

MEMORANDUM

To: Mayor Vernon Marino, Woolwich Township Committee and Joint Land Use Board

From: Woolwich Township TDR Task Force

Date: October 21, 2019

Re: Township of Woolwich TDR Task Force Report

This memorandum summarizes the changes proposed by the TDR Task Force to the Development Transfer Ordinance (“TDR Ordinance”) found in 203-51 of the Code.

ACKNOWLEDGEMENTS

TDR TASK FORCE COMMITTEE

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- **Background: 5-Year TDR Review.**
 - In 2018, Woolwich Township undertook a statutory-required, 5-year review of the TDR program. The review was last conducted in 2013. The process as outlined in the State TDR Act entails the review of the program, including the development transfer ordinance, and includes statutory tests meant to determine program viability and adjustments that may be necessary to ensuring program success. If the State Office of Planning & Advocacy (OPA), in consultation with the State TDR Bank Board Staff, determine that the current program, or proposed changes to it would jeopardize program success, the law requires OPA to render an opinion that the program is no longer viable, resulting in an invalidation of the Township’s development transfer (“TDR”) ordinance. The report was completed on December 13, 2018 and subsequently accepted by OPA as satisfactory. The report did not include an update to the Real Estate Market Analysis (REMA), which is required every five years, because it was last updated in July of 2016 as part of the Master Plan and TDR program update.

- On December 17, 2018, the Township Committee of Woolwich Township, adopted Resolution (R-2018-293), which accepted and referred the 5-year TDR review report to the Woolwich Township Joint Land Use Board (JLUB), recommending similar acceptance and adoption. The JLUB held two duly advertised public hearing on January 31 and February 21 of 2019, where it heard testimony from members of the public, including landowners in both the TDR sending and receiving zones, in addition to the testimony provided by its own professionals. As a result of the two hearings, and based upon the review of the report and the consideration of the testimony of the JLUB's own professionals and that of the public that testified at the two (2) hearings, the JLUB adopted the enclosed resolution (Resolution #2019-11) on March 21, 2019, which made certain findings, determinations and recommendations.
- In addition to accepting the findings and recommendations of the 5-year report, the resolution confirmed and determined that the TDR program met its statutory obligation of having transferred at least 25% of the remaining development transfer potential during the past five (5) years, in accordance with the statutory standards set forth in the provisions of N.J.S.A. 40:55D-157 and N.J.S.A. 40:55D-156a. However, the resolution also acknowledged concerns regarding the economic viability of the TDR program moving forward in its current configuration and, as such, made the following recommendations to the Woolwich Township Mayor and Committee regarding the TDR program:
 - A. That the Woolwich Township Mayor and Committee review the TDR program as a whole to determine whether there are revisions that can be made to the program and ordinance to make it more economically viable moving forward and increase options under the program for landowners in both the sending and receiving zones; and
 - B. That the Real Estate Market Analysis (REMA) be updated and brought current, with the updating process to begin as soon as possible; and
 - C. That the Woolwich Township Mayor and Committee review and revise the zoning densities, such as to eliminate the 15-acre zoning in the TDR sending and receiving zones, with the intent to up-zone and increase the densities in both zones; and
 - D. That the Woolwich Township Mayor and Committee remove from consideration any extension of the TDR program to commercial development; and
 - E. That the Woolwich Township Mayor and Committee create a joint sub-committee, with representation from the JLUB, to review and advise both the Township Mayor and Committee and the JLUB on revisions to the TDR program and ordinance.
- **TDR Task Force.**
 - In furtherance of the recommendations of the JLUB, on May 6, 2019, the Woolwich Township Committee adopted a resolution (R-2019-125) appointing a TDR Task

Force (“Task Force”) consisting of nine members, including township officials, representatives of boards and members of the general public. The purpose and intent of the TDR Task Force is to work with Township officials, staff and professionals, to review the TDR program as a whole, including the REMA report and advise both the Township Mayor and Committee and the JLUB to determine proposed revisions deemed necessary to making the program and development transfer ordinance more economically viable, while increasing options and addressing legitimate equity concerns of affected landowners within the Sending and Receiving Areas. Specifically, the Task Force was directed to review and recommend changes to permitted zoning densities within the Sending and Receiving Zones with intent to balance landowner equity considerations with other important land use goals, including the continued protection and preservation of the agricultural land base within the Sending Area and associated Planning Incentive Grant (PIG) Project area as designated in the Township’s Farmland Preservation Plan.

- Since being established in May, 2019, the Task Force held five well-attended and highly productive meetings. At the meeting conducted on October 8, the group voted unanimously in support of several key recommendations, which are presented here for the consideration and action of the Woolwich Township Committee and JLUB. The specific recommendations are as follows:
 1. For participating Sending Area properties, individual site specific credit allocations will remain unchanged, reflecting underlying pre-TDR zoning in the R-1 through R-3 zoning districts.
 2. Amend the TDR ordinance to increase base density for landowners in the Sending and Receiving Areas (RR-2 to RR-6 zoning districts) for landowners who ultimately choose to not participate in the TDR program. Specifically:
 - a. For non-participating Sending Area properties, a base density of (1) single family dwelling unit per 5-acres shall be permitted for conventional lotting.
 - b. For non-participating Sending Area properties where cluster development is utilized as a voluntary option as contained at 203-40-42 of the Woolwich Township Code, a base density incentive of (1) single family dwelling unit per 3-acres shall alternatively be permitted to incentivize a more compact format that minimizes impacts to onsite and adjacent agricultural resources. A yield plan shall be used to determine total units as described at 203-40 through 42 of the Woolwich Township Code. That Code also provides for a lot size density minimum (21,780 sq. ft.) and maximum (87,120 sq. ft.) for clustered lots, among other bulk standards, including suitability of soils for subsurface sewage disposal.
 - c. Non-participating properties within the Sending Area shall be permitted to subdivide up to (2) lots between 1 to 1.5 acres in size as part of a minor subdivision within a ten-year period. Lot frontage requirements should be considered to minimize disturbance

- to agricultural uses and overall value for preservation under the easement purchase program. Properties subdivided thus, shall avoid prime farmland where feasible and demonstrate suitability of soils for subsurface sewage disposal. Additionally, properties subdivided thus, shall not be permitted further subdivision (severable or non-severable exception area) as part of conventional preservation through the easement purchase program within similar ten-year period.
3. For non-participating properties in Receiving Area (RR-2 to RR-6 zoning districts), a density of (1) single family dwelling unit per 5-acres shall be permitted with mandatory connection to public sewers. Cluster development shall be mandatory with an estimated maximum lot size of 9,700 SF. A yield plan shall be used to determine total units as contained at 203-40 through 42 of the Woolwich Township Code. A base density of (1) single family dwelling unit per 5-acres shall be used in calculating unit yield. As a condition of approval, the residual land not contained within the clustered development lots and related subdivision improvements shall be reserved for TDR development and require the use of credits to support any additional future units. Properties partially developed in this manner that later utilize TDR credits shall deduct the total number of clustered units from the by-right base density of one dwelling unit per 1.5 acres as provided for at 203-51(G) of the TDR ordinance for properties participating in TDR. Additionally, language should be added to the TDR ordinance to provide further guidance on the process by which residual land associated with a non-participating cluster development shall be established, restricted and registered to ensure future availability to support TDR Receiving Area development.
 4. Remove (26) twenty-six Sending Area properties from the TDR program as identified by the TDR Task Force and comprising 82.75 credits. There are currently 634.25 credits held in private ownership at this time. After proposed reduction, there will be 551.5 credits, not including the 275.5 owned by the Woolwich TDR Bank Board, comprising 827 total remaining credits. The intent is to refocus preservation efforts on larger and more strategic farms that are ten or more acres in size and contiguous with other preserved or otherwise targeted farms. Parcels proposed for removal have one or more of the following characteristics: They are less than 10-acres in size, constrained, partially developed, no longer farmland-assessed, isolated, or otherwise incompatible for preservation. Such parcels are either more appropriate for infill development or preservation through the conventional easement purchase program.
 5. Revise Section 203-54 G(1)(d)1 of the TDR ordinance to permit construction of any residential building in order to replace any single or multi-family residential building that existed and was demonstrably occupied any time after adoption of the TDR program in October 2008. Replacement of any residential building previously occupied after October of 2008, shall not require the use of a TDR credit.
- **Task Force Conclusion.**
 - It is worth acknowledging that the proposed changes received the unanimous consent of the Task Force through a process of deliberative mutual understanding, analysis and compromise that sought a balancing of landowner equity concerns

with the continued protection and preservation of valuable agricultural resources. These changes, particularly those to density, are intended to provide a realistic opportunity to preserve land independent of TDR through traditional easement purchase, or alternatively develop property in a manner that provides meaningful options and flexibility without undermining the agricultural land base where significant public funding has been invested. As such, the proposed changes are intended to render the TDR program as one of several land use options that are available to affected landowners. Moreover, as there is no guarantee that 25% of the total remaining credits will be transferred or acquired by the Township before the completion of the next 5-year review in 2023, it is hoped that the proposed changes will make it easier for future decision-makers to either transition from and replace TDR, or rely on the conditions as set forth in 203-51 N., to make adjustments and continue the program should it be deemed worthwhile and in the interests of affected landowners.

- With adoption of these changes, the Task Force is hopeful that once public water and sewer are installed and operational within the Rt. 322 Regional Center and associated Receiving Area, that a private market will finally materialize for TDR credits in the near future. With that said, the Task Force understands that it may take additional time before TDR emerges as a viable option for affected landowners.
- While the Task Force would like to see the proposed amendments to the TDR ordinance enacted as soon as possible, the timing and manner of adoption will need to be carefully weighed in light of recent litigation brought by the Wolfson Group, which is challenging TDR. Similarly, while the Task Force believes the proposed changes can be enacted prior to completion of the REMA update, any final decision should be carefully vetted in consultation with the Township's professionals and legal experts.