

## **Notes on the Boulder Co. TDR Valuation Report (Clarion Associates, Nov. 27, 2007)**

As Clarion indicates, the “Clearinghouse” or some such mechanism to track and register the origin and disposition of TDRs (Transferable Development Rights) and TDCs (Transferable Development Credits) is very desirable, if not essential. It also should be responsible for the existing TDR program.

The new program, as currently proposed, lacks any provision for transfer of building rights as such; thus Clarion's recommendation to use only the term “TDCs” makes a lot of sense. This would also avoid confusion between this new proposal and the county's existing TDR program.

Most of the Report's conclusions depend mainly upon assumptions about Boulder County's involvement in the program, through regulations and their interpretations, and through its Open Space program. This will be discussed in some detail below.

### **Potential Demand for TDCs**

This appears to be based entirely upon input from the county's Land Use Dept. which assumes that new-house construction will continue at about 120 units/yr. (trending downward slightly during the next ten years) and that the percentages of these houses large enough to require purchase of TDCs will remain constant. Additions to existing houses and additional outbuildings are assumed to add minimally to the demand for TDCs. The county's current proposals cast major doubt upon this input:

1. The major justification for this entire regulatory exercise has been concern expressed over the number of “large” houses recently constructed in rural Boulder County. Assuming continuation at same rate of construction does not seem consistent with mitigating this concern.
2. The currently proposed “presumption” of 125% of median house size in the “applicable neighborhood” as the limit on new house size would be a major obstacle to new, “large” houses being constructed. Few, if any, areas of the county have existing housing stock for which such a calculation will yield a maximum allowable house size in excess of the “thresholds” currently proposed (6500 sq. ft. plains/foothills, 4500 sq. ft. mountains). Given the current regulatory process, the best guess is that just about every “large” house in the future would have to be individually approved by the Board of County Commissioners via appeal of a negative SPR (Site Plan Review) determination – if the currently proposed modification to the SPR criteria is adopted. It is very doubtful that such approvals would approach the numbers assumed in Clarion's analysis (i.e., building new, “large” houses at the current rate).

The demand for TDCs assumed by the Land Use Dept. and Clarion thus appears to be very high – assuming that the currently proposed regulations are adopted.

### **Potential Supply of TDCs**

The major source of TDCs in Clarion's analysis is assumed to be vacant parcels. Many, or most, of the larger vacant parcels in rural Boulder County are now owned by city or county Open Space programs, or other governmental entities, or are already covered by conservation easements, or have some other major impediment to construction of a single-family house. It is not clear which, if any, of these properties have been excluded from Clarion's analysis.

On a purely economic basis, Clarion's analysis indicates that little or no incentive will exist for private sales of TDCs from vacant land which preclude any future development. At best such sales would yield \$120,000 per parcel on the plains/foothills and \$30,000 per parcel in the mountains (assumptions: private sale, TDCs available per Table 1, valuations the maximums shown in Table 13). These numbers are quite low when compared with the recent land values supplied in Ellen Flannelly's

letter. However, a private sale could recover a substantial portion of the expense of buffering an existing house from potential neighbors by purchase of adjoining property, and so the proposed TDC program might become an effective means of subsidizing such “private Open Space”.

In addition, many TDCs could be supplied if future purchases of public Open Space parcels are allowed to generate TDCs. This appears to be implicit in Table 1 which allocates two additional TDCs for each sale to the county. Since generation of TDRs has been a feature of county Open Space purchases under the current TDR program for some years now, a similar policy for TDCs would be consistent. Unfortunately, Clarion's analysis does not appear to have considered involvement of the various governments' Open Space acquisition programs in their analysis.

The potential supply and timing of TDCs from parcels with existing housing is highly speculative, as Clarion notes. As indicated by Ellen Flannelly's letter, a substantial penalty for house-size limitations exists on larger lots (greater than five acres), so TDCs from parcels with existing houses can be expected to come mainly from smaller parcels.

To summarize, TDCs from private transactions involving vacant lands don't appear to make much economic sense unless they serve to buffer an existing house, TDCs spun off through Open Space purchases would probably dominate the supply (as has been increasingly the case for some time in the current TDR program), with TDCs involving existing houses an uncertain wild card.

### **Balance of Supply and Demand and Estimated TDC Value**

Given the uncertainties noted above, balance of supply with demand and valuation are difficult to impossible to evaluate at present. A major difficulty is the number of “large” houses the county will allow, and where these houses are to be located (i.e., where are the “TDC receiving sites” and how many will there be?).

Other questions regarding whether previously approved TDR subdivisions, and various other pre-existing situations, will be subject to these proposed regulations have been raised and are as yet unanswered. These may have significant effects upon TDC demand and valuations, at least initially. These do not appear to have been considered in Clarion's Report.

And the supply of TDCs could become much larger if sales of TDCs from previously purchased Open Space parcels are allowed. This possibility still seems to exist.

### **Summary and Conclusions**

While the analysis and Report both appear reasonable based upon the data available to Clarion, many critically important facets, which are perhaps unique to Boulder County, do not appear to have been supplied to Clarion. These, of course, affect the validity of their conclusions.

The input from the Land Use Dept. to Clarion implies that a political decision has been made to allow “large” house construction in rural Boulder County to continue at approximately its recent rate -- if it provides a substantial subsidy to public and private Open Space purchases. What remains most unclear is where these new, “large” houses will be located, and the process(es) which would be used to make these location decisions. It appears that these would be made on a case-by-case basis, with the presumption that a “large” house would not be allowed unless some convincing argument could be made in favor of a “large” house. This would negatively impact the market value of many rural properties since that valuation is based mainly upon their development potential. The magnitude of this impact should have been one of the items evaluated by Clarion's Report; unfortunately that apparently wasn't included in their scope of work.

While it is unlikely that this Report provides much in the way of useful economic information, it may serve a useful purpose if it stimulates clarification and serious thought concerning just what is being proposed, and what the proposed regulations are supposed to accomplish. It remains to be seen if this will actually happen.

Dick Schillawski, December 5, 2007