



**DRAFT MINUTES**  
Legal Affairs Committee  
April 11, 2013  
Agency Meeting  
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**Legal Affairs Committee  
April 11, 2013**

The Committee convened at 3:10 p.m.

**Committee Members Present:**

Cecil Wray, Committee Chairman, Richard Booth, Sherman Craig and Frank Mezzano.

Not Present: Patrick Hooker

**Other Members or Designees Present:**

Lani Ulrich (Agency Chairwoman), Arthur Lussi, William Thomas, William Valentino, and Robert Stegemann (DEC)

**Agency Staff Present:**

James Townsend, Sarah Reynolds, Keith McKeever, Mary Palmer, Dan Kelleher, Jennifer McAleese, Rick Weber, Robyn Burgess and Brian Grisi.

**Others Present:**

Frederick Monroe (Executive Director, Local Government Review Board)

Cecil Wray, Committee Chair called the meeting to order.

Sarah Reynolds and James Townsend gave their presentation - An Overview of the Transfer of Development Rights and Procedural Bill (attached).

Sarah Reynolds explained the proposed changes to Section 809 of the APA Act. Ms. Reynolds highlighted the existing problem with section 809(7)(a) of the statute, which states that an issued permit "shall expire" unless filed in the local county clerk's office within 60 days, as sometimes a landowner does not file within the 60 days, or may at times never file. If the landowner then undertakes the project without the permit being filed the activity on the property is illegal.

Robert Stegemann asked if that issue would come up in a title search.

Ms. Reynolds stated that each County Clerk's office does it a little bit differently.

James Townsend added that the process varies by counties and by practitioners. It is not a true title objection, so it may not get picked up. In a technical title search well-advised practitioners do go to the APA permit registry to check. He pointed out that in the past 10 years the standard of searching the APA permit registry has improved.

Frank Mezzano asked generally whether someone doing a title search would think to come to the Agency and ask if we have had any involvement on the piece of property.

Ms. Reynolds said that it definitely does not happen with every property but sometimes does, and those questions would go through to the Jurisdictional Office.

Richard Booth asked if the language in the draft bill creates confusion between the 60 day statutory provision and the "in existence provision".

Ms. Reynolds explained that the reason for filing is to get the permits to a county clerk's office to serve as notice of permit requirements on a property. The reason for the "in existence" provision in the statute is to ensure that a permit does not remain valid forever without being implemented.

Chairwoman Ulrich added that she thinks Mr. Booth's point is another idea to put into the mix of what may go into a draft preamble.

In relation to the transfer of development rights portion of the bill, Mr. Booth cautioned about eliminating the language addressing the historical misconception that one landowner could use another's density allowance. He also stated that in issuing permits allowing the movement of principal building "rights" from one land use area to another the Agency must pay close attention to where the increased development would take place. Mr. Booth said the Agency should give due consideration to impacts.

Mr. Booth asked how the density calculation would be made on a lot with two principal buildings and only enough acreage for one?

Ms. Reynolds replied that the second principal building would not be counted when applying the overall intensity guidelines in the receiving land use area portion of the project site, but would be accounted for on the overall project site by the reduction of one principal building allocation from the giving land use area portion of the site.

Fred Monroe noted that a town can move density with a map amendment. The transfer of development rights provision would allow for the movement of density in more cases without having to go through the map amendment.

Ms. Reynolds reminded that these transfers can only occur within a municipality and cannot cross town lines. Additionally, they can only occur pursuant to a permit, and would have to come through the Agency and go through an environmental review.

Chairwoman Ulrich commented that one piece that came out of the March Stakeholder's meeting was that this bill would encourage greater smart growth development within the park and greater protection for lands, and would encourage greater clustering within the park.

Mr. Townsend assured the Board that he has been in touch with the Governor's Counsel and offered to go to Albany to meet with Legislators to go through the same discussion.

**Adjournment:** The Committee adjourned at 4:07 p.m.

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Attachment