr. Tim O' Connor	Ms. Leanne Reidenbach, Senior Planner
Mr. Mike Maddocks	Ms. Jennifer VanDyke, Administrative Services Coordinator
Mr. Rich Krapf	
Mr. Reese Peck (late)	

Consultants (Design, Community, and Environment)

Mr. Aaron Engstrom (via phone)

Mr. Bill Fulton (via phone)

Mr. Jack Fraley called the meeting to order at 6:00 p.m.

2. **Old Business**

There was no old business.

3. **New Business – Update on Transfer of Development Rights (TDRs) feasibility study**

Mr. Bill Fulton spoke on TDRs. The basic premise of a TDR program is that rural land owners sell development rights to another party interested in increasing density at another site (termed a receiving area). The receiving area would be one where a concentrated type of development would be feasible. With a TDR program, rural land owners could be compensated for any reduced development potential while their rural land is protected.

Mr. Al Woods asked what the consultant was going to study.

Mr. Fulton stated that they would be making a determination of whether a TDR program is feasible to implement for this area through conducting a market analysis and stakeholder interviews.

Mr. Woods summarized that they will study, assess, and qualify the demand curve for TDRs.

Mr. Fulton stated that they would help identify appropriate sending and receiving areas. They are going to help determine the value for potential sellers. They will conduct a market analysis to determine whether a TDR program is financially feasible for current and future real estate markets. The consultants will also discuss the role the program would play in growth management and within the County's other preservation programs such as Purchase of Development Rights and greenspace acquisition.

Mr. Woods stated that the feasibility study will take into account existing commitments, therefore bringing into the equation the availability of land for such a transfer. Mr. Woods asked if typically a program like this is well received by the development community.

Mr. Fulton asked Mr. Woods what he meant by committed availability.

Mr. Woods stated that this would be projects that are already in the pipeline or approved but have not been built.

Mr. Fulton stated that it does take time to get a program like this going and that having a lot of units in the pipeline could slow down use of a TDR program. A receiving area would be where the County is looking to focus growth and would be where there is an existing demand for development, making it more profitable. Profitability is needed to offset the cost associated with purchasing development rights. Mr. Fulton asked where the County would establish their receiving areas.

Mr. Woods asked Mr. Fulton, in his experience, does a TDR program elevate the base cost of the property on the receiving side.

Mr. Fulton stated that it is just like any other entitlement. The TDR program is not going to increase the cost of base land. Part of the study will determine whether or not there is enough money in developing the receiving area to offset the cost of purchasing development rights. This is done by doing a residual land analysis. The transferred development right is not automatically attached to the valuation of a receiving area.

Mr. Woods stated that something needs to be done on the receiving side to encourage the developer to go out and acquire the development rights. One technique is to down-zone the receiving property and make transferring development rights the only way to get back up to the previously permitted density. This will help incentivize purchasing development rights. The program has to attract buyers to make it successful.

Mr. Fulton stated that in the ideal TDR program, there is a dual high and low density option for properties. Through the normal process you can get the low density, but if you want to go above that density then you have to buy TDRs. That may or may not include a down-zoning prior to adoption of a TDR program. Often, the down-zoning only includes the sending area, similar to what Montgomery County, Maryland did. They down-zoned the sending areas and then, using the TDR program, developers procured further development rights so rural land owners were compensated for their lost development potential from the down-zoning.

Mr. Reese Peck asked if the consultants were familiar with the County's requirements regarding the State legislation about Urban Development Areas (UDAs). As a high-growth County, James City County (JCC) has to designate urban development areas and they should coincide with areas that would be optimum receiving areas.

Mr. Fulton asked if this initiative has been incorporated into the Comprehensive Plan.

Mr. Peck stated that it has not.

Ms. Tammy Rosario stated that staff is currently going through a process to certify that the Comprehensive Plan has met the requirements of the UDA legislation.

Mr. Peck asked whether staff was looking to certify the entire Primary Service Area (PSA) as a UDA and if, in doing that, the entire PSA would have to be designated as a receiving area.

Ms. Rosario stated that the UDA legislation has been incorporated as a consideration item in the feasibility study. Staff is looking to maximize the intent of the legislation and focus on areas within the PSA to certify as UDAs. The TDR receiving areas do not necessarily have to be within the UDAs, but that makes sense.

Mr. Fulton stated that they do not anticipate the entire area within the PSA to be considered as a receiving area. The receiving areas would be where you expect concentrated development and where there is infrastructure to support higher density. He asked whether the Committee thought that rural land owners within JCC were willing to consider such a program and based on knowledge of the Comprehensive Plan, what areas the Committee thought would make sense to consider as receiving areas.

Mr. Fraley stated that the areas designated Economic Opportunity (EO) in the Comprehensive Plan Land Use Map should be a consideration. This area is outside the PSA at this time. It would be a logical choice as they had envisioned this area becoming a dense residential development. They also envisioned that this area would be a Transit Oriented Development (TOD). The targeted density would range from 6 to 18 units per acre. This would be a vertical development consisting of 100 or more acres. Mr. Fraley stated that he would like to consider down-zoning both sending and receiving areas. Mr. Fraley suggested reducing allowable density in receiving areas then requiring TDRs to get back up to the previously permitted density.

Mr. Fulton asked what the maximum density is that developers and land owners want to achieve and what process they go through to achieve that density.

Mr. Fraley stated that acquiring higher density is achieved through rezoning at this time. Property owners can go through a rezoning process during which they present what they believe to be public benefit with the project. Developers will provide workforce housing or unusual environmental designs in order to increase density by claiming public benefit. Mr. Fraley stated that the TDR program would change this approach.

Mr. Fulton asked how the other Commissioners felt about the process of down-zoning for the sake of promoting a TDR program.

Mr. Peck suggested that they consider other areas for receiving zones such as those that are currently designated for higher to moderate density residential by the Comprehensive Plan. The chosen receiving areas should coincide with the areas identified as urban development areas. This has certain implications for determining development based on gross verses net acreage because there are requirements on how you measure densities within UDAs. Thus far it has been on gross acreage.

Mr. Fraley stated that the UDA densities are based on net acreage, but they do not measure "net" the same as the County typically does. If you look at the areas designated as medium density the permitted density range is currently from 4-12 dwelling units per acre. He would like to decrease it to eight without the use of TDRs.

Mr. Fulton stated they could set it at eight and give the developers the opportunity to buy rights to bring up the density to 12. By distributing receiving areas over a broader area you could also reduce concentrated traffic and other impacts. Rather than creating pockets of very high density development, it would be possible to create a more wide-spread moderate density development for residential purposes.

Mr. Fraley stated that he likes the suggestion. The current housing trends suggest that there is not a need for large mansion style housing that was once popular. Mr. Fraley reiterated that he would like to use the TDR program for economic development purposes. He is aware that there are existing State laws that restrict some very high density development, including as maximum impervious coverage limits.

Mr. Fulton stated that there is a restriction mandated by the Chesapeake Bay Act that limits the amount of impervious surface to 60% and asked to what extent that constrained development.

Mr. Fraley asked if Mr. Allen Murphy could respond to this question.

Mr. Murphy stated that it is the cost of doing business in JCC. It has not prevented development from occurring. There are varying opinions within the community regarding its necessity and effectiveness. The County has experienced substantial development even with those requirements in place.

Mr. Doug Gebhardt of the Economic Development Authority confirmed what Mr. Murphy stated.

Mr. Fulton stated that previously New Town and Stonehouse had been suggested as potential receiving areas.

Mr. Fraley stated that Mr. Peck had previously asked that the consultants look at those areas designated Mixed Use, which included New Town and Stonehouse.

Mr. Rich Krapf stated the Mixed Use area off of Route 199 and Route 5 should be considered.

Mr. Fulton asked the Commissioners if they felt the dual low and high density range discussed is acceptable. There are two different approaches that could be used to implement the TDR program. The developer could simply purchase and secure the rights to build at a higher density. In the alternate scenario developers would purchase the rights after the proposal has gone through the legislative development review process. The rights would be purchased for anything above the base density. One option gives the Planning Commission a greater role.

Mr. Fraley stated that rather than a range there could be a fixed number. The fixed number could be combined with a TDR overlay that would increase the density. The overlay would have performance standards that would result in by-right development when used with TDRs. By creating an overlay, the developer would be capable of investing capital to buy development rights rather than exhausting it in the legislative process.

Mr. Fulton stated that New Town would be an example of a development that has development standards in the form of design guidelines.

Ms. Leanne Reidenbach stated that they would need to discuss how the proffer system works in conjunction with TDRs. Ms. Reidenbach pointed out that by placing TDRs on a by-right development track the County would not be capable of collecting proffer money with the current State legislation, which may make it difficult to mitigate the impacts of any increased density.

Mr. Fulton stated that in the 4-12 unit example the developer could proffer their way from 4-8 units in a legislative process and then apply the TDR by-right to achieve the 8-12 unit per acre density.

Mr. Fraley stated that to achieve the higher density they would have to construct performance standards and accommodate impacts through those.

Mr. Murphy stated that performance standards typically have to do with design, environmental features, and aesthetics and do not include cash payments.

Mr. Fraley stated that some jurisdictions have performance standards that include traffic counts.

Mr. Murphy stated that this sounds more like inverse proffers. The performance standards would be more similar to restrictive proffers.

Mr. Krapf asked at what point in the review process road capacity would be reviewed and addressed.

Mr. Fulton stated that developers would reach the highest density by buying development rights. This would mean that the question of road capacity is not addressed at the time when the highest density is achieved.

Mr. Krapf asked if this has been a problem other jurisdictions have dealt with.

Mr. Fulton stated this is not something they have reviewed in the past since there are very few states that operate under the proffer system. Many use impact fees or something similar that can be collected for both legislative and by-right development proposals.

Mr. Krapf stated that they anticipate hearing resistance from the community if the by-right density in rural lands is decreased. Currently the minimum lot size is three acres. Mr. Krapf stated that research indicates a need for a strong agricultural and housing market for the success of a TDR program. He asked whether the fact that the County's agricultural market is not robust would create a problem.

Mr. Fulton stated that for a TDR program to be successful, rural land owners need to be motivated to hold on to the land once the development rights have been sold. Agricultural purposes are not a requisite, though livelihood dependent upon the land is. The fact that JCC does not have a robust agricultural market could complicate matters.

Mr. Fraley asked if the property owner can continue using the land for agricultural purposes once the development rights have been sold.

Mr. Fulton stated yes. Typically the rural land owners will look for other revenue producing opportunities if the development rights are sold. The success of a TDR program is dependent upon the rural land owner's perception of being compensated for their development rights. If the rural land owner's property is down-zoned yet they have development rights for more than they would be capable of building, the likelihood of them selling development rights increases. A transfer ratio of two to one may be incentive enough to encourage the sale of development rights. Part of the consultant's analysis will include the creation of economic motivation for both sending and receiving land owners.

Mr. Fraley stated he is interested in what effect the TDR program will have on the total unit potential (or build out) in JCC.

Mr. Fulton stated they are capable of providing possible outcomes should the County exceed the current residential density potential in receiving areas than those being taken from the sending areas.

Mr. Fraley stated he is interested in developing policy that does not potentially increase or decrease the gross number of housing units. He would prefer to create policy that supports the use of TDRs for economic development or that compensates land owners but does not necessarily give them a development bonus.

Mr. Fulton stated that by creating developable acreage there is no ratio involved. TDRs should be thought of as developability should you pursue the program as a means to promote commercial development. The development value that is being sold compared to the development value of what is being bought is important to consider. This type of analysis is more complicated and time exhausting. The study will include possible recommendations for changes that would make this system work. Mr. Fulton also stated that it is very useful for them to understand the concerns JCC rural land owners have.

Mr. Fraley stated that several years ago there was a Rural Lands Committee formed. That committee determined that it would be advantageous to change the density in rural lands to a 12 acre minimum lot size.

Mr. Krapf asked if it is counterproductive to have a Purchase of Development Rights (PDR) program along with a TDR program.

Mr. Fulton stated it is not. Having more options available to land owners is helpful and other programs can take the pressure off of the TDR program as the sole land preservation tool.

Mr. Fraley asked whether the consultant would be evaluating the PSA boundary as part of the TDR study. He also noted that areas zoned R-8 that are inside the PSA but have not been developed should also be looked at as potential receiving areas.

Mr. Fulton said that examining the PSA was not within the current contract. He said that based on potential areas identified as sending or receiving areas, necessary PSA adjustments may become clear in order to keep receiving areas within the PSA and sending areas outside the PSA. He then noted that TDRs could be used to up-zone the undeveloped R-8 areas in the PSA. He also noted that it may be less likely for a smaller land owner to go through a long or costly process to secure TDRs for development.

4. Adjournment

Mr. Fraley moved to adjourn.

The meeting was adjourned at 6:50 p.m.

Jack Fraley

Jack Fraley, Chair of the Policy Committee