



State of New Jersey
DEPARTMENT OF STATE
NEW JERSEY STATE PLANNING COMMISSION
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Governor

THOMAS K. WRIGHT
Chairman

SHEILA Y. OLIVER
LT. GOVERNOR

DONNA A. RENDEIRO
Executive Director/Secretary

**New Jersey State Planning Commission
Plan Implementation Committee
Minutes of the Meeting Held on April 21, 2021
Zoom Video Conference**

CALL TO ORDER

Chairwoman Robinson called the April 21, 2021 meeting of the New Jersey Plan Implementation Committee (PIC) order at 9:32 a.m.

OPEN PUBLIC MEETINGS ACT

It was announced that notice of the date, time and place of the meeting had been given in accordance with the Open Public Meetings Act.

ROLL CALL

Members Present

County Commissioner Director Shanel Robinson, Chair, County Member
Danielle Esser, Director of Governance, NJ Economic Development Authority
Nick Angarone, Designee for Acting Commissioner Shawn LaTourette, Department of Environmental
Sean Thompson, Designee for Lt. Governor Sheila Oliver, Department of State
Susan Weber, Designee for Diane Gutierrez-Scaccetti, Commissioner, Department of Transportation

Others Present through Video conference

See Attachment A

PLEDGE OF ALLEGIANCE

Chairwoman Robinson asked everyone to recite the Pledge of Allegiance.

APPROVAL OF MINUTES

Chairwoman Robinson asked for a motion to approve the Minutes of the March 17, 2021 meeting. Danielle Esser made the motion, and it was seconded by Nick Angarone. The March 17, 2021 minutes were approved.

CHAIRWOMAN'S COMMENTS

Chairwoman Robinson welcomed everyone to the PIC meeting. She reminded everyone to fill out their financial disclosure statement by May 15th, 2021.

EXECUTIVE DIRECTOR'S REPORT

The Executive Director welcomed Brianna Keys as the new Governor's Office representative.

The Director commented that a map amendment from PSE&G to support the Wind Port inn South Jersey was received. The office is going through a completion review now, it is not anticipated that there will be any concerns and it is hoped to be on the next PIC meeting.

NEW BUSINESS

Rule Update Proposal

Chairwoman Robinson commented that this presentation will look specifically into timelines and topics, not specific language. After the presentation, the Committee will vote to move it forward to the SPC.

Chairwoman Robinson referred the presentation to Matt Blake.

This presentation can be found in the following link:

<https://nj.gov/state/planning/assets/docs/meeting-materials/pic/materials/pic-materials-4-21-2021.zip>

Director Rendeiro recognized that this is a very aggressive timeline and that the goal is to have the rules adopted by the end of this year. At this point, we do not have specific language; rather, we are looking for an agreement on the topics to be addressed. After the language is written, it will be shared with the Interagency Work Group, the PIC, the SPC and the Governor's Office for review.

The Director addressed item #4, Regional Plan Endorsement. Both the State Planning Act and the Rules encourage regional planning but there were no specific guidelines. This will address that lack of guidance.

Director Rendeiro commented that the rules have not been reviewed for almost 15 years and that the goal is to modernize them, incorporating the goals of the current administration to include climate

change and equity considerations. There is nothing controversial and that during the process if any State Agency or planning partners would want to add any other items, to feel free to let the OPA know.

Chairwoman Robinson asked for any comments or questions from the Commission members. Seeing none, Chairwoman Robinson asked for a motion to move forward the rule update proposal to the SPC. Sean Thompson made the motion and was seconded by Commissioner Esser. Chairwoman Robinson asked for a roll call vote: Yes:(5) Danielle Esser, Susan Weber, Nick Angarone, Sean Thompson, Shanel Robinson. Nays: (0). Abstains: (0). The Rule Update Proposal was approved.

Woolwich Township Transfer Development Rights Program

Chairwoman Robinson commented that these discussions began in 2008. There are some claims that there are no benefits to TDR for Woolwich. In addition, there is a lawsuit and TDR is looking for a decision to be made with regard to next steps.

Chairwoman Robinson referred to Director Rendeiro for an overview.

Director Rendeiro commented that this is a complicated issue. The Township of Woolwich was endorsed and their Center was designated in April 2008; the TDR program was part of that approval. The TDR Bank granted \$5 million in order to purchase credits. It was also required of the Township to add \$2 million (which they did) for the purchase of credits. There were two PIA's (Plan Implementation Agreement), one for TDR and the other one for general planning documents. As part of Plan Endorsement, OPA reviews the progress toward the completion on the items in the PIA in biennial reviews. In addition, the Woolwich center designation and their endorsement expire in 2021. After approaching the Town at the end of last year for their biennial review, one Township request was to eliminate the TDR program since they did not feel that the Township saw the anticipated benefits. They have been asked to be released from the obligation of the \$5 million payback which would be required.

Director Rendeiro mentioned that present are representatives from Woolwich and also Steven Bruder from the State Agriculture Development Committee who will have the opportunity to speak.

OPA became aware of a current lawsuit brought by a developer as a builder's remedy lawsuit that challenged the TDR Statute. The Township asked the State to assist in the defense and as a result, several State agencies (including the SPC), were brought into the lawsuit. That lawsuit is still on the books but has been stayed.

Director Rendeiro commented that the office has reviewed both PIA's. That there are 32 items in the general PIA in which 28 had been completed, ongoing or are on target to meet the deadline. Of the items on the TDR PIA, 14 of the 15 items have been completed.

There were several grants awarded to the Township including a possible award from the Infrastructure Trust Fund which were never dispersed. They received some funding from DVRPC (Delaware Valley Regional Planning Commission) and the State TDR bank gave them \$5 million.

There were some road improvements at the intersection of Route 322 and the NJ Turnpike, and a number of other improvements completed by NJDOT; NJDOT represents that they were not TDR

dependent. There are no remaining obligations from either the Infrastructure Bank or the DVRPC, to the best of our knowledge.

The largest grant of \$5 million was awarded by the State TDR bank to fund the purchase of credits that was supposed to be reimburse upon the extinguishment of the credits through TDR. Woolwich was required, and did, invest \$2 million investment in the reverse option but none of those credits were offered or purchased by potential developers. The Director expressed that this is the first of three major issues. The second major issue is the sewer service areas in the receiving areas that was awarded in anticipation of TDR going forward. The third major issue is the pending lawsuit; the State involvement should be dismissed with prejudice. Director Rendeiro commented that the State was brought in to assist Woolwich in defending the TDR program. She said that there were a few other minor requirements that should be incorporated going forward, should the Township continue with the Plan Endorsement process.

Director Rendeiro commented that because this is such a complicated issue, she wanted to give everyone a heads up on where everything is at this moment and ask the for their thoughts, comments and some directional thoughts offer by the PIC members, prior to a recommendation to the TDR Bank.

Once the SPC determines whether Woolrich is consistent and how we are going to move forward in any future Plan Endorsement, this information will be relayed to the TDR bank because in order for them to make a determination regarding the \$5 million obligation, they will be looking to know whether Woolwich completed their obligation and that they are committed to complete all the requirements.

Director Rendeiro commented that right now there are some items to be completed by Woolwich. These items include the Recreation and Open Space Inventory (ROSI) (after an initial discussion with the Town it's believed that there is no concern with this); the Environmental Resource Inventory that was developed with DVRPC should be adopted as part of the MP (Master Plan); and a submission of an updated and adopted Farmland Preservation Plan. If there is an agreement, there will be a request for a submission of the updated MP to reflect center-based planning and resource protection in lieu of TDR that includes these items.

Director Rendeiro suggested that all of these items could be part of an action plan or a PIA depending on when the Township can get them done.

Two of the bigger items to discuss are the lawsuit in which Woolwich has agreed to dismissed with prejudice. The discussion on the sewer service areas is the other. There are two receiving areas with sewer service areas. One is the Northern area that has had infrastructure investment and contracts in place with development opportunities for warehousing. The Director feels that the sewer area should remain, even though this is a NJDEP decision; given the investment and the potential economic growth involved there is a logical reason to keep it. The second receiving area is called Auburn Road where right now there is no development activity. It's primarily in a 25-acre clip with a fair number of environmental concerns. Director Rendeiro commented that this area is referenced in the Woolwich TDR PIA. This is the one item that has not been completed that the Township had approximately 5 years to complete development.

Director Rendeiro commented that the two additional items to discuss are the determination of what happens with the credits and the continuation of Plan Endorsement. The credits exist but they are on

paper. The Director is looking for alternatives regarding the disposition on the credits. Woolwich's Plan Endorsement and Center Designation is to expire this year but it has not been determined whether the Township wishes to pursue Endorsement to continue their Center Designation. If Woolwich pursues PE, all of the requirements as well as the new PE guidelines will need to be met. Director Rendeiro commented that the Northern Area Receiving Area are the same boundaries as a Center boundary. If they get the Center extended, Woolwich will be able to accomplish their growth goals without having it as a Receiving Area.

Director Rendeiro commented that at some point there will be a recommendation to the PIC and the SPC regarding the determination of consistency and a determination regarding moving forward with a PE with Woolwich and the State agency partners. The Center boundary will assist them regarding their economic growth, by maintaining their opportunity for warehousing and to allow termination of TDR but maintaining the TDR intent related to conservation and center-based development.

Director Rendeiro referred to Steven Karp for a presentation of the maps. This presentation can be found in the following link:

<https://nj.gov/state/planning/assets/docs/meeting-materials/pic/materials/pic-materials-4-21-2021.zip>

Nick Angarone from NJDEP commented that the existence of TDR in Plan Endorsement has an impact but that before any decisions are made there will be additional evaluation of the site.

John C. Gillespie, Special TDR Counsel for the Township of Woolwich commented that anyone familiar with the TDR program knows that it is a very difficult program. Chesterfield Township in Burlington County is the only one that successfully implemented TDR under the original statute back in 1986. Woolwich was never successful, there were great efforts as the Director referenced in her comments about the \$7 million dollars spent in the reverse auction, \$5 million from the state TDR and \$2 million from the Township. That was not early on and not part of initial PE process and was in 2016. After eight years into the program with not a single TDR credit had not been transferred.

One of the problems with Woolwich is that the opportunities for farmland preservation that didn't need TDR were very plentiful. Chesterfield decided not to go with the traditional farmland preservation because TDR wants to eliminate public funding of farmland preservation. TDR was intended to have farmland preservation funded primarily through developers to make payments to farmers for credits that have some value.

Under the statute that Woolwich operates is that within the 5-year review and in effort to trying salvage TDR, Woolwich and the State came with the idea of this reverse auction where they would buy the credits with the \$7 million dollars. Equalized value of the credits was approximately \$24 to \$25 thousand dollars per credit, but those credits just sit there. It was the opposite of the intent; it was still publicly funded. There were no private dollars spent.

Mr. Gillespie commented that since 2016 Woolwich has been struggling to make this work and that developers are not interested. After 5 years and with the \$7 million investment, respectfully, it is not going to be able to reignite it today. The best course is to find some another means by which to achieve some semblance of what was intended to preserve farmland.

As far as the sewer service area, I appreciate the recognition that, at least for the 322 corridor, elimination of that sewer service area would do harm, not only to Woolwich and its commitments, but Harrison to the east of Woolwich, which will be serviced by this sewer service area.

Steven Bruder from the State Agriculture Development Committee commented that the TDR bank did not look at this until a request from Woolwich to the SPC. There was a reversed auction in 2016 to help promote the program following the 2008 market crash and that as his understanding there is a wastewater solution to serve the receiving area.

Director Rendeiro commented that the request to unwind TDR is complicated, that the office is not ready for a recommendation. She will be looking for comments from the Committee members in order to help make that recommendation. A recommendation may head toward continuing the PE process in order for them to get their Center redesignated in the area. The Center designation will cover the Northern receiving area. This will allow the Town to work on their economic development potential.

The Southern Auburn Road Receiving Area is more of a complicated discussion and will continue to be addressed in the near future. Some of the items to be included into the future PE will be acceptable alternatives to ensure that the goals of TDR - conservation and center based development - are maintained with the other items previously discussed.

Chairwoman Robinson asked for any comments or questions from the Committee members.

Commissioner Esser asked if the TDR has been not able to be implemented because of the market. Director Rendeiro commented that partially because of the market but also because there were other alternatives for conservation that were less difficult. The property owners went through the path of less resistance.

Commissioner Esser asked in reference to the \$5 million, what is the Commission's involvement or legal concerns?

Director Rendeiro commented that TDR bank need to make a determination on whether to relieve Woolwich from that obligation. The \$5 million was meant to be repaid upon the sale of those credits. The credits were not sold. That leaves an obligation of the Township to repay that money unless TDR bank relieve them from that obligation. The TDR bank is not willing to look into that until the SPC determines whether or not the Township is consistent and is meeting the spirit of TDR. Our concern is to determine how they are going to preserve property and how they are going to do center-based development. The Director added that she does not believe it's the SPC responsibility because is not Commission's money.

Steven Bruder commented that the request was made to the SPC and that the \$5 million is an agreement between the State TDR Bank Board and the Township. There are certain provisions that required the retention of the credits that were purchased through the auction; it was not intended to be a permanent preservation of these properties without that money either being sold to developer or returned to the State TDR bank.

Commissioner Esser asked if the Attorney General Office is aware of this issue. Director Rendeiro commented that she had a conversation in reference to the legal action and that they are a number of State agencies involved.

Commissioner Esser asked about what the Commission needs to be focusing on. Director Rendeiro responded that the Commission should be focusing on their consistency, the actions that have happened, so that at some point the SPC can determine whether or not they are consistent and have complied with the requirements of the PIA and the sewer service area which is under NJDEP's review.

Commissioner Esser requested a document with more specific explanation of the issue for a better understanding. Director Rendeiro offered to provide a clear document with a specific explanation on what TDR is and a discussion of the credits.

Sean Thompson from NJDCA asked if the SPC has a jurisdiction over the credits. Director Rendeiro responded that she did not believe that the SPC has a jurisdiction over the credits. She also offered to put together a joint plan of action.

Nick Angarone asked about the status of the receiving area. NJDEP has a concern about the Southern receiving area due to a protective habitat which is included in the sewer service area presumably because of PE and TDR and because there is being some development. Mr. Angarone also asked about the status of the sending areas. This is just an intent to get some information and not to make any policy statement or a decision from the department. Director Rendeiro commented that as Mr. Gillespie mentioned there are 3,000 acres that have been preserved, 817 were the result of the reverse auction.

The Director commented that she's not sure of the total amount of acres to be intended to be preserved or the location and that she'll look into that information.

ADJOURNMENT

With no further comments from the Commission or the public, Chairwoman Robinson asked for a motion to adjourn. The motion was made by Nick Angarone and seconded by Sean Thompson. All were in favor. The meeting was adjourned at 10:49 a.m.

ATTACHMENT A

**NEW JERSEY STATE PLANNING COMMISSION
PLAN IMPLEMENTATION COMMITTEE**

ATTENDEES

DATE: APRIL 21, 2021

Walter Lane – Planning Director, Somerset County
Jonathan Sternesky – NJHMFA
Matt Baumgardner – NJDEP
Mark Villinger - Lakewood
Jelena Lasko - NJDOT
Jason Kasler -
Andrew Gold -
Leah Furey Bruder - PP, AICP
Brianna Keys - Policy Advisor, Office of the Governor
John Gillespie - Law Firm-Parker McCay P.A. - Woolwich
Steven Bruder - PP AICP - NJ Dept. Of AG
A. Soriano -
B. Kyle Holder -