

December 16, 2004

A special joint meeting of the Greenwich Township Committee and the Greenwich Township Planning Board was held on the above in the Municipal Building. Doris Rayna, Chairwoman, called the meeting to order.

Adequate notice of this joint meeting of the Greenwich Township Committee and Planning Board has been given in accordance with the provisions of the Open Public Meetings Act.

Planning board members present were Jim Adams, Frank Marchetta, Steve Babula, Helio Carvalho, Ken Hoser, Brooke Waldt, Doris Rayna. David Banisch, Planner, was also present.

The chair stated that the purpose of the joint meeting is a discussion of Transfer of Development Rights Pilot Program (TDR). The presentation was turned over to David Banisch, Planner.

This has been an interesting year for land use law in New Jersey. One of the recent legislation/administrative code revisions is the Highlands Act. Greenwich Township is situated in the Highlands Region. Certain portion of the municipality are subject to mandatory development regulations that have been established in the Highlands Act, which will serve to limit development. However, the vast majority of the Township is located in the Planning Area, which is the portion of the Highlands Region within which growth will be permitted and in some cases, encouraged.

COAH adopted their third round rules and methodology. Those are the rules that guide municipal action with respect to their constitutional obligation to provide their fair share of low and moderate income housing.

There was a piece of legislation adopted and enacted, in March, which was a TDR bill. This is Statewide and the DCA has circulated an invitation to municipalities to participate in a TRD Pilot program. Prior to this act, they were only authorized in Burlington County and that was, essentially, on a trial basis. The Transfer Development Rights

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provisions are included in the Highlands act and because planning area municipalities will be designated receiving zones by the Highlands Regional council, at some point in

time, Mr. Banisch felt that it would be a good idea for the town to take a look at this opportunity to investigate whether or not Transfer development Rights program makes sense for the municipality.

Transfer Development Rights is a growth management tool. The objective behind TDR is to transfer density, or development rights, that could occur in one place and focus them into another area that may be more appropriate for growth. The program may be an opportunity for the municipality to limit overall growth in the municipality to that which is currently permitted plus the growth associated with areas of the Township that we believe may be more appropriately zoned with agricultural and natural resource protection zoning. The goals and objectives of the master plan are to retain the rural character of the township, preserving farmland and open space. The TDR program would dovetail very neatly into those goals and objectives and those land use planning objectives that the planning board has been working on as part of the Master Plan review.

The TDR pilot program is an opportunity for the municipality to evaluate itself and from what we have been told by the Office of Smart Growth, who is offering this opportunity, if after investigation that the municipality does not want to pursue TDR program the township can withdraw from the program.

There will be a Regional Plan developed by the Highlands Regional Council and for the planning area municipalities; it is going to be a voluntary program. The Regional Plan will identify areas for preservation where no growth will be permitted and preservation areas where limited growth will be permitted. The Regional Plan will also designate areas within the Planning Area where growth should be encouraged, based upon available infrastructure to support growth.

In the past, Greenwich Township has experienced court ordered growth in connection with fulfillment of its constitutional obligation to provide its fair share of affordable housing. At the present time, the township is seeking an extension of its second round substantive certification until December 2005. At that time, the township will have to submit for substantive certification of a new housing element and fair share plan all over again. One of the provisions in the administrative code rules that were adopted by COAH, under the third round, is that the township will have to submit to a Smart Growth consistency review. Smart growth could be described as a Center-based growth management strategy, which seeks to limit sprawl and cluster growth in relatively dense neighborhoods. At the same time, Smart Growth seeks to limit development in undeveloped areas and preserve farmland, open space and environmentally sensitive areas. Therefore, Substantive Certification will require that the municipality receive Plan

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Endorsement from the Office of Smart Growth within three years of receiving Substantive Certification from COAH.

For Highlands Planning Area municipalities that conform to the Highlands regional plan, Plan Endorsement may be granted without petitioning the Office of Smart Growth. That means that our local master plan is consistent with Smart Growth management. The town has three years in which this has to be done.

Section 13 of the Highlands Act states, in part, that “The council shall set a goal of identifying areas within the planning area that are appropriate for development as voluntary receiving zones that, combined together, constitute four percent of the land area of the planning area”. Mr. Banisch believes that this provision of the act could result in the designation of a TDR growth area in Greenwich Township in the Highlands Regional Plan.

COAH’s recently adopted rules requires that every municipality that receives substantive certification for the Council shall obtain initial plan endorsement from the State Planning Commission by the three-year anniversary review, within three years of December 20, 2005. A municipality that has not received initial plan endorsement may be subject to Council action, including revocation of the municipality’s substantive certification.

Mr. Banisch stated that the two plans are going to be cross accepted together. Within 60 days after adopting the regional master plan, the council shall submit the plan to the State Planning Commission for endorsement pursuant to the rules and regulations adopted by the State Planning commission. The State Planning commission review shall be limited to the planning area only. Basically what the act is saying is that the Highlands Regional Plan is going to get cross-accepted with the State Plan. This is where the two are going to become one.

The following is “what we know will happen”:

The Highlands Regional Council will adopt a regional plan that will designate TDR receiving zones.

Smart Growth principles are to be the guiding growth management principles in the Highlands Regional Plan. This plan will get cross-accepted with the State Plan.

Third round substantive certification from COAH will require Plan Endorsement. Substantive Certification may be revoked or withheld is not consistent with the SDRP.

The following is “what Mr. Banisch’s thinks will happen”:

Greenwich Township will be designated as an appropriate municipality for a TDR receiving zone in the Highlands Regional Plan. An argument can be

made in a case why it shouldn't and Mr. Banisch is perfectly prepared to advance that argument. Four percent of the planning area spread out over the entire highlands regional plan, it is going to be a scramble finding 4%. 90% is the planning area. The two compelling reasons for locating growth in some portion of Greenwich Township is, based on existing conditions, is the Wastewater Management Plan and excellent regional highway access.

In order to receive third round substantive certification, Greenwich Township may have to conform to a regional plan that would include receiving growth originating from outside of municipal boundaries.

Were Greenwich Township not to receive third round substantive certification from COAH, the township may be vulnerable to a builder's remedy lawsuit.

Mr. Marchetta asked Mr. Banisch that because of all the growth that Greenwich Township has experienced, is there a chance Greenwich could be considered a special case? Mr. Banisch stated that there is that possibility. Mr. Marchetta stated that the only reason this is being addressed is that we want to stop something worse. There may be other ways to prevent this disaster that the township is trying to prevent other than accepting this density of 5 du/acre, of which have not been explored yet. Concerns were expressed that Greenwich is sending a message out there that we are volunteering to take density. Mr. Banisch stated that the only thing the Township is volunteering now is to investigate the TDR program. This is not a commitment to accept this kind of growth. Based upon discussions with Ms. Mercer and Mr. Harrison from the Office of Smart Growth, the Township can withdraw from the process at anytime.

There are two TDR Pilot Programs that the Office of Smart Growth is offering;

1. Statewide, which includes non-Highlands Municipalities.
2. Highlands municipalities.

The Office of Smart Growth TDR Program is different from the Highlands Act TDR program. The distinctions are:

1. The Highlands TDR program will offer the municipality the following benefits if a municipality receives transfer of density from a Highlands preservation area and the average density is 5 du/acre:
  - a. Up to \$250,000 enhanced planning grant.

- b. Authorization to impose impact fees up to \$15,000.
- c. Entitlement to legal representation.
- d. Priority of capital or infrastructure programs.
- e. Technical assistance.

A Highlands TDR receiving zone may be designated prior to adoption of the Regional Plan.

2. The Office of Smart Growth TDR Program will provide \$40,000 matching grant and may provide the Township with Plan Endorsement (which is needed for Substantive Certification), prior to adoption of the Highlands Regional Plan.

David Banisch stated that if you designate a TDR receiving zone at 5 dwelling units per acre, then you get the Highlands benefits. If you don't, then you only get the \$40,000 from the Office of Smart Growth. You will get both if you zone for 5 dwelling units per acre. In that receiving zone you may include open space component, non-residential component, you can have some areas where the density exceeds 5 dwelling units per and some areas where the density is less than that. The key point is that the Township could have a good deal of flexibility in designing the TDR receiving zone.

Jim Adams stated that the difference between the pilot program we are talking about today and what will happen in the future, is with the pilot program we can set up a TDR and receive within our own district. Within Greenwich, we will send and receive in Greenwich. Mr. Marchetta stated that is what we are trying to do, but it is not 100% guaranteed.

Ms. Pasquarelli stated that even if the township was not at their 6-year review, the township would have to be doing this anyway because of all the new regulations. We do not have any guarantees that we won't be hit with something on top of what we already have. Mr. Banisch stated that he cannot offer any guarantees.

Mr. Marchetta and Ms Rayna stated that what happens when developers come and there aren't any TDR's available or nobody wants to sell their TDR's in Greenwich. Then will the courts force us to make TDR's from outside of our township? The landowners in the township have not been surveyed.

The most current build-out estimate is 421 residential dwelling units, based upon current zoning. Current zoning provides for approximately 8,000,000 square feet of nonresidential development, which would generate a municipal affordable housing growth share of 960 units. Mr. Marchetta stated that to lower that figure, in our new Master Plan, reduce commercial build-out, bringing that number down. As part of the Mater Plan update, the Planning Board is recommending rezoning some non-residentially

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zoned lands with agricultural protection zoning. This could result in approximately 1,432 acres of land being rezoned for agricultural and natural resource protection zoning. Under current R-7 zoning, this would add 200-348 dwelling units to the build out calculation. Mr. Banisch stated that for every 8,333 sq. ft., you owe COAH one (1) affordable housing unit.

Mr. Adams stated that 90% of our township is designated planning. Our Master Plan, as well as the projected one has about 90% of the area planned as PA4 and PA5, planning areas that are environmentally sensitive, etc., not designed for building. The board has addressed the County's Cross Acceptance process. We have an opportunity to negotiate and what function, at the township level, will participate in that negotiation process, so that we are assured that our goals and objectives that we built into that cross acceptance process is made part of the State plan. Mr. Banisch stated that the County will be coming to the planning board to deal with that, but the governing body has a role in it. If the governing body decides to pursue the TDR investigation, you will actually be pursuing Plan Endorsement. Plan Endorsement is where you get Substantive Certification and where everything falls together. The Office of Smart Growth TDR program may provide the Township with Plan Endorsement, which is needed for Substantive Certification.

Ms. Rayna stated that she has received phone calls and asked why the planning board did this and why does the planning board want all of these additional houses. The motion made was to file the application to become part of the pilot program with the idea that as more information came out, we might decide that this is not for Greenwich and withdraw or we may decide that this is for Greenwich and begin the process. If we do not file the application, we have already knocked down one avenue that we could have taken. The planning board spent a lot of time making sure that the township could withdraw from the process. The planning board has had so much to review, such as the State Plan, Smart Growth, TDR, Cross Acceptance, Master Plan, COAH, Wastewater Management Plan. It takes a great deal of study and then it is very difficult to see how all these pieces are going to mesh together in the future and part of it we will never know until the future arrives.

Brian Visconti stated that no one wants more homes. If we do nothing with the pilot program, how long do we have before the land is developed. Comments were developers are knocking at the door now.

Ms. Pasquarelli stated of the 5,000 acres in the planning area maybe some of those could be consumed by making a successful case that they are a critical resource area that needs protection.

Ms. Pasquarelli stated that what is being suggested is that we set up a TDR system, an intra-municipal transfer, transfers only from one part of Greenwich to another, no transfers from outside the municipality at all. Build out numbers are going to change

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because of all of the other complicated reasons. We are talking about the TDR program where areas in Greenwich would be designated sending areas, areas would be designated receiving areas. Send from Greenwich and receive by Greenwich. The potential downside is that we are creating higher density zones than we would under the current zoning. The alternative, potentially, is being forced at some time to be subject to an inter municipal transfer where we not only have build-out of what our zoning calls for, but we would be cohered somehow to take outside TDR's. We have to ask ourselves "is it worse to accept outside TDR's?"

Committeewoman Emiliani stated that when you are "applying", you are putting up a red flag and saying "here I am".

Jim Adams stated that if we go ahead and get the resources of the State, we could have a plan that is more favorable to Greenwich in our back pockets today as opposed to that coercion process in the future. Ms. Pasquarelli stated that we still don't have any guarantee that we won't be coerced later. Mr. Banish stated that what he thinks will happen, say we do nothing and in December 2005 we will submit a new housing element and fair share plan to COAH. COAH will review it and certify the township. Within 3 years we have to secure Plan Endorsement. Within that time frame, that is when the Highlands Plan becomes adopted and that is when we have to become consistent and secure that Plan Endorsement.

The Township Committee and Planning Board discussed having another joint meeting. Date to be announced.

Debbie Pasquarelli made a motion, seconded by Elaine Emiliani, to open the meeting up to the public. The vote is as follows:

IN FAVOR: Pasquarelli, Visconti, Emiliani, Marchetta.

OPPOSED: None.

Motion carried.

Walter Matuch, 22 Pine Hollow Road. If this goes through, the people living here won't be able to afford the taxes, they won't be able to afford the improved quality of live and they won't be able to afford the changes that have happened to their daily life style. This will affect community services or infrastructure. Any development in Greenwich will put a severe strain on the Board of Education and the school system. With the amount of money that the State is potentially away, Greenwich stands to lose 3 million dollars. The way of live will change. Mr. Matuch sees 48 children or more to a class, 12 months a year for school and 24 hours a day. The payment that will be received will be a one-time payment. The best way to encourage development is no development. By giving the indication that we want to become a pilot program, we are sending a message to all

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developers to come here and build. We should be fighting this with the other townships. There is no such thing as “smart growth”. Once you are in a pilot program, it is hard to get out.

Bob Vetrecin, 807 South Main Street. Agree with Mr. Matuch. We don't want to convert Greenwich into Piscataway, Middlesex, etc. He feels that Mr. Banisch's presentation was a sales pitch as to why we should support this program. The facts were presented in such a way that this is a program to support. Mr. Vetrecin doesn't support it. A program like this should be on a referendum to the whole town. We are changing the nature of the town. By volunteering for this program, the planning board is wrecking the town. To build another school will destroy the town with respect to the tax structure. Mr. Vetrecin doesn't see anything positive about this program.

Frank Marchetta stated that in defense of the planning board, they are trying to prevent something worse from happening. They are trying to do the right thing for the town.

Dawn Marie Kondas, 1911 Gary Road. Doesn't want to see any more growth in the town. As a member of the open space committee, we have done so much in the township to try and prevent the development. Ms Kondas stated that her concerns are that there are so many unknowns and can't foresee what all assumptions are going to come out to be. Spoke to Hunterdon County and several municipalities have been contacted by the Governor to participate in this Pilot Program and they all have declined. It is their understanding that the new COAH regulations and the data was not going to be delivered to them until March 2005 and then they would have a good 12 months to put the plan into place. Ms. Kondas is also concerned about being the “poster child” for this program.

Ms. Pasquarelli stated that the Highlands Council was told by the Office of Smart Growth that they have had, State wide, 15 communities sign on to the Pilot Program.

Frank Marchetta wrote a letter, dated December 15, 2004, to the Highlands Council Members, letting them know the hardship that Greenwich has been through and that Greenwich Township doesn't want to be a receiving area. Ms. Pasquarelli stated that as a member of the Highlands Council, she has a conflict and excused herself as Mr. Marchetta read the letter.

Mr. Matuch stated that he would like a copy of Mr. Marchetta's letter and feels that every resident in the township should sign the letter. It was suggested putting Mr. Marchetta's letter in the newsletter.

Jim Adams asked Mr. Banisch how do we go from 90% planning to 90% preservation. Mr. Banisch stated that the options that are available are to zone for preservation. He doesn't see the lines in the legislation being moved.

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Bob Lurig, 611 WarrenGlen Road. If we get into the Pilot Program, we have to designate certain area as high density. If we go into the Pilot Program and then the State turns around and says you don't have to worry about this because you are not one of the high-density areas. In the meantime, the township has zoned for 700 more houses. Mr. Banisch stated that he doesn't see any draft legislation to that affect or taking any provisions out of the act that would lead him to believe that is a possibility.

Steven Harth, Thomas Stewart Way. He moved into the town on June 30, 2004. There are a lot of unknowns with this program. The Highlands is being challenged so we don't know what is going to happen there. The challenge could be successful. The township should fight.

Dan Perez, South Main Street. He agrees with everyone that has spoken so far. The town has under gone some major changes with homes and businesses. It comes to a point that enough is enough and where do we stop.

Chris Whittman, 10 Hidden Acres Lane. We should proactively go after them and make a case for Greenwich to be more included in the preservation area. There was a report that stated that the carrying capacity of Route 78 is going to fail sometime around 2008. If development comes, that argument will happen sooner. Mr. Banisch stated that those conditions prevail throughout the highlands and just the existence of the highway itself is an attractive piece of infrastructure. The township should fight. TDR is an unknown.

Frank Marchetta stated that a decision on the TDR Pilot Program would be made at the next meeting.

Debbie Pasquarelli made a motion, seconded by Frank Marchetta, to close the public hearing. The vote is as follows:

IN FAVOR: Pasquarelli, Visconti, Emiliani, Marchetta.

OPPOSED: None.

Motion carried.