

# MEETING SUMMARY

## TDR/PDR Multi-Stakeholder Work Group

Wednesday August 2, 2017, 2:30-4:30 PM

Planning and Development Services – Annex Conference Room

Attendees – Members	Perspective	Present
Chris Behee	City of Bellingham	<input checked="" type="checkbox"/>
Michael Jones	City of Blaine	<input checked="" type="checkbox"/>
Rollin Harper	Cities of Everson, Nooksack, and Sumas	<input checked="" type="checkbox"/>
Jori Burnett	City of Ferndale	<input checked="" type="checkbox"/>
Dave Timmer	City of Lynden	<input checked="" type="checkbox"/>
Bill Henshaw	Building Industry	<input checked="" type="checkbox"/>
Betty Sanchez	Realtors	<input type="checkbox"/>
Myrle Foster	Rural Property Owner	<input checked="" type="checkbox"/>
Ralph Black	TDR User	<input checked="" type="checkbox"/>
Phil Thompson	Economist	<input checked="" type="checkbox"/>
Steve Powers	Affordable Housing	<input type="checkbox"/>
Brad Rader	Agriculture	<input type="checkbox"/>
Karlee Deatherage	Environmental	<input checked="" type="checkbox"/>
Rud Browne	Council Member	<input checked="" type="checkbox"/>

Attendees – Alternates/Representatives	Perspective	Present
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>

<b>Quorum Present</b>	<b>YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></b>
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Attendees - Staff	Present	Attendees - Staff	Present
Matt Aamot	<input checked="" type="checkbox"/>	Mark Personius	<input type="checkbox"/>
Chris Elder	<input checked="" type="checkbox"/>		<input type="checkbox"/>

Attendees – Guests	Organization (if applicable)	Present
Natalie Knops	Re Sources	<input checked="" type="checkbox"/>
Jacob Plagerman	County PDS Intern	<input checked="" type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>

Meeting was called to order about 2:30 pm.

Approval of July 5 Meeting Summary

**The July 5 meeting summary was approved without changes (except for a typo).**

Open session to take public comment

There were no public comments.

Barriers to Effective TDR and PDR Programs - Preliminary draft discussion paper

The Work Group reviewed the preliminary draft discussion paper.

**TDR Barrier # 1 – Lack of Market Demand for Higher Densities**

Rollin indicated that local governments can create an ever increasing supply of development rights. When a city upzones property, there is an infusion of new development rights for developers to utilize. Phil stated there can be too much supply, but also not enough demand from developers for the incentives being offered. Rud indicated there is a problem if supply and demand are not in the same jurisdiction (unless there is a binding interlocal agreement between the jurisdictions). We need to ask how the developer can profit while the community benefits from the transaction. Ralph indicated that the traditional TDR model is not working, so we need to look at the alternatives. The Work Group did not make any changes to the “TDR Barrier # 1” text.

**TDR Barrier # 2 – Lack of Relevant Incentives**, 2<sup>nd</sup> paragraph, was modified as follows: “There are other incentives for using TDRs in the Whatcom County Zoning Code . . .”

Jori brought up the phrase “Therefore additional new incentives should be considered” (which he did not propose changing). He indicated that in downtown Ferndale, some applicants say that if there is an existing building that needs to be demolished, even if all of the permits and impact fees were zero, they would not be able to make a project pencil out. Bill and Ralph indicated that some impact fees, such as school impact fees, are the same regardless of the size of the house.

**New TDR Barrier # 7 - Additional Costs Act as Disincentive** was added in response to discussion at the last meeting (former Barrier 7 was renumbered to 8).

The Work Group gave preliminary approval to the Barriers discussion paper, which will eventually be incorporated into the Work Group's report.

### Work Group – General Direction

**Voluntary TDR Program** – Staff requested Work Group direction on the following questions:

- Should the Work Group primarily focus on a density credit model for the future (instead of a traditional TDR program)? Should any new incentives be tied to a density credit program?

Chris Behee indicated that a density credit model is more likely to be successful. He indicated that in Bellingham (700 block of Telegraph Rd), there is a 3.5 acre site with a zoning density of 10 units/acre, that can go up to 24 units/acre with TDRs or City PDRs. The developer gets 35 units under standard zoning, used a 15% open space bonus to obtain 5 more units, and obtained 43 additional units by paying \$215,000 to the City's voluntary PDR program (\$5,000 per additional unit). Using the PDR program the developer was able to achieve the maximum 83 unit potential allowed at the 24 unit/acre density on the property. This represents the first significant use by a private developer of the City's PDR program.

Jori indicated that, if a city can find an appropriate incentive, then the density credit system is better than the traditional TDR program. Michael said the density credit system is better because it provides greater flexibility and simplicity. Ralph likes the simplicity of the density credit system (although he prefers the term "cash-in-lieu"). The Work Group reached consensus that we should primarily focus on the density credit model in the future and that new incentives should be tied to a density credit program.

- Should we keep the existing voluntary TDR program for people who now hold TDRs? Should we refine the existing TDR program, but not put major effort into trying to reform this program?

There are 247 certified TDRs in the County (18 of which have been transferred). The Work Group reached consensus that we should keep the existing TDR program. The existing TDR program should be refined, but we will not put major effort into reforming the program. Rud raised the issue of converting existing TDRs to density credits to take existing TDRs off the books.

**Mandatory TDR Program** – A Civil Deputy from the County Prosecuting Attorney’s Office stated at the June meeting that, in his opinion, the County can’t require TDRs for UGA expansions under RCW 82.02.020.

- Staff asked the Work Group if they want to drop the idea that TDRs should be required for UGA expansions and rezones (and focus on a voluntary density credit/TDR program)?

Jori and Michael stated that a mandatory TDR program for UGA expansions is a non-starter for them. Dave and Phil indicated that the mandatory program should not be pursued based upon the legal opinion. Rollin agrees, although he did raise the possibility of a voluntary program where UGAs are expanded. Ralph said UGA expansions should be based upon the appropriate planning needs of the city. Rud indicated that conversion of rural areas was driving the discussion on Policy 2A-14.

The Work Group passed a motion to respect legal counsel’s opinion and not require TDRs for UGA expansions. The vote was 10-0-1 (Rud abstained).

### **PDR Program**

- Staff asked the Work Group if they want to recognize the success of the County’s existing PDR program and tie new incentives in a density credit program to the existing PDR program?

Dave asked where PDR purchases are occurring and what are the priority areas? Chris Elder said there are 10 priority areas and ranking criteria the County uses. But the PDR program depends on having willing land owners to sell their development rights. Dave indicated that Lynden may be concerned if target areas are adjacent to the City or UGA, where they may want to expand in the future. Michael indicated there needs to be a discussion relating to where development rights are purchased. Several cities indicated that they would want a portion of funds raised from any such density credit program to go towards city amenities. It was also noted that development rights in Bellingham may be more valuable than in the small cities.

The Work Group reached consensus to recognize the success of the County’s existing PDR program and tie new incentives in a density credit program to the PDR program and city amenity improvements.

## Market Analysis

The Work Group previously heard from Nick Bratton (Forterra), Michael Murphy (King County), and Heather Ballash (State Department of Commerce) on this topic. A market study by a consultant could assist with the following:

- Determining what incentives would be attractive to developers (additional dwelling units, increased building height, increased commercial floor area, etc).
- Determining TDR exchange ratios. In the context of a density credit program, the study could provide guidance on the amount a developer would contribute to the PDR Program to gain an incentive.

Michael indicated that a study recommending incentives would be helpful. Rud said we should ask developers what is valuable to them. Ralph said that developers can't assess the value of a program that is undefined. We need some specific incentives to ask developers about. Rollin indicated that a market study would have to cover each jurisdiction. We need to ask local developers and councils what incentives might be valuable in the different cities. Michael agreed that we need to ask developers what specific incentives are valuable to them. If there is no value, then drop it. Rud said we should ask developers what incentives they want and how much they are willing to pay for things the community wants. Ralph indicated that we could invite a group of builders/developers that work in the various cities to come in and talk to the Work Group about what incentives would be valuable to them. Rud said we should ask these questions at the Building Industry Association. Bill said that we need more detail before we ask for input from the builders. It was also noted that this is a busy time of year for builders.

The Work Group reached consensus on the following:

- It is premature to determine if a market analysis should be conducted.
- The Work Group will reach out to developers/builders this fall. This may include inviting them in to a Work Group meeting and/or going to a Building Industry Association meeting.

Opportunities/Solutions for a Workable TDR Program - Preliminary draft discussion paper

The Work Group discussed “TDR Opportunity # 1 - Density Credits / In Lieu Fees.”

Staff indicated that *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs* (2012) defines density transfer charges (DTCs – also known as density transfer credits) as a program in which “. . . developers gain bonus development potential at receiving sites using a cash payment instead of TDRs. . .” *The TDR Handbook* lists advantages of DTCs, which are summarized as follows:

- Developers know the cost up front;
- Developers do not have to find and negotiate with a willing TDR seller(s);
- Local government can use the cash on their highest preservation priorities (rather than the developer choosing where to buy TDRs within the sending area);
- The cash can be utilized in an existing PDR program (and the cash may be part of local matching funds used to leverage additional federal funding);
- Simplifies administration of the program. Reduces the time and resources needed to administer the program;
- Provides similar benefits as a traditional TDR program;
- Jurisdictions avoid the potentially controversial process of designating receiving areas; and
- Jurisdictions don’t need to determine sending/receiving area ratios.

Ralph indicated that most developers would prefer a cash-in-lieu system to a traditional TDR model. Only a very small percentage would use a traditional TDR system, if there is a cash-in-lieu alternative.

The Work Group will review the preliminary draft discussion paper again at the next meeting.

Next Meeting

September 6, 2017.

Meeting Adjourned at 4:30 pm

Signed:  \_\_\_\_\_ Ralph Black, Chairperson