

### **Accessing Farm Equity**

Agriculture is the leading industry in the State and in Queen Anne's County (QAC). Agriculture's continued viability in QAC is increasingly threatened by rural residential sprawl encouraged by the County's existing rural residential zoning programs.

It has been convincingly demonstrated to persons with an open mind that down zoning the agricultural lands to a density of 1/25 acres, with no exceptions, has little initial effect on farmland values for parcels greater than 100 acres and no effect when considering the long term.<sup>1</sup> A majority of those that seek a solution to rural sprawl in our County's countryside recognize this and appreciate the certainty that adoption of real agricultural protective zoning will bring to rural land use planning.

However, a vocal component of the farm community believes that an essential prerequisite for politically acceptable reform requires developing a program to allow farm owners to access a small portion of their land equity without selling the entire farm. Also, there are those who believe without a program of this kind that the county is taking "equity rights" from the farm without just compensation. While I subscribe to the first need (incremental access to limited portions of land equity value) I do not subscribe to the "taking" assertion.

Nevertheless, it is probable that a politically successful approach for the comprehensive plan must be based upon the two following principles:

- 1) The multiple rural development techniques now available need to be consolidated into a single minor subdivision development program based upon an agricultural protective density of 1/25, without exceptions.
- 2) Farm owners who believe that this zoning will devalue the equity they hold in their properties based upon the current zoning density of 1/8, should have a method of incrementally accessing the value of that equity.

Both sides in this contentious debate agree that thoughtfully designed residential and mixed-use neighborhoods concentrated in and around existing towns and villages is the solution to the County's moderate growth that will benefit all.

A mechanism to access farm equity has, to date, focused on the creation of a Transfer of Development Rights (TDR) program that requires growth in some or all of the towns and villages to achieve all the intended parcel density by acquiring TDRs to be transferred from the rural countryside. This TDR solution has several shortcomings that are discussed below. A preferable

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<sup>1</sup> Based on Fitz Turner's study comparing farmland sales in Kent and Queen Anne's County over a ten-year period.

alternative is to expand and make more robust the Purchase of Development Rights (PDR) program adopted by Ordinance 08-16 on August 5, 2008 and is functioning today.<sup>2</sup> As footnote 2 indicates the existing PDR program may already be achieving what the proponents of TDR hope to accomplish, permitting farm families to access needed portions of their land equity. If that proves to be the case in the coming years, the Impact assessment may be substantially reduced from the \$1.00 per sq ft proposed here. The material that follows compares and contrasts these two alternatives.

*Citizen Support:*

Many surveys and citizen comments during the visioning exercises for the 2010 Comprehensive Plan all suggested strong citizen support for rural and agriculture preservation and favors compact, town-like development pattern infilling and extending the pattern of the county's existing towns and villages. Rural residential AND commercial sprawl growth patterns along our highways and scattered throughout the countryside are what citizens are asking their leaders to avoid!

*Potential application:*

The major difference in the two approaches is that the TDR approach must have both a "sending" and a "receiving" area. A PDR program needs only "sending" properties because development rights are extinguished after they are acquired. Furthermore, it is unnecessary to execute joint planning agreements with the municipalities, or to modify annexation agreements with growth area landowners to guarantee TDR purchases, as will be required for a workable TDR program. (This is and untested and a serious impediment to the implementation of a TDR program.)

*Financing:*

Both alternatives seek to support rural preservation using County residential development activities as the source of funds. This expansion of the PDR ordinance proposes to create a "conservation" impact fee that is in addition to school, fire / EMS services, and parks and recreation fees that are currently assessed on a per sq. ft. basis in both the unincorporated areas of the County **and** in the municipalities.<sup>3</sup> The County collects the impact fee for building permits in both the towns and unincorporated county areas so they are in control of the funds throughout the process.<sup>4</sup> The timing of the collection of this fee is advantageous because it can be deferred until a certificate of occupancy is issued. This permits borrowing to support the fee to take place when the homeowner acquires permanent financing for the home and is not a

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<sup>2</sup> Since adoption in 2008 a portion of recordation fees collected when property changes hands or is refinanced has funded the PDR Program. The tax rate \$4.95 per \$500 assessed value is apportioned \$3.30 recordation, \$1.00 PDR program, \$0.50 new courthouse and \$0.15 workforce housing. In FY 09 and FY 10 (two slow recordation years) \$1,211,303 was raised for the PDR program and used to purchase and retire development rights from the Frizz-King and Emerson properties. At that average, the program can be expected to acquire and retire approximately 60 development rights per year (EQUAL TO THE AVERAGE NCD TRANSFERS PER YEAR FOR THE 4 YEAR PERIOD 2003-2006).

<sup>3</sup> The current assessment is \$3.21/sq ft for schools, \$0.37/sq ft for Fire and EMS service, and \$0.35 for parks and recreation = \$3.93/sq ft. — or \$10,218 for an average 2,600 sq ft home.

<sup>4</sup> See § 18:3-7B

financial burden to the developer/builder. (See Chapter 18: amended 5/8/2007 by Ord. No. 06-108).

Alternately or in combination, a small bond issue retired by county property tax revenue could provide some of the capital for the program. This advantageously spreads some of the cost of rural preservation across all property owners.

Sources of Funding:

Both TDR and PDR programs are proposed to be supported by development activities in the incorporated and unincorporated areas of the County. The TDR Proposal requires a development right purchase prior to or concurrent with lot subdivision and recordation. The land developer must “front” the money for the TDR purchase months, if not years, prior to securing a homebuyer with access to permanent mortgage financing. In contrast, the PDR program acquisitions are not linked to land development and can occur using the large current inventory of unimproved lots<sup>5</sup> at any time funding is available and there are willing sellers.

Potential Application Area (Receiving Area):

The feasibility study for a new TDR program is struggling to identify sufficiently large receiving area(s) to accommodate the number of potential transfers that are associated with existing unencumbered farm acreage.<sup>6</sup> This criteria is potentially fatal to the TDR concept for a number of reasons:

- 1) Current projections advanced by the planning staff assume a mandatory 3.5 units/acre in the growth areas ALL requiring a TDR purchase. Landowners in the planning area may be unwilling to commit to that level of investment ~ (3.5 x \$12,000=\$42,000/acre) in land they already own and plan to sell at a windfall price.
- 2) The TDR Concept assumes that most if not all of the planning area around the municipality it surrounds will be annexed into the town under joint county/town planning agreements that will require the purchase of TDRs (in exchange for county funding to support town infrastructure). Neither of these critical assumptions have been verified and shown to be feasible. Two recent Sudlersville annexations (BDC and the Schulz property, 300 or more acres) made no accommodation for the future implementation of this concept.
- 3) There is great debate about how much capacity and at what rate it must become available to demonstrate the viability of the concept. This won't be resolved easily.

In sharp contrast, the impact-fee-funded PDR concept, with or without supplementation using a bond issue, has the potential to provide a continuing source of funds<sup>7</sup> to purchase at least 80

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<sup>5</sup> Estimated by *Citizens Alliance to Save Our County* in 2006 to be nearly 4,300 lots.

<sup>6</sup> Estimated to be approximately 100,000 acres, that supports 12,500 rights. Some of those rights will be associated with other programs (MALPF, minor subdivision and retention). The planning department estimates that 5,266 rights remain unallocated. (60day draft, page 1-19.

<sup>7</sup> At 370 building permits/year (average over the period 2001 to date (Trends and Indicators Report p.9)), 2,600 sq. ft. per average building permit, and a fee of \$1 per sq. ft. will generate \$962,000 per year, sufficient to purchase 80 development rights @ \$12,000/right. This will increase the total impact fee from \$3.93 /sq. ft. to \$4.93/sq. ft., an approximately 25% or \$2,600/home increase— far less than the \$12-15,000 that a TDR is likely to cost.

rights per year comfortably 33% above the rate of NCD transfers (60) in the most robust recent years.<sup>8</sup> Residential permits issued countywide since 2001 have averaged 370 units per year even including some after-the-bubble-burst years.<sup>9</sup> There is a tremendous inventory of buildable and “may-soon-be buildable” lots in the County so the PDR concept is not significantly affected by the slowdown in lot creation due to APF and Market constraints. (See footnote 5).

*Sharing the Benefit— Sharing the Burden*

Clearly the majority of County residents want the County’s rural agricultural/forestry/maritime economy and the historic pattern of small towns and villages to be preserved and nurtured. As all will benefit from the wisdom of creating this future, it is appropriate that the widest possible constituency shares the burden of accomplishing it.

*Ease of Implementation*

A workable PDR Ordinance (Ord. 08-16) already exists, requiring only minor revision to accommodate this concept. No joint planning agreements or special annexation provisions are needed.

*Continuity:*

The PDR solution has the advantage of being able to continue indefinitely, unlike the TDR solution that may exhaust the allocated receiving area capacity.

*Recommended insertion locations*

- A) *Modify>Element 1.0>Goal 1>Objective 2>Recommendation 2*
- B) *Eliminate> Element 1.0>Goal 1>Objective 3>Recommendation 1*
- C) *Modify>Element 3.0>Goal 1. Objective 1>Recommendations 4, 5*
- D) *Modify>Element 5.0>Goal 2>Objective 1>Recommendation 2*

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<sup>8</sup> The average volume of NCD transfers for 2003-2006 was 60 rights (Queen Anne’s Conservation recorded plat research, May 2007)

<sup>9</sup> QAC Trends and Indicators Report, 2009 Table 4 & p. 9