

Brian T Stern
Tolend Rd
Dover, New Hampshire

May 28, 2024

To the Planning Board, Planning Department, and all other bodies that this proposal may be considered by as part of the approval process.

Regarding: TDR Site Development Plan, "Ambrose Woods"

My name is Brian Stern. I own 45 acres across Tolend Rd from the Ambrose property.

I remember when the rules for transfer of development rights were being proposed and written. This was a novel approach. The purpose was to push development from the rural areas to the city core. This was to protect rural areas from residential development and to create or vibrant downtown with residential premises. There was a trend against residential development. This was not just to as to the location of residential development, but to slow down and restrict residential development generally.

When the certified mail of this proposal came to me, I thought something must be wrong. So, I read current regulations for the transfer of development rights. It reads exactly as I remembered as to its purpose.

170-27.2. TRANSFER OF DEVELOPMENT RIGHTS.

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*B. Purpose and Intent. Within the City of Dover there are certain lands that possess significant conservation features, including but not limited to unsuitable development areas, groundwater recharge zones, forested areas, wildlife habitat, farmland, scenic viewsheds, historic landmarks, and **linkages** to other such areas. Because of their unique assemblages of flora and fauna and their significant contribution to the **ecological system** and/or the **cultural identity of our community**, these lands are worthy of special protection. The City of Dover furthermore, has a limited supply of land suitable for development. The purpose of this overriding district is to **promote intensive development on the developable land possessing the least conservation value and to permanently protect lands possessing significant conservation features that provide unique values in their undisturbed condition.***

The justification or basis of authority for the rules is: to protect environmentally sensitive areas. The entire scheme is to move development from environmentally important areas to areas of least conservation value. Not just environmentally sensitive areas: the rules talk about linkage of environmental areas and ecological systems.

Additionally, the Rules governing overriding districts specifically provide that:

170-7. Establishment of Districts.

*(4) Overriding districts. The purpose of the overriding districts is to provide **an additional layer of land use regulation or protection in certain sensitive areas** of the City.... Most of the districts are intended to protect environmentally sensitive areas.*

So you have the overall purpose of overriding districts to protect the environment and the rules governing the transfer of development rights written specifically for the protection of land possessing the most significant conservation features towards developmental lands with the least conservation value.

There are some others who are going to speak to the high conservation value of this property. I want to say something personal about this property, I've known Rick and Donna Ambrose. We frequently talked of the work we were both doing on improving our woodlots, improving our brushy habitats and open space. We shared an interest in tackling non-native invasive species. The conservation value is more than just what's on paper. Rick shared with me his wildlife sightings, including moose multiple times indicating more than just a random event on this property, bear multiple times, all of the deer, turkeys and birds, as well as importantly, creating habitat for New England Cottontail. As much as my property across the street is unbelievably unique, he has more indication of New England cottontail activity on his property than I do. As a matter of fact, this was a property of interest to the Open Lands Committee. This property fits the criteria of the Open Lands Committee as to having environmentally sensitive and worthy features and being adjoining to other conservation easements.

Allow me to just plainly state that this parcel is of high environmental value, and linked with others ecological systems of the area. This project fails for this reason alone.

The transfer of development rights has such limited applicability, that it is not available as a right, but only with permission, to be granted solely with the discretion of the planning board. Section C states:

*C. Applicability. Upon request by an APPLICANT for development approval and at the **discretion of the PLANNING BOARD**, the provisions of this **subsection may apply** ...*

That TDR is not available to matter of right is stated twice in this one sentence. Approval of TDR is discretionary and in the use of the word "may." The rules "may apply"; it does not say shall apply. Accordingly, granting the right to transfer development rights is completely at the discretion of the Planning Board and non-appealable.

The code explicitly acknowledges the effort of the Open Lands Committee. Section (B) reads:

Additionally, it is recognized that the City of Dover has an Open Lands Committee and Conservation Commission who are active in protecting and preserving OPEN SPACE.

The open land committee was at the time a new governmental body. I was chairman of the Open Lands Committee during these formative years. The catchphrase was that conservation pays. Taxes from residential properties do not cover their costs to the City. The push was towards commercial and industrial development and limit residential growth. This is significant because there may be some inclination to try to reinterpret and fit the transfer of development rights, with the intent behind them when they written, into a different sentiment today- to expand residential growth. This would be improper. The rules must continue to be read and interpreted in the context of restricting residential development in the rural areas, as was the purpose and intent of legislation.

It is worthwhile to know that no use of the TDR provisions, in the manner being attempted here, has ever ever before been attempted. The applicant cannot be coming before you with confidence in obtaining the right to transfer development rights. This is significant for the Board to not think it would be negotiating some great sacrifice or compromise for the developer to simply go back to a standard open space subdivision.

If all this isn't enough, this project is not even in the receiving area.

The regulations state:

*D(2) The RECEIVING AREA is defined to be all **nonR-40 or R-20 zoning districts east of the Spaulding Turnpike** which allow residential development*

a. If the units created are purchased, the receiving area may be any zoning district that allows residential development.

The receiving districts have two requirements, that it be in a non-R-40 or R-20 District and be East of the Spaulding Turnpike. When purchasing the transfer of development rights, the restriction to non-R-40 or R-20 Districts is lifted. Section (a) did not remove the restriction to a receiving area being East of the Turnpike, to anywhere in the City. Section (a) remains a subsection of section (2) and does not stand on its own; and cannot on its own eliminate the main provision limiting receiving areas to East of the Turnpike. If the drafters of the regulations wanted to lift this restriction, they knew how to do that. If there is any ambiguity or dispute in the interpretation of this: it must be resolved in favor of the intent and purpose of the TDR program to move development from rural areas to the core and to protect environmentally worthwhile areas.

There is another attempt at an extreme application of the Zoning Rules. I always thought the allowance for Accessory Dwelling Unit was for the occasional homeowner, not a wholesale development. This application would create numerous ADU on this one parcel. This is an attempt by a developer to simply double the density of units allowed and exceed all other aspects of the zoning rules. It is certainly an attempt to take advantage of the provisions, distort them and create as high a density as possible- as high a density as possible without regard to anything else.

When you look at the residential performance standards and the calculation of the yield, it is a bit complicated. I see both the restrictions of the open space subdivision regulations, and the restrictions of the transfer development regulations, both being imposed as a double overlay. I do not see how the wetlands in this project can be used to benefit this development. There is also a conditional use permit required for the impact of 5000 ft.² of wetlands. This is an addition to the wetlands impact the developer caused on his adjoining parcel. This project would create a thoroughfare from Littleworth Road to Tolend Rd. The traffic impact will be from any of all development happening on the Ambrose property, along with all of the homes currently served from Littleworth Road, and anyone else who cares to drive through in either direction. This traffic will impact Tolend Rd, Littleworth Rd and property owners in this new development. The sight line on Tolend Rd., Westerly is horrendous.

If this somehow proceeds, I respectfully request that the planning board take a look at the annual cost per acre that has been calculated as the price to purchase development rights. This developer is proposing payment of \$15,000 per acre. This sounds low. You know the story about statistics, so I would like this calculation verified and the document supporting this calculation to be part of this record. If this developer would be willing to sell this area for \$15,000 per acre I will buy it and I'm sure the Conservation Commission and Open Lands Committee would evaluate this.

I want to finish with a look at the character of the area. This is not an idle exercise or an ideal wish of the community.

The final section of the legislation section 8 that states,

G. Residential Performance Standards.

(8) Regardless of the method utilized, any other provision in this Chapter to the contrary, the density or intensity of development of a receiving parcel may be increased by the TRANSFER OF DEVELOPMENT RIGHTS so long as the increase in density or intensity:

(b) Is not incompatible with the land uses on neighboring LOTS

I submit to you that this proposed project fails as being incompatible with the neighboring lots. The great thing about the volunteer boards of the City of Dover is how well you all know the community. You know the feeling as you cross the Turnpike and head out Tolend Rd. As to the neighboring lots, I have 44 acres of which the vast majority is under a conservation easement owned by the City of Dover and is of high environmental value. The house and 6 acres I sold to Ken and Leslie Herd is also partially under the same conservation easement and is also an active agricultural area. They can tell you more. Adjoining me Westerly is the Willows subdivision with a large amount of conservation land. Easterly is 20 acres with four houses, restricted so that nothing more will ever be developed. Adjoining the Ambrose property to the East is the Paradis property, of I think 60 acres. It is an active farm, with no development, also under some conservation easement. The Ambrose property, with 54 acres, is a single

home that nobody ever expected to see developed. While the full length of Tolend Rd, is of rural character, within the Tolend Rd corridor, this is a unique and special piece. It must be taken in the context of this large continuous block of minimal development.

The Ambrose property is in the R-40 District. The Zoning Rules District Purpose statement reads:

B. District purpose statements.

*(1) Residential districts. The residential districts are intended to provide a wide range of residential units to provide the citizens of Dover with a balance of housing choices, with varying housing types, densities and costs. The goal is to preserve and create City neighborhoods that are safe and **promote harmonious development**.*

(a) Rural Residential District (R-40). The purpose of this residential district is to provide for conventional single-family neighborhoods in the more rural areas of the City. These areas have larger lot sizes (one or more acres)

The wide range of residential units with a balance of housing choices occurs across different zones, not within a zone. And the rural residential R- 40 is to provide for conventional single-family neighborhoods in the more rural setting. The proposed type of development is not for this area.

Accordingly, this property fails to qualify for TDR under the prohibition when incompatible with the neighboring land uses. It fails for not being in the receiving district East of the Turnpike. It fails because it would be contrary to the intent to protect environmentally sensitive areas. It fails because it is concentrating development in the rural areas intended to be protected and for traditional single family homes on large lots. TDR are for specific and limited purposes; only when it fits the intention and design behind the regulations.

I respectfully request that if you are inclined towards considering a TDR for this property, that you require a full ecological assessment of this property and this property in the context of the ecological systems and linkages it is part of.

Thank you for the opportunity to present my input on this matter and your consideration of my thoughts on this.

With best regards,

Brian T Stern