MINUTES OF THE CHURCHILL COUNTY PLANNING COMMISSION

155 N. Taylor St., Fallon, NV 89406
October 24, 2023

The audio recording file failed to record the beginning of the meeting due to a mechanical failure. The mechanical failure was subsequently corrected. The record should reflect that a good faith effort to comply with the provisions of subsections 4 and 5 of NRS 241.035 were made, but the county was prevented from doing so because of factors beyond the county's reasonable control, including, without limitation, a power outage, a mechanical failure, or other unforeseen event, and such failure does not constitute a violation of the provisions of this statute.

1. Call to Order:

The workshop meeting of the Planning Commission was called to order at 6:34 p.m. on October 24, 2023 by Chair Eric Blakey.

Present: Eric Blakey, Chair; Jeff Goings, Member; Deanna Diehl, Member
Absent: Scott Nelson, Vice Chair; Zack Bunyard, Member; Mark Hyde, Member; and Paul Picotte, Member.

Planning Staff Present:
Chris Spross, Public Works Director
Dean Patterson, Senior Planner
Alexa Robinson, Office Specialist
Diane Moyle, Administrative Assistant

District Attorney Staff Present:
Joseph Sanford, Deputy D.A.

2. Consideration and possible action re: Approval of Agenda as submitted or revised:

Chair Blakey stated there would be no motion to approve the agenda as this was a discussion without decision.

3. Discussion Item

A. Consideration and no action re: Potential changes to regulations and implementation of the Transfer of Development Rights (Churchill County Code 16.14)

Chris Spross, Planning Director, introduced the meeting stating that it was held at the bequest of a member of the sending site committee who unfortunately was unable to attend. The requesting member happened to also be one of the very few private parties who owned their Transfer of Development Rights (TDRs) rather than the county, Mr. Spross was unsure of the depth the discussion would get into without the input of the requesting member. Mr. Spross also summarized what he believed was the intention behind the request for the meeting, which was to discuss the current program, how it's working, and how it differs from a traditional program where typically there is a sending and receiving site prior to execution of the development rights. He stated that it is his understanding, though he was not with the county when the program was developed, that the reason the TDR program is set up the way it is with the county owning so many development rights was to use it as a mechanism to either incentivize or discourage growth in the future. Mr. Spross went on to state that at the moment there was no chance to use the program as an incentive, as there was no new development interest in the county.

Dean Patterson, Senior Planner, explained the theory behind the TDR program which was a market-based system where developers could approach farmers to purchase development rights from them and the county wouldn't really get involved. However, possibly due to the recession, nobody really needed them and so the county came up with the Navy program or began to utilize the existing Navy program to gather TDRs where they Navy paid varying amounts, between 50%-90% and currently it is at 75%, and then the county got all of the TDRs. This resulted in a stockpile somewhere in the range of 12,000 TDRs, a number so large that it will be difficult to think of ways to use them and recoup their cost.

Diane Moyle, Administrative Assistant, added that there are about 200 TDRs that were negotiated to be privately owned by the landowners.

Mr. Spross explained that the number of TDRs does not directly correlate to the amount of potential development, that 12,000 TDRs does not necessarily mean that a developer would be able to build 12,000 units. He further explained that a TDR is used by a developer to either eliminate or reduce the amount of open space required for a subdivision or planned unit development project. For example, if the base density for a subdivision is 200 and someone wanted to increase that density by 10 percent by reducing the amount of open space required then they would purchase 20 TDRs. The number of TDRs that can be used in this way is such a small fraction that it could be the equivalent of something like 40,000 units. So, the 12,000 TDRs owned by the county translates to much more than just 12,000 units for development. The creates the other problem of how long it would take the county to eventually use up all of the 12,000 TDRs currently in its possession. He then addressed the sending site committee for confirmation of the large number of TDRs exchanged in the program. He stated that recently for a single application they received 222 TDRs for the land they put in a conservation easement. That amount alone could build a couple subdivisions and the county has so many people wanting to participate in the program that there could be no end in sight. The program was a novel idea to preserve the agriculture community and the county does want to conserve their agricultural land but there is currently no way to use the large amass of TDRs. Mr. Spross speculated whether it may or may not be the right time to possibly think about changing the TDR program. He stated that any adjustments made to the program would need to be approved by the Board of County Commissioners. He proposed that the purpose of the meeting being held was to have a discussion about the possibility of making changes to the program and what those changes might entail.

Mr. Patterson reiterated that there is a large number of TDRs generated with the applications submitted to the Sending Site Committee. Normally when a home site is developed you would take a farm and split it into home sites, in the A-10 zoning district for example, one home per 10 acres can be built. However, with the TDR program there is a complicated and generous conversion that happens which gives much larger numbers of TDRs. Mr. Patterson had done some research on older applications and recalled one application receiving 1.3 TDRs per acre. Meaning that site had 1 TDR per less than an acre rather than one home site per 10 acres or 5 acres as permitted. As Mr. Spross pointed out, one farm could theoretically generate enough TDRs for a subdivision that fulfills years' worth of development needs.

Jeff Goings, Planning Commission, asked if the 75% and 25% cost split was between the Navy and Churchill County. It was confirmed that this was true. Mr. Goings then asked if the Navy retained any of the TDRs. Mr. Patterson responded that the county is receiving all of the TDRs from this program. Mr. Goings clarified that the funding was split 75% to 25% but that the Navy did not retain any of the TDRs. Mr. Patterson confirmed that the Navy was not interested in obtaining TDRs. Diane Moyle, Administrative Assistant, explained that the Navy was interested in stopping any development on those parcels while the County was interested in keeping the water in the area. Mr. Patterson described the Navy's side of the program as a land rights purchase program, as in they pay the farmer for their development rights. For example, normally when doing a conservation easement if there was someone like The Nature Conservancy wants to do a conservation easement then they would just pay the farmer and that would complete the transaction without development rights getting involved. However, somehow the two have become intertwined so now the farmer is getting the money for the purchase of the development rights but is also generating the TDRs that never get used. Dean added that in a market driven system the farmer would sell his development rights using the TDR program and he would get approved and then hold them for an amount and there would be no payment, he would just see if there was a developer on the market who would like to purchase them.

Deanna Diehl, Planning Commissioner, inquired as to whether or not the program was developed to create a sound barrier around the base. Mr. Patterson agreed that was part of the intention of the program. He then elaborated that even without the TDR program the navy would probably still be buying conservation easements to stop development in their flight path and sound barrier. Mrs. Moyle clarified that the Navy was using the TDR program to help them accomplish their goals. She added that the Navy is actually putting a restrictive use easement on these applications that restricts the uses such as not allowing tall towers and dust control.

Carla Pomeroy, Sending Site Committee, asked how they go about finding a price for these. For example, if she were a developer and came to the county asking what a fair market price would be, how would the county determine that? Mr. Patterson replied that the amount was completely dependent on the negotiations between the farm owner and the developer. Ms. Pomeroy clarified that she was asking specifically for when a developer wants to buy the TDRs from the county. Mr. Spross explained that prices are market driven and at the current time there was no market. It is also a problem for the private owners who maintained their TDRs and who now have an asset but cannot value that asset. TDRs are only worth whatever someone is willing to pay for them. There has been talk about how to develop a market value for TDRs. They have debated using accessory dwelling units on an individual's property and making it a condition to purchase a TDR. Or if someone wants to build a second permanent dwelling on their property then they would buy a TDR. They would still need a way to determine what to charge for the TDRs. Because there is no market for them right now, they currently have no value. The county has a large number of TDRs, but they aren't worth anything right now. When they created the R3 zoning that opened the door for someone to rezone a property and get a higher density by contributing a community benefit back to the county. Mr. Spross speculated that at that time the county may have benefited from adding a clause that allowed them to forgo that community space and have the developer purchase TDRs instead. Currently, there is no mechanism in place that would help determine the value of the TDRs.

Ms. Pomeroy asked if the TDRs become worth something, and the county sells to a developer, what does the county plan to do with the money they receive for the TDRs. Joeseph Sanford, Deputy District Attorney, replied that since there is no specific description associated with the TDRs then the amount paid for them would be placed in the general fund. He further explained that from his recollection that the TDR program itself was developed while looking at what was being done in Douglas County. He added that for the program the market needed to have a demand to build, and a restriction placed on it such as Mr. Spross's example of purchasing a TDR to build a second dwelling. That way, in order to build, the TDRs would have to be purchased. This was used as a way to control development in areas where it was not desired or could be overbuilt if left to the market without some form of government control. This is not currently an issue in Churchill County, we desire growth and so we do not want to put barriers on that growth which is why TDRs are not needed at this time.

Mr. Goings then asked if the TDRs are marketed in any way to encourage their use. He suggested that the county advertise the TDRs to potential developers. Mr. Sanford replied that because they are used as a barrier for development Churchill County does not market them because they want to encourage development at this time. To create a market for the TDRs, Churchill County would have to put an artificial barrier on development that states the developer could not build without TDRs. This would increase the cost to build in the county and discourage development. He referenced Mr. Spross's example of the R3 zoning which requires a community benefit such as a park or a firehouse. There may be places where a developer would strongly desire to build, but through either planning or zoning we limit the developers who can build. If there were ten developers who wanted to build at a location and the county only wanted two of those developers to be able to build, the county could use something like a TDR and its purchase price to say whichever developers buy the TDRs have the right to build. At this moment, due to a lack of interest from developers, we don't want to add deterrents. Mr. Goings asked if the TDRs could be used more as an incentive. He used the example of the R3 where we require the community benefit, could the county market the TDRs as a less expensive way to increase density and get around having to build that community establishment. Mr. Spross replied that currently they have only had one developer who rezoned to R3, when the R3 regulations were designed TDRs weren't part of the discussion. The county's position on their TDRs is that they have 12,000 TDRs and they are fine with that because they know at some point in time, they will need them if the growth comes. However, the obstacle they face is that there are private parties out there who own TDRs but they cannot value those TDRs because there is no value without a market.

Mr. Patterson added that there will never be a market as long as no one needs to buy them and there is no requirement from the county to buy them in the code. He mentioned that there was some talk about changing the code to require them for accessory dwelling or second permanent dwelling, but they only get between one and ten applications for those in a year. While this is better than nothing, in no way is it going to reach the 12,000 and it does not solve the problem of how to value them. He also brought up the point that if somebody wanted to rezone and they wanted to increase their density, for example, from E-1 zoning to R3 zoning then TDRs could be used as previously mentioned to increase density at a lower cost than adding community benefits and this would result in a much larger use of the TDRs. The only place in the code that mentions TDRs is the planned unit development section that says someone can purchase TDRs but there is no calculation for how to figure out how many TDRs are needed to reduce the open space requirement or any other condition for increasing density. They had one developer who talked about doing that but there was no way of figuring out the numbers.

Mrs. Moyle commented that the reason why the county began collecting the TDRs was in the hopes that someday they could recoup the cost of paying their percentage for the conservation easements with the Navy. Mr. Spross speculated that a formula could probably be generated for calculating how many TDRs should be purchased for a development. It could be as straightforward as they need to purchase however many TDRs that would be equivalent to the number of units the developer would gain from the density increase.

Mr. Goings brought up that not all TDRs are valued the same because the TDR price would be based on the appraisal. Mrs. Moyle corrected that the TDRs do not have anything to do with the appraisal for the conservation easement and are not assigned a value from that. The TDRs are part of a calculation within the program and are independent of the appraisal. Mr. Sanford clarified that the cost to the county for the conservation easement may vary depending on the appraisal, but it is not fixed to or related to the TDRs. Mr. Spross added that appraisals are also based on market value and subject to change.

Mr. Ghetto, Sending Site Committee, added that TDRs are a separate standalone mathematical calculation that is not influenced by the appraisal value for the conservation easements with the Navy. He asked if the county has considerably more TDRs than a private owner would have and so is there a worry in the future that the county will be competing against these private owners. Mr. Ghetto also added that the TDRs were started in order to replenish their wallet for the county's contribution so far. He then asked that since the county has 12,000 does anyone know how much the county has paid so far from the start and can that be divided amongst the 12,000. He wondered if the TDRs have no value, then would it be prudent to cancel the program and start from scratch.

Mr. Spross replied that the County Manager's Office would have records of the money contributed to the program. He added that he isn't sure that just using the county's cost to value the TDRs was valid since the Navy had also contributed funds to the program.

Mr. Ghetto asked what the consequences would be of just doing away with the TDR program. Mr. Spross responded that before that could be decided, every private party that owned TDRs would need to be involved in the discussion. The people who hold the TDRs feel as though they own an asset, they just don't know what the asset is worth. He explained that yanking the program and starting from scratch could be difficult because there are private owners. Mr. Patterson agreed that the county would have to come up with some way to mitigate the private owners. This may involve releasing their conservation easement so they could then turn around and enter the Navy's purchase program. Mrs. Moyle added that the private owners already received money from the Navy for their conservation easement in addition to the TDRs.

Mr. Ghetto asked how difficult it would be to calculate the total amount that has been purchased for the conversation easements and divide it by the 12,000 TDRs the county owns. Mr. Spross replied that the calculation would be pretty straight forward, but it would not be a true representation of the value of the TDRs because there is no demand for them. Mr. Sanford further added that he would caution the county against attributing a specific value to the TDRs when they already pay for the conservation easements themselves and then acquire the TDRs. Giving a value to the TDRs makes them an asset and it would start to look like we weren't paying for that asset when we are instead paying for the conservation easement. The value from the creation of the conservation only applies to the conservation easement and not the TDRs.

Mr. Goings responded that a private owner could go into the public record and find what was paid for the conservation easements and divide that by the number of TDRs owned by the county to come up with a baseline. Mr. Patterson said that while they could do that, all it would give them would be a starting negotiating point with potential developers. However, since nobody wants or needs the TDRs there isn't much of a point to the TDR program at the moment. Churchill County also does not want it to cost more to build here so how much does the county want to continue with a TDR program. Mr. Spross explained that a private citizen probably wouldn't care as much what the county paid for the conservation easement, they would more than likely wish to focus on what both the county and the Navy paid to get their starting negotiation number. Mr. Goings reiterated that the private owners are looking for a value for their TDRs, and maybe that is something that can be determined at this meeting. Perhaps private owners will have to find out on their own what their TDRs are worth. Mr. Patterson stated that it was an interesting point to have the farmers directly negotiate with the developers, it did bring up the problem of the 12,000 owned by the county. There could be a possible solution in that as long as there are private TDRs then the county won't sell theirs and this could potentially eat up the privately owned TDRs. Mr. Spross added that one of the reason the program was set up to either allow for growth or check growth and the county cannot do that if developers are negotiating for privately owned TDRs. For this reason, he would caution against scrapping the TDR program and eliminating the county's TDRs while the private owners keep their TDRs. This scenario could potentially lead to the county losing control over new developments.

Mrs. Moyle said that this is the most successful are that the Navy has had this program in the whole of the United States and it does protect their interests to keep the development down. She added that this is the program that they can use so that they don't have to buy property and get involved in the real estate industry. She suggested that maybe the county look into the calculation that produces the TDRs to reduce the number allotted from each application.

Eric Blakey, Planning Commission Chair, asked what was the reason for allowing the private owners to retain their TDRs. Mrs. Moyle replied that it was a negotiating tactic used under Brad Getch. Mr. Sanford suggested that the appropriate way to consider whether there is a desire or a need for evaluation would be if the program continued as it currently is, the farmer could take less money and keep some portion of TDRs and that would tell you what the value actually is of the TDRs. Mr. Sanford said he suspected that, at this current point in time, no person entering the program is going to take less money to keep TDRs and that gives them their current value. Mr. Blakey asked if it was viable for the county to go to the property owners to buy the TDRs from them so that there wouldn't be any privately owned TDRs floating out there. That was it could be used as a development control tactic as it was intended. Mr. Spross replied without a market it would be really difficult to determine an amount to offer the private owners to purchase their TDRs. It would be in the county's best interest to have them all, but he doubted that the county would be prepared to buy them.

Mrs. Moyle stated that there were only 229 privately owned TDRs and explained that the reason they were privately owned was because it occurred during a time when people did not like their appraised value and so to add to the deal they were allowed to keep some portion of the TDRs on top of the appraisal value for the conservation easement. Mr. Blakey asked if it was required to give the property owner the option to keep TDRs to which Mrs. Moyle replied that was never a requirement and the county manager does not offer that anymore.

Mr. Patterson added that when the Navy negotiates with a property owner for a conservation easement it is only for the conservation easement, and he was unsure why the TDRs got tied to that program. Mrs. Moyle responded that there were about four parties who went through the program with the Navy and those TDRs were extinguished and do not exist anymore. She speculated that possibly the only reason the programs got tied together was to possibly recoup some of the cost of the conservation easements. She stated the Navy was only interested in the restrictive use easement and used the county's conservation easement to facilitate that.

Mr. Goings stated that there have been appraisals that have been done that were for the full value or if someone decided to keep the building spot. Mrs. Moyle clarified that his particular appraisal included the options for with and without a home site and this did not equate to keeping

TDRs. Mr. Sanford further clarified that the difference is that if you have a property that is under conservation easement with a home site then a home can be built on that conserved property. Whereas, with a TDR, even if you owned it, you would not be allowed to build on that conserved property. Mr. Goings added that he understands that they are talking about something that has no value, however, it would seem that there is a need to value it. He stated that a building site would have TDRs associated with it. Mrs. Moyle clarified that unless water rights were being removed to reduce the TDR calculation, then having a building site would not affect the number or values of the TDRs. Mr. Patterson further explained that it was another way a private party could examine the situation to arrive at a starting negotiating number.

Mr. Getto stated that there was a chart that was filled out that calculated the TDRs and suggested that the multipliers on the chart be re-evaluated. This could possibly slow down the massive generation of TDRs. This would not affect the existing TDRs, but would slow future TDR growth. MR. Spross agreed that future generation of TDRs did need to be curbed. He then expressed some concern over the private parties that own TDRs, however, he does not see how Mr. Getto's suggestion would impact those already existing TDRs and so this was something that he and Mr. Patterson had looked into. Mr. Getto stated that he believed they could get the support of the private owners as decreasing the quantity of TDRs could potentially increase the value of the TDRs they had. Mr. Spross agreed with that statement. Mr. Getto also mentioned that this was a good start while the county considered whether or not to do away with the program all together or freeze its operations for a certain time period. He asked if adjusting the calculations was something that could be done internally or required a public forum. Mr. Sanford affirmed that changes to the TDR calculations would need to go before the board of Count Commissioners. He further explained that since it was part of the County Code it would need to be done through a code amendment which would go to the Planning Commission first and then the Board of County Commissioners. He is unaware of any interest from the Navy and since it would be only for TDR calculations going forward, then it would not affect any historical owners either.

Mr. Blakey recommended that the Planning Commission and the Sending Site Committee should both be allowed to review the calculation progress to see if it still applies to the current TDR process or if it needs to be changed. Mr. Spross agreed and informed the Chair that the Planning Commission had the authority to request staff to review where the calculations came from or look at other municipalities and see how they perform their calculations. If some changes were then decided upon, then they could be brought before the Planning Commission and ultimately a code change brought before the County Commissioners. Mr. Blakey said that he would like to see that reviewed and for staff to get some input from other counties to see if any changes would be beneficial. Mr. Getto agreed with the idea to review the calculations. He stated that he had been there from the beginning and even when he started that calculation sheet already existed. Mrs. Moyle stated that it could have been Ernie Schank and John Mincer who was part of the original group who set up the calculations. Mr. Spross also mentioned that looking into Churchill County's historical files would more than likely offer limited information on how the TDRs were calculated and the proposed approach would be more effective.

Mr. Getto spoke how the success of Churchill County's TDR program was linked to the Navy Base wanting to do conservation easements and that this might not be the case in other counties and so our numbers will look different. Mr. Goings once again remarked that TDRs were also tied to the conservation easements to which Mr. Getto replied that the conservation easements were tied to the appraisal. The Navy, however, only wants conservation easements that say the owners are not going to develop the property. Meanwhile the county has a separate formula that says because development is no longer permitted in that area then "X" number of TDRs will be generated for future use when the county needs them. Mr. Patterson further clarified that when it comes to the process for the Navy is to approach the landowner and offer them money based on an appraisal to secure a conservation easement on their property. If the program was marketable then there would be developers approaching the landowners to get the development rights. It's not normally both, but somehow Churchill County has both going at the same time. Mr. Patterson would recommend that the Navy has their conservation easement program at the base and the county handle the market driven TDR program. Mr. Getto added that the county has become like a middleman because the base doesn't care if there's a TDR program or not. Mr. Patterson and Mr. Getto agreed that the county should still be involved with the conservation easement program but that it should be separated from the TDR program.

Mr. Getto brought up the point that by separating the programs then the landowner could chose whether or not they wanted to go down the Navy program route with the conservation easements or down the TDR program route with future developers. Mr. Patterson replied that the Navy has a limited area surrounding the Navy base, however the TDR program could be applicable to a much broader area. Mrs. Moyle added that the Navy is getting a break on how much they pay for conservation easements because the county is paying for part of that cost. So, it is beneficial for the base to continue to work with the county on the conservation easement program.

A second meeting was tentatively scheduled for possibly February or March. Mr. Blakey would like to allow time for staff to gather the discussed information and provide it to the Planning Commission prior to the meeting so as to possibly generate more ideas and to encourage more members to come to the next meeting. Mr. Sanfor summarized the information requested for the next meeting which included the history and the process for the creation of the TDR formula sheet used by the sending site committee, the total cost for the Navy and the County to date for TDRs as well as the exact number of TDRs issued, and the potential annual use in the county if a program was adopted to use TDRs for accessory dwellings and things of that nature. Mr. Patterson mentioned that the TDR program is mentioned in the master plan as an item with which something needs to be done or fixed and so these meetings would be a step toward completing that item in the master plan which is set to be reviewed next year.

4. Adjournment:

Chair Blakey thanked everyone for coming to participate. There were no further comments or questions, so he adjourned the meeting at 7:41 p.m.

Approved: ______________________
Eric Blakey, Chair

Approved: ______________________
Scott Nelson, Vice Chair

Approved: ______________________________
Zack Bunyard, Commissioner

Approved: NOT AVAILABLE
Deanna Diehl, Commissioner

Approved: ______________________________
Jeff Goings, Commissioner

Approved: NOT IN ATTENDANCE
R. Mark Hyde, Commissioner

Approved: ______________________________
Paul Picotte, Commissioner

ATTEST:

Alexa Robinson
Office Specialist