



May 22, 2013

RE: Transfer of Development Ordinance

Dear Stafford County Planning Commissioners,

Despite claims to the contrary, in reality the Transfer of Development Rights (TDR) ordinance passed by the Stafford Board of Supervisors does very little to protect Crow's Nest. You are in a unique position to change that. Because the Board passed a motion without sending you a specific ordinance, you have broad latitude to amend the TDR ordinance. The only mandate in the Board's motion appears to be that the boundaries of the current sending area shall not shrink.

Issues with the Current Ordinance

Under the current ordinance, only a portion of the Crow's Nest Harbour lots are eligible for TDR. The TDR ordinance does not contain a single provision providing incentives for or guarantees that land placed in the TDR program will become part of the Crow's Nest Natural Area Preserve. The legislation does not even provide for public access to land placed in the TDR program. Not only that, the legislation allows uses such as logging, commercial campgrounds, and construction of buildings up to 6,000 square feet.

Not only does the current ordinance fail to protect much of the remaining acreage on Crow's Nest, it is fundamentally unfair to individual lot owners in Crow's Nest Harbour. Because of the "common ownership" requirements in the TDR ordinance, only some lots in the Harbour owned by corporations will be eligible for TDR.

As currently constructed, the TDR ordinance could also cost Stafford County taxpayers up to \$30 million in lost revenues. The Courthouse receiving area currently has A-1 and R-1 properties, both of which call for single family dwelling units, so presumably a development right for those land uses is equal to at least the County's cash proffer guideline amount of \$43,101 per unit. Since the Board cannot collect those proffers on units built using transferred development rights, 688 development rights coming from the sending area equate to \$29.7 million in lost cash proffer revenue. In the alternative, property owners can chose to take a property tax waiver (a tax "abatement") in the amount equal to the value of the development right, equating to a similar loss in property tax revenue.

Solutions

First, we support the following recommendations made by the Northern Virginia Conservation Trust (NVCT) regarding the Transfer of Development Rights (TDR) ordinance:

- Create two different types of sending areas, with separate criteria for a public park sending area and an agricultural, forestry and horticultural sending area;

- Restore the provision that allocates at least one development right for each lot in existence as of the passage of the amended ordinance and designated as park land in the Comprehensive Plan;
- Specify that the sole residual use for land in the public park sending area is public park use;
- Remove the requirement for common ownership of contiguous lots as of the effective date to meet the twenty acre requirement; and
- Eliminate the tax abatement, at least for park land lots.

Second, regarding the creation of two different types of sending areas, we recommend that the existing boundaries of the sending area be maintained, and divided into two types of sending areas, with different types of requirements:

- A park sending area consisting of the entire Crow's Nest peninsula (bordered by Brooke Rd and Accokeek Creek to the north; Brooke Rd to the east; and Potomac creek to the south); and
- An agricultural, horticultural and forestry sending area, consisting of the remaining area in the current sending area, bounded by Accokeek Creek and Brooke Rd to the south and Aquia Creek to the north.

To facilitate discussion, we have attached for your consideration potential language regarding the requirements for the two different types of sending areas.

Third, in order to minimize the burden of potentially lost revenues from property taxes and proffers, we recommend the following:

- Eliminate the tax abatement provision in its entirety;
- Add B-3, Office, to the eligible properties in the receiving area in order to encourage use of TDRs for commercial development;
- Prioritize commercial conversion of TDRs by minimizing eligible residential land uses in the receiving areas, specifically:
 - Eliminate A-1 agricultural properties in the receiving area;
 - Reduce the maximum increased density for TDRs for R-1 properties (currently increased from 1.5 du/acre by-right to 14 du/acre with TDR);
 - Exclude from consideration addition of R-4, Manufactured Home, to eligible properties in the receiving area; and
 - Exclude from consideration the addition of multi-family dwellings to the B-3 land use in the receiving area; and
- Require that sending properties in the agricultural sending area (vs. park sending area) have been in land use for a minimum of ten years (to minimize loss tax revenue producing properties).

Finally, we recommend that the TDR program be phased in, with an immediate implementation date for the park sending area, and a later implementation date for the agricultural sending area. This will minimize the impact of any unforeseen consequences of the TDR legislation by allowing time for amendments to the ordinance prior to implementation of the agricultural sending area.

When properly implemented, TDRs protect sensitive areas from development while moving development to more appropriate areas with adequate infrastructure. The Board has provided you with the discretion to make sure the TDR ordinance does just that. Please do so by amending the ordinance as recommended by Save Crow's Nest, the Northern Virginia Conversation Trust, and property owners on the Crow's Nest peninsula.

Thank you for your consideration.

Cecelia Kirkman, for
Save Crow's Nest

Copy: Jeff Harvey, Director of Planning and Zoning
1 Attachment

Attachment A, Proposed Language for Sending Area Requirements

Sec. 28-357. – Sending properties.

- (a) For the purposes of this Article, a sending property must be an entire tax map parcel or lot that complies with all requirements of this Article. Sending areas shall be limited to those areas designated as sending areas on the map entitled, “Transfer of Development Rights (TDR) Sending and Receiving Areas,” in the Comprehensive Plan, zoned A-1 (Agricultural) or A-2 (Rural Residential).
- (b) Sending areas shall be designated as solely one of the following types:
- (1) a park sending area for the purposes of establishing or expanding publicly owned parks; or
 - (2) an agricultural, horticultural and forest sending area, for the purpose of maintaining existing agricultural, horticultural or forest lands of significant value.
- (c) In order for a property in a park sending area to qualify as a sending property eligible for a transfer of development rights, such property shall be:
- (1) Designated for
 - (a) park land use in the Comprehensive Plan; or
 - (b) share a minimum 500 foot common property line with a publicly owned park or a property designated for park land use in the Comprehensive Plan; or
 - (c) contiguous parcels in which at least one of the parcels shares a minimum 500 foot common property line with a public park or property designated for park land use in the Comprehensive Plan;
 - (2) Located in areas designated as park sending areas on the Map entitled “Transfer of Development Rights (TDR) Sending and Receiving Areas” in the Comprehensive Plan;
 - (3) Zoned A-1 (Agricultural) or A-2 (Rural Residential); and
 - (4) A separate parcel or contiguous parcels (i) comprised of at least twenty (20) acres, or (ii) designated as Park on the Land Use Map in the Comprehensive Plan, comprised of at least two (2) acres, and in existence on the effective date of this Article XX (Transfer of Development Rights).
 - (5) Inclusive of all properties within the sending area under common or related entity ownership.
- (d) In order for a property in an agricultural, horticultural or forestry sending area to qualify as a sending property eligible for a transfer of development rights, such property shall be:
- (1) Located in areas designated as agricultural, horticultural or forestry sending areas on the Map entitled “Transfer of Development Rights (TDR) Sending and Receiving Areas” in the Comprehensive Plan;
 - (2) Zoned A-1 (Agricultural) or A-2 (Rural Residential); and
 - (3) A separate parcel comprised of at least fifty (50) acres, and
 - (4) Have been enrolled in the Stafford County land use program for a minimum of ten years.

Sec. 28-360. – Transfer of development rights sending property development limitations.

(d) Unless otherwise specified in this Article XX, the severance of development rights from an agricultural, horticultural or forestry sending property shall not deprive the owner of such sending property of the right to use that portion of the property from which development rights have been severed for any (i) agricultural uses; and (ii) forestal uses with reforestation plans; provided that such uses were permitted by right on the sending property prior to the transfer of such development rights. Any buildings or structures that exist on a sending property at the time development rights are severed shall be allowed to remain to support any such existing agricultural and forestal uses. If the sending property is 50 acres or greater in size, then new buildings and structures comprising up to a cumulative total of 6,000 square feet shall be allowed to be constructed on that sending property to support any such existing agricultural and forestal uses. No new buildings or building space shall be allowed on sending properties less than 20 acres in size. Any building constructed as a lawful nonconforming use under the provisions of this Article XX shall not count against the allowance of up to 6,000 cumulative square feet for new buildings on any such sending property 50 acres or greater in size.

(e) The sole residual use in the park sending area shall be public park use. Unless otherwise specified in this Article XX, the severance of development rights from a park sending property shall not deprive the owner of such sending property of the right to use that portion of the property from which development rights have been severed for public parks, public campgrounds and related public camping facilities, provided that such uses were permitted by right on the sending property prior to the transfer of such development rights. Any buildings or structures that exist on a sending property at the time development rights are severed shall be allowed to remain to support any such existing public park, public campground, and related public camping facilities. If the park sending property is 20 acres or greater in size, then new buildings and structures comprising up to a cumulative total of 2,000 square feet shall be allowed to be constructed on that park sending property to support any such existing public park, public campground, and related public camping facilities. No new buildings shall be allowed on park sending properties less than 20 acres in size. Any building constructed as a lawful nonconforming use under the provisions of this Article XX shall not count against the allowance of up to 2,000 cumulative square feet for new buildings on any such sending property 20 acres or greater in size. For purposes of this section, the term “campgrounds” does not include any use by travel trailers, motor homes, and similar vehicular type structures. Any newly constructed campgrounds, related camping facilities, park buildings and structures, and related light emitting devices, shall not be visible from the property line.