

**AT A WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 14TH DAY OF DECEMBER 2010, AT 4:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. ROLL CALL**

James G. Kennedy, Chairman, Stonehouse District  
Mary Jones, Vice Chair, Berkeley District  
Bruce C. Goodson, Roberts District  
James O. Icenhour, Jr., Powhatan District  
John J. McGlennon, Jamestown District

Robert C. Middaugh, County Administrator  
Leo P. Rogers, County Attorney

**B. BOARD DISCUSSIONS**

**1. Rural Lands – Transfer of Development Rights**

Mr. Steven Hicks, Manager, Development Management, explained that this work session was the first part of the process for creating a policy related to Rural Lands including Transfer of Development Rights (TDR).

Mr. Bill Fulton, Design, Community, and Environment (DC&E), gave an overview of TDRs and possibilities for its application in James City County. He explained the goals of TDR, including preserving rural lands and redirecting growth. He noted that TDR was an implementation tool, rather than a policy document, to achieve the County's planning goals and program goals were very important. He also noted that TDR cannot be mandatory; it must be voluntary. He highlighted problems with TDR programs, including too few receiving areas, lack of demand for development, higher densities that can be achieved in other ways, and unrealistic expectations of the purpose of the TDR program

Mr. Rogers noted some legal issues related to TDR, including Virginia legislation beginning in 2006, which was later revised in 2009 and 2010 to allow for flexibility in sending zones and receiving zones in order to equate for property values in different areas, and banking of property rights for transfer at a later date. Mr. Rogers explained the treatment of taxes for TDR properties and that the County could have a bank for TDRs, but it could only receive properties; it could not buy a TDR. He explained the County could not accept money for properties that were not currently in the bank. Mr. Rogers noted that there were problems with TDRs in Virginia related to infrastructure in the receiving properties, and the lack of impact fees in favor of a proffer system in Virginia also made the program difficult. He stated that a process of approval and recordation had to be outlined.

Mr. Fulton reviewed three case studies of TDR programs to help explain the uses and strategies of these programs. He reviewed the program in Montgomery County, Maryland, which operates its program without a bank and has been a very successful program. He explained that all the programs take time to be built and to perform. Mr. Fulton also reviewed a program regarding the New Jersey Pinelands, which was located in a very sensitive area throughout the entire locality. He explained that the Pinelands provides net density while Montgomery County provides gross density to the receiving zone. He stated that King County,

Washington, was kick-started by money from a bond issue and operates through a bank system. He stated there were inter-local agreements between counties and cities to increase density in the cities and decrease density in the counties. He stated that part of the money from the program was provided for infrastructure improvements in the receiving areas. He stated that TDRs could also be traded for something other than increased density in this locality.

Mr. Fulton explained successful TDR program criteria and how they could be applied to James City County. He stated that program goals were important and that TDRs should be used as one of many growth-management tools. He explained that the conservation areas and growth areas should be identified in the Comprehensive Plan for those goals in order for TDRs to be successful. He stated that there needed to be enough space in the receiving areas to accommodate all the density from the sending areas in order to ensure a market for the sending area landowners to be made whole. He stated the sending area landowners should have the best incentives, so the program has to be easy and has the landowners' support. He noted that in receiving areas, the program has to be easy to use and marketing information should be available; that the County should have a clear database of the transactions, and that buying the TDR credits has to be the most appealing way to increase density in the receiving areas. He stated that deterrent factors could be down-zoning sending area property owners and on the receiving end, TDR has to be the only or most attractive way for developers to increase density. He noted that banks are most often used in the mid-Atlantic region in order to preserve as much farmland as possible.

Discussion was held on the process for establishing TDR prices for the TDR properties with and without the bank. Discussion was held about market-set values and establishing values through the bank process. Mr. Fulton explained that it must be determined if the bank would be a market-based player or if the prices would be pegged to a publicly known model. Discussion was held on how to ensure there are adequate receiving areas to support the program and definition of adequate infrastructure for the receiving areas. There was discussion about how the program would work in a proffer state such as Virginia, since in most cases this program operates in impact fee states. Discussion was held about a process for identifying and designating receiving areas for the program, and ways built in to make sending area landowners whole for their development rights, particularly in relation to environmentally sensitive areas within the receiving areas. Mr. Fulton explained that the program goals must be clearly identified in relation to what land would be preserved. Discussion was held on creating mixed-use receiving areas with increased density for environmental reasons.

Mr. Fulton reviewed decision points for the Board to help guide the program analysis. He asked tactical questions including what the purpose of the TDR program was, what role the TDR program would play in pursuing land preservation goals, whether or not TDR would be redeemable for other benefits in receiving areas besides residential units, and how a bank could be used for the program. He asked the Board to focus on four main points: whether or not rural lands should be down-zoned; if the TDR program would be the only way to achieve higher density, identification of the sending and receiving areas; and providing amenities to receiving areas along with increased density from the TDR program. Discussion was held on whether the program should use gross density or net density; if there was concern for significantly increased density areas, how the way density is calculated on environmentally sensitive areas inside the Primary Service Area (PSA); and how to resolve density issues due to undevelopable land. Discussion was held about implementation of a program for the transfer of PSA rights as well as a TDR program. Discussion was held on the economic analysis process for the receiving areas in relation to proffers. There was discussion about the goals of the program and reshaping the PSA boundary in relation to urban area locations. The Board discussed other tools that could help control growth and how TDR would be used for commercial versus residential development.

Mr. Hicks asked for Board guidance on the critical questions to determine the feasibility of the program. The Board and staff discussed public outreach to stakeholders and the broader public. Discussion was held about evaluating sending and receiving areas to reconcile infrastructure needs and tying the program to the adopted Comprehensive Plan.

**C. CLOSED SESSION**

Mr. Goodson made a motion to go into Closed Session pursuant to Section 2.2-3711(A)(3) of the Code of Virginia to consider the acquisition of parcels of property for public use.

On a roll call vote, the vote was AYE: McGlennon, Goodson, Icenhour, Jones, Kennedy (5). NAY: (0).

At 5:55 p.m., Mr. Kennedy recessed the Board into Closed Session.

At 6:26 p.m., Mr. Kenney reconvened the Board.

Mr. McGlennon made a motion to adopt the Closed Session resolution.

On a roll call vote, the vote was AYE: McGlennon, Goodson, Icenhour, Jones, Kennedy (5). NAY: (0).

**RESOLUTION**

**CERTIFICATION OF CLOSED MEETING**

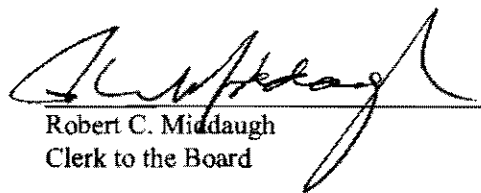
WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(3) of the Code of Virginia, to consider the acquisition of parcels of property for public use pursuant to Section 2.2-3711(A)(3) of the Code of Virginia.

**D. BREAK**

At 6:27 p.m., the Board took a break.

  
Robert C. Middaugh  
Clerk to the Board