P U B L I C H E A R I N G

before

ASSEMBLY ENERGY AND NATURAL RESOURCES COMMITTEE

ASSEMBLY BILL 2622

(The "Transfer of Development Rights Act")

and

ASSEMBLY BILL 2992

(The "Transfer of Development Rights Demonstration Act")

November 21, 1986
Burlington County Office Building
Freeholders' Meeting Room
Mount Holly, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblywoman Maureen Ogden, Chairwoman
Assemblyman Robert C. Shinn, Jr.

ALSO PRESENT:

Norman Miller
Office of Legislative Services
Aide, Assembly Energy and
Natural Resources Committee

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Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
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Trenton, New Jersey 08625

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J. MARTIN
airman
R. ALBOHN
AS R. FELICE
D. SHINN, JR.
Y S. MARSELLA
d S. Naples

New Jersey State Legislature
ASSEMBLY ENERGY AND
NATURAL RESOURCES COMMITTEE
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
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November 14, 1986

NOTICE OF A PUBLIC HEARING

The Assembly Energy and Natural Resources Committee will hold a public hearing on Friday, November 21, 1986, beginning at 10:00 A.M. in the Burlington County Office Building, Freeholder's Meeting Room, 49 Rancocas Road, Mt. Holly, New Jersey.

The purpose of this hearing is to take testimony pertaining to Assembly Bill No. 2622, sponsored by Assemblyman Shinn, and Assembly Bill No. 2992, sponsored by Assemblyman Bocchini, both concerning transfer development rights.

Anyone wishing to testify at the hearing should contact Norman Miller, Committee Aide, at (609) 292-7676.

ASSEMBLY, No. 2992

STATE OF NEW JERSEY

INTRODUCED JULY 10, 1986

By Assemblymen BOCCHINI and MARSELLA

AN ACT concerning the protection of land resources through the transfer of development potential and supplementing P. L. 1983, c. 32 (C. 4:1C–11 et seq.).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known, and may be cited, as the "Transfer of Development Rights Demonstration Act".

2. The Legislature finds and declares that the approval of the "Farmland Preservation Bond Act of 1981, P. L. 1981, c. 276, and the subsequent enactment of the "Right to Farm Act," P. L. 1983, c. 31 and the "Agriculture Retention and Development Act," P. L. 1983, c. 32 demonstrates the continuation of a longstanding commitment by the citizens and government of the State to the preservation and enhancement of the agricultural industry; that the process of perserving agricultural land as well as providing the most conducive climate to farm production through these enactments has benefited all the citizens of the State; that the public purchase of development easements has successfully reduced the development pressure and maintained agriculture in strategically located areas; that the resources do not exist for public purchase of all of the development potential of agricultural land without harnessing the dynamic forces of the private market; that rather than retire the development potential through the purchase of development easements, this potential could be realized in areas suited to more intense use of the land; that the transfer of this development potential remains,

in many respects, an innovative but experimental process of land use management; and that a demonstration of the feasibility of transferring the development potential from one parcel of land to another for the purpose of preserving agricultural land utilizing a private market but supervised by the State Agriculture Development Committee is necessary before providing general authority to municipalities to enact transfer of development rights ordinances.

3. As used in this act:

"Development potential" means the maximum number of dwelling units or square feet of nonresidential floor area that could be constructed on a specified lot or in a specified zone under the master plan and zoning ordinance in effect on the date of the adoption of the development transfer ordinance.

"Development transfer" means the conveyance of development potential, or the permission for development, from one or more lots to one or more other lots by deed, easement, or other means as authorized by ordinance;

"Instruments" means the easement, credit, or other deed restriction used to record a development transfer;

"Receiving zone" means an area designated in the master plan and zoning ordinance, adopted pursuant to the provisions of P. L. 1975, c. 291 (C. 40:55D–1 et seq.), within which development is to be increased, and which is otherwise consistent with the provisions of section 6 of this act;

"Sending zone" means an area designated in the master plan and zoning ordinance, adopted pursuant to the provisions of P. L. 1975, c. 291 (C. 40:55D–1 et seq.), within which development is to be prohibited or restricted and which is otherwise consistent with the provisions of section 6 of this act;

4. The State Agriculture Development Committee shall, within 180 days of the effective date of this act and pursuant to the "Administrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B–1 et seq.), adopt rules and regulations establishing a development transfer demonstration program. These regulations shall include:

a. Procedures for the identification of market conditions conducive to the transfer of development potential from sending zones to receiving zones within a municipality;

b. Procedures for the identification of the agricultural conditions necessary to justify the transfer of development potential from sending zones to receiving zones;

c. Procedures for the review and approval of municipal development transfer ordinances and master plans.

5. a. The governing body of any municipality may, by ordinance, provide for development transfer within its jurisdiction. Prior to adopting such an ordinance, the planning board shall include in the master plan for the municipality the following:

(1) An analysis of the anticipated population and economic growth for the succeeding 10 years;

(2) The identification and description of all prospective sending and receiving zones; and,

(3) An estimate of the development potential of the prospective sending and receiving zones.

b. Prior to the adoption of changes to the master plan to provide for development transfer, the planning board shall submit the proposed changes, with the analysis supporting these changes, to the county planning board for review and comment, which comments shall be included in the record by the municipal planning board.

6. a. Prior to adoption of the development transfer ordinance, the planning board of the municipality shall submit the ordinance concurrently to the State Agriculture Development Committee for review and approval and to the County Agriculture Development Board of the county wherein the municipality is located.

b. The committee shall review the development transfer ordinance against the following criteria:

(1) Consistency with the agricultural development area and the adopted master plan of the county;

(2) Support of regional objectives for agricultural land preservation;

(3) Consistency with reasonable population and economic forecasts for the county;

(4) Adequacy of present or proposed infrastructure for concentrated growth;

(5) Sufficiency of the receiving zone to accommodate the development potential that may be transferred from sending zones;

(6) Conformance with the provisions and procedures of this act.

d. The comments of the committee shall be submitted to the municipal planning board within 60 days of submittal of the proposed development transfer ordinance by the municipal planning board to the committee and shall be included in the record consolidated by the municipal governing body prior to final adoption of the development transfer ordinance.

e. If the development transfer ordinance satisfies the criteria in subsection c. of this section and otherwise comports with the purposes of this act, the committee shall approve the ordinance.

7. a. The development transfer ordinance shall provide for the issuance of instruments and the adoption of procedures for recording the permitted use of the land at the time of the recording, the separation of the development potential from the land, and the recording of the residual use of the land upon separation of the development potential.

b. The development transfer ordinance shall specifically provide that upon the transfer of the development potential from a sending zone, the owner of the property from which the development potential has been transferred shall cause a statement containing the conditions of the transfer and the terms of the restrictions on the use and development of the land to be attached to and recorded with the deed of the land in the same manner as the deed was originally recorded. These restrictions and conditions shall state that any development inconsistent therewith is expressly prohibited, shall run with the land, and shall be binding upon the landowner and every successor in interest thereto.

c. The municipal governing body shall, pursuant to the ordinance, direct the municipal planning board to carry out the development transfer demonstration program.

d. The development transfer ordinance shall provide that, upon the granting of a variance under the provisions of section 57 of P. L. 1975, c. 291 (C. 40:55D–70) which increases the development potential of a parcel of property for which the variance has been granted by more than 5%, that parcel of property shall constitute a receiving zone and the provisions of the ordinance for receiving zones shall apply with respect to the number of development credits required to implement that variance.

8. a. In creating and establishing sending and receiving zones, the governing body of the municipality shall designate tracts of land of such size and number as may be necessary to carry out the purposes of this act.

b. All land in a sending zone shall be suitable for agricultural use.

c. All land in a receiving zone shall be appropriate and suitable for development and shall be at least sufficient to accommodate all of the development potential which may be the subject of a development transfer from the sending zone. The development potential of the receiving zone shall, in the judgment of the governing body of the municipality, be based on the information provided pursuant to section 5 of this act.

9. a. A development transfer shall be filed with the clerk or

register of deeds and mortgages of the county wherein the transfer takes place and shall be recorded in the deed to the property. This recording shall specify the lot and block number of the parcel in the sending zone from which the development potential was transferred and the lot and block number of the parcel in the receiving zone to which the development potential was transferred.

b. The county clerk shall transmit to the assessor of the municipality in which a development transfer has been effected a record of the transfer and all pertinent information required to value, assess, and tax the properties subject to the transfer in a manner consistent with subsection c. of this section.

c. Properties from which and to which development potential has been transferred shall be assessed at their fair market value reflecting this development transfer; except that nothing in this act shall be construed to affect, or in any other way alter, the valuation, assessment, or taxation of land which is valued, assessed, and taxed pursuant to the "Farmland Assessment Act of 1964," P. L. 1964, c. 48 (C. 54:4–23.1 et seq.).

d. Property subject to a development transfer shall be newly valued, assessed, and taxed as of October 1 next following the development transfer.

10. a. The development transfer ordinance shall provide for review thereof by the planning board and the governing body of the municipality at least once every six years in conjunction with the review and update of the master plan of the municipality pursuant to the provisions of section 76 of P. L. 1975, c. 291 (C. 40:55D–89). This review shall provide for the examination of the ordinance to determine whether the program continues to be, and whether the uses permitted in the sending zone continue to be, economically viable.

b. The planning board and governing body of the municipality shall, in light of this review, determine whether the development transfer ordinance should be amended or repealed.

c. If the determination is made to amend or repeal the development transfer ordinance, the municipality shall submit the reasons therefor to the committee for review and approval.

d. If the committee approves the repeal, the municipality shall, by ordinance, amend its master plan to reflect the repeal and shall provide for continued use of development transfers which have been effected from a sending zone but which have not yet been redeemed by transfer to a receiving zone by establishing density

bonuses for development transfers to designated areas of the municipality.

e. The repeal of a development transfer ordinance shall in no way rescind or otherwise affect the restrictions imposed and recorded pursuant to section 5 of this act on the use of the land from which the development potential has been transferred.

11. a. Any municipality located in whole or in part in the pinelands area, as defined in P. L. 1979, c. 111 (C. 13:18A–1 et seq.), which desires to enact a development transfer ordinance shall submit the proposed ordinance to the pinelands commission, prior to adoption, for review to determine whether the ordinance is compatible with the pinelands development credit program adopted by the pinelands commission. Upon adopting the ordinance, the governing body of the municipality shall submit the development transfer ordinance to the pinelands commission for certification in accordance with P. L. 1979, c. 111.

b. Lands permanently restricted through development or conservation easements existing prior to the adoption of a development transfer ordinance shall not be included in the sending zone under a development transfer ordinance.

12. The governing body of a municipality shall provide for the public purchase, sale, exchange, or retirement of the development potential which has been transferred from a sending zone through the establishment of a Development Transfer Bank, governed by a board comprising five members appointed by the governing body, each having training or experience in banking, law, land use planning, or agriculture, which bank shall provide the financial support for this purchase, sale, exchange, or retirement at a level it deems necessary. For the purposes of the "Local Bond Law," P. L. 1960, c. 169 (C. 40A:2–1 et seq.), this purchase, sale, exchange, or retirement shall be considered an acquisition of lands for public purposes.

a. The development transfer bank is authorized to purchase property in a sending zone if:

(1) Adequate funds have been provided for these purposes; and

(2) The person from whom the development potential is to be purchased demonstrates possession of marketable title to the property, is legally empowered to restrict the use of the property in conformance with this act, and certifies that the property is not otherwise encumbered or transferred.

b. The development transfer bank shall establish a municipal average of the value of the development potential of all property in a sending zone of a municipality within its jurisdiction, through

an agronomic study designed to identify the general appraisal value. The development transfer bank may purchase the development potential for 80% of the appraised value established in the agronomic study. The establishment of this municipal average shall not prohibit the purchase of development potential for any price by private sale or transfer but shall be used only when the development transfer bank itself is purchasing the development potential of property in the sending zone.

c. The development transfer bank may sell, exchange, or otherwise convey or retire the development potential of property in a sending zone it has purchased or otherwise acquired pursuant to the provisions of this act, but only in a manner that does not substantially impair the private sale or transfer of development potential.

d. A development transfer bank may be established by the governing body of a county which has also established a county agricultural development board.

13. The governing bodies of two or more municipalities may, by substantially similar ordinances, provide for a joint program for development transfer, including transfers from sending zones in one municipality to receiving zones in the other.

14. This act shall take effect immediately.

STATEMENT

This bill would establish a development transfer demonstration program, as part of the "Agriculture Retention and Development Act," wherein the development potential of a parcel of agricultural land would be transferred to another parcel within a municipality. The purpose of this program is to reduce the development pressure on agricultural land while maintaining benefits of the development potential of that land.

The bill authorizes municipalities to enact, after approval by the State Agriculture Development Committee, development transfer ordinances identifying receiving zones where density would be increased and sending zones where agricultural land would be preserved. The committee would use the following criteria for the review and approval of development ordinances:

(1) Consistency with the agricultural development area and the adopted master plan of the county;

(2) Support of regional ojectives for agricultural land preservation;

(3) Consistency with reasonable population and economic forecasts for the county;

(4) Adequacy of present or proposed infrastructure for concentrated growth; and

(5) Sufficiency of the receiving zone to accommodate the development potential that may be transferred from sending zones.

The bill also requires that if a municipality enacts a development transfer ordinance, the governing body thereof must create a Development Transfer Bank to facilitate the purchase, sale, exchange, or retirement of development potential. These banks would be authorized to establish a municipal average value for the purchase of development potential but would be involved in the market in a manner that would encourage private rather than public purchase.

NATURAL RESOURCES

The "Transfer of Development Rights Demonstration Act."

ASSEMBLY, No. 2622

STATE OF NEW JERSEY

INTRODUCED MAY 12, 1986

By Assemblymen SHINN, COLBURN and Assemblywoman Ogden

AN ACT concerning the protection of land resources through the transfer of development potential and supplementing P. L. 1975, c. 291 (C. 40:55D–1 et seq.).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "Transfer of Development Rights Act."

2. The Legislature finds and declares that as the most densely populated State in the nation, the State of New Jersey is faced with the challenge of accommodating vital growth while maintaining the environmental integrity and preserving the natural resources and cultural heritage of the Garden State; that the responsibility for meeting this challenge falls most heavily upon the municipalities to appropriately shape the land use patterns so that growth and preservation become compatible goals; that until now municipalities have lacked effective and equitable means by which potential development may be transferred from areas where preservation is most appropriate to areas where growth can be better accommodated and maximized; and that the tools necessary to meet the challenge of balanced growth in New Jersey must be made available to our municipalities as the architects of New Jersey's future.

The Legislature further finds and declares that the "Municipal Land Use Law," P. L. 1975, c. 291 (C. 40:55D–1 et seq.), to which this act is a supplement, fails to give municipal governments insufficient authority to equitably and appropriately transfer potential development, and thus fails to promote the ultimate goal preserving the highest possible quality of life in the State of New

Jersey, and that it is therefore the intent of this act to provide new authority to municipal governing bodies so that they might better meet the challenge of achieving balanced growth and a quality environment for the State.

3. As used in this act:

a. "Development potential" means the maximum number of dwelling units or square feet of nonresidential floor area that could be constructed on a specified lot or in a specified zone under the master plan and zoning ordinance in effect on the date of the adoption of the development transfer ordinance;

b. "Development transfer" means the conveyance of development potential, or the permission for development, from one or more lots to one or more other lots by deed, easement, or other means as authorized by ordinance;

c. "Instruments" means the easement, credit, or other deed restriction used to record a development transfer;

d. "Receiving zone" means an area designated in the master plan and zoning ordinance, adopted pursuant to the provisions of P. L. 1975, c. 291 (C. 40:55D–1 et seq.), within which development is to be increased, and which is otherwise consistent with the provisions of section 6 of this act;

e. "Sending zone" means an area designated in the master plan and zoning ordinance, adopted pursuant to the provisions of P. L. 1975, c. 291 (C. 40:55D–1 et seq.), within which development is to be prohibited or restricted and which is otherwise consistent with the provisions of section 6 of this act;

4. a. The governing body of any municipality may, by ordinance, provide for the transfer of development within its jurisdiction. Prior to adopting an ordinance providing for the transfer of development, the planning board shall include in the master plan for the municipality the following:

(1) An analysis of the anticipated population and economic growth for the succeeding 10 years;

(2) The identification and description of all prospective sending and receiving zones; and

(3) An estimate of the development potential of the prospective sending and receiving zones.

b. Prior to the adoption of changes to the master plan to provide for the transfer of development, the planning board shall submit the proposed changes, with the analysis supporting these changes, to the county planning board for review and comment, which comments shall be included in the record by the municipal planning board.

5. a. The development transfer ordinance shall provide for the issuance of instruments and the adoption of procedures for recording the permitted use of the land at the time of the recording, the separation of the development potential from the land, and the recording of the residual use of the land upon separation of the development potential.

b. The development transfer ordinance shall specifically provide that upon the transfer of the development potential from a sending zone, the owner of the property from which the development potential has been transferred shall cause a statement containing the conditions of the transfer and the terms of the restrictions on the use and development of the land to be attached to and recorded with the deed of the land in the same manner as the deed was originally recorded. These restrictions and conditions shall state that any development inconsistent therewith is expressly prohibited, shall run with the land, and shall be binding upon the landowner and every successor in interest thereto.

c. The municipal governing body shall, pursuant to the ordinance, direct the municipal planning board to carry out the development transfer program.

d. The development transfer ordinance shall provide that, on granting a variance under the provisions of section 57 of P. L. 1975, c. 291 (C. 40:55D–70) which increases the development potential of a parcel of property for which the variance has been granted by more than 5%, that parcel of property shall constitute a receiving zone and the provisions of the ordinance for receiving zones shall apply with respect to the number of development credits required to implement that variance.

6. a. In creating and establishing sending and receiving zones, the governing body of the municipality shall designate tracts of land of such size and number as may be necessary to carry out the purposes of this act.

b. All land in a sending zone shall have one or more of the following characteristics:

(1) Substantially undeveloped or unimproved farmland, woodland, floodplain, swamp, marsh, aquifer recharge area, recreation or park land, or steeply sloped land;

(2) Land substantially improved or developed in a manner so as to represent a unique and distinctive aesthetic, architectural, or historical point of interest in the municipality;

c. All land in a receiving zone shall be appropriate and suitable for development and shall be at least sufficient to accommodate all of the development potential which may be subject of a development

transfer from the sending zone. The development potential of the receiving zone shall, in the judgment of the governing body of the municipality, be based on the information provided pursuant to section 4 of this act.

7. a. Prior to adoption of the development transfer ordinance, the planning board of the municipality shall submit the ordinance to the county planning board of the county wherein the municipality is located.

b. The county planning board shall review the development transfer ordinance with regard to the following criteria:

(1) Consistency with the adopted master plan of the county;

(2) Support of regional objectives for agricultural land preservation, natural resource management and protection, historic or architectural conservation, or other community purposes requiring restrictions on development;

(3) Consistency with reasonable population and economic forecasts for the county;

(4) Adequacy of present or proposed infrastructure for concentrated growth;

(5) Sufficiency of the receiving zone to accommodate the development potential that may be transferred from sending zones.

c. Any proposed development transfer ordinance designed to protect agricultural land shall be referred by the county planning board to the county agricultural development board established under P. L. 1983, c. 31 (C. 4:1C–11 et al.).

d. The comments of all county agencies shall be submitted to the municipal planning board within 60 days of submittal of the proposed development transfer ordinance by the municipal planning board to the county planning board and shall be included in the record consolidated by the municipal governing body prior to final adoption of the development transfer ordinancy.

8. a. A development transfer shall be filed with the clerk or register of deeds and mortgages of the county wherein the transfer takes place and shall be recorded in the deed to the property. This recording shall specify the lot and block number of the parcel in the sending zone from which the development potential was transferred and the lot and block number of the parcel in the receiving zone to which the development potential was transferred.

b. The county clerk shall transmit to the assessor of the municipality in which a development transfer has been effected a record of the transfer and all pertinent information required to value, assess, and tax the properties subject to the transfer in a manner consistent with subsection c. of this section.

c. Property from which and to which development potential has been transferred shall be assessed at their fair market value reflecting this development transfer; except that nothing in this act shall be construed to affect, or in any other way alter, the valuation, assessment, or taxation of land which is valued, assessed, and taxed pursuant to the "Farmland Assessment Act of 1964," P. L. 1964, c. 48 (C. 54:4–23.1 et seq.).

d. Property subject to a development transfer shall be newly valued, assessed, and taxed as of October 1 next following the development transfer.

9. a. The development transfer ordinance shall provide for review thereof by the planning board and the governing body of the municipality at least once every six years in conjunction with the review and update of the master plan of the municipality pursuant to the provisions of section 76 of P. L. 1975, c. 291 (C. 40:55D–89). This review shall provide for the examination of the ordinance to determine whether the program continues to be and whether the uses permitted in the sending zone continue to be economically viable.

b. The planning board and governing body of the municipality shall, in light of this review, determine whether the development transfer ordinance should be amended or repealed.

c. If the development transfer ordinance is repealed, the municipality shall, by ordinance, amend its master plan to reflect the repeal and shall provide for continued use of development transfers which have been effected from a sending zone but which have not yet been redeemed by transfer to a receiving zone by establishing density bonuses for development transfers to designated areas of the municipality.

d. The repeal of a development transfer ordinance shall in no way rescind or otherwise affect the restrictions imposed and recorded pursuant to section 5 of this act, on the use of the land from which the development potential has been transferred.

10. a. Any municipality located in whole or in part in the pinelands area, as defined in P. L. 1979, c. 111 (C. 13:18A–1 et seq.), which desires to enact a development transfer ordinance shall submit the proposed ordinance to the pinelands commission, prior to adoption, for review to determine whether ordinance is compatible with the pinelands development credit program adopted by the pinelands commission. Upon adopting the ordinance, the governing body of the municipality shall submit the development transfer ordinance to the pinelands commission for certification in accordance with P. L. 1979, c. 111.

b. Lands permanently restricted through development or conservation easements existing prior to the adoption of a development transfer ordinance shall not be included in the sending zone under a development transfer ordinance.

11. The governing body of a county or municipality may provide for the public purchase, sale, exchange, or retirement of the development potential which has been transferred from a sending zone.

a. If the governing body provides for this purchase, sale, exchange, or retirement it shall establish a Development Transfer Bank, governed by a board comprising five members appointed by the governing body, each having training or experience in banking, law, land use planning, natural resource protection, or agriculture, which bank shall provide the financial support for this purchase, sale, exchange, or retirement at a level it deems necessary. For the purposes of the "Local Bond Law," P. L. 1960, c. 169 (C. 40A:2–1 et seq.), this purchase, sale, exchange, or retirement shall be considered an acquisition of lands for public purposes.

b. The development transfer bank is authorized to purchase property in a sending zone if:

(1) Adequate funds have been provided for these purposes; and

(2) The person from whom the development potential is to be purchased demonstrates possession of marketable title to the property, is legally empowered to restrict the use of the property in conformance with this act, and certifies that the property is not otherwise encumbered or transferred.

c. The development transfer bank may establish a municipal average of the value of the development potential of all property in a sending zone of a municipality within its jurisdiction, which value shall generally reflect market value. The establishment of this municipal average shall not prohibit the purchase of development potential for any price by private sale or transfer but shall be used only when the development transfer bank itself is purchasing the development potential of property in the sending zone.

d. The development transfer bank may sell, exchange, or otherwise convey or retire the development potential of property in a sending zone it has purchased or otherwise acquired pursuant to the provisions of this act, but only in a manner that does not substantially impair the private sale or transfer of development potential.

e. A development transfer bank established by the governing body of a county which has also established a county agricultural development board under P. L. 1983, c. 32 (C. 4:1C–11 et al.),

shall, when considering any action concerning agricultural lands, submit a municipal average arrived at pursuant to subsection c. of this section for review to the county agriculture development board and the State Agriculture Development Committee and coordinate the development transfer program with the farmland preservation program established pursuant thereto to the maximum extent practicable and feasible.

f. A development transfer bank may apply for funds for the purchase of development potential under the provisions of P. L. 1978, c. 118 and P. L. 1983, c. 354 for the purpose of acquiring and developing land for recreation and conservation purposes consistent with the provisions and conditions of those acts.

g. A development transfer bank may apply for funds for the purchase of development potential under the provisions of P. L. 1981, c. 276 for the purpose of farmland preservation and agricultural development consistent with the provisions and conditions of that act and P. L. 1983, c. 32 (C. 4:1C–11 et al.).

12. The governing bodies of two or more municipalities may, by substantially similar ordinances, provide for a joint program for the transfer of development, including transfers from sending zones in one municipality to receiving zones in the other.

13. This act shall take effect immediately.

STATEMENT

This bill would increase the power of municipalities to implement their master plans by allowing the transfer of development to well situated areas while protecting lands that are valuable for agriculture, natural resource management and protection, historic or architectural conservation or other reasonable community purposes.

It would provide equity for landowners in restricted areas by allowing them to sell the development potential of their land to developers for additional density in areas best suited and available at all times to accommodate these higher densities. Further, the bill would ensure the adoption of feasible and workable ordinances and reduce litigation by establishing a review procedure.

Finally, the bill would provide specific reference to the concept of development transfer in law, while describing the concept in terms sufficiently general to accommodate a variety of creative municipal approaches to development transfer.

NATURAL RESOURCES

Enacts the "Transfer of Development Rights Act."

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mjz: 1-59

ASSEMBLYWOMAN MAUREEN OGDEN (Chairwoman): I would like to call the hearing to order at this time. This is going to be the third hearing that the Assembly Energy and Natural Resources Committee holds on the overall concept of transfer development rights. I am Maureen Ogden, the Chairwoman. Bob Shinn, who is sitting to my left, as most of you know, is a member of the Committee but, more importantly to this hearing, he is the sponsor of one of the two bills which are the subject of this hearing, although we actually have a third bill which is an amendment.

The principal bill, which Bob sponsored, is A-2622. The other bill that has been the subject of these three hearings is a bill sponsored by Assemblyman Bocchini, A-2992. We are also dealing this morning with A-2689.

Maybe after I introduce the other two people here at the table, Bob, you would like to briefly explain A-2689, because I don't believe we have dealt with that before. I would like to introduce Norman Miller, who is head of the Environmental Section for the Office of Legislative Services, and another member of that department -- a new member of that department, who is very welcome -- Patricia Cane.

Bob, would you please briefly deal with A-2689? I believe that everyone here is very familiar with the other two bills. They have been presented and discussed at the previous hearings, and there is no need to go into those at the moment. But, would you please touch on this one, Bob?

ASSEMBLYMAN SHINN: Okay. Assembly Bill 2689 would amend the Agriculture Retention and Development Act to permit the transfer of development easements purchased under that Act in a manner consistent with the Transfer of Development Rights Act. It would also permit the municipal average value for development potential in sending zones established by the Development Transfer Bank under the Transfer of Developments Rights Act to be used as the value of development easement.

The bill provides that if this sale occurs, any moneys from the Farmland Preservation Bond Act used to purchase the development easement would be paid back to the bond within 90 days, or the end of the calendar year in which the sale occurs.

The reason this bill is needed is because it goes to the funding of the bank in the case of a municipality that establishes a transfer of development credit bank. It would allow the municipality, based on appraisal information, to develop average values for the sending area of credits, and it amends the Agriculture Retention and Development Act to permit that average evaluation. Right now, the Agriculture Retention and Development Act is site specific in its evaluation and has a formula whereby you determine the evaluation. This Act uses that same formula, but allows a regional average value to be determined so that you don't have to appraise each farm in your sending area, and you have a regional approach to evaluation.

Then the concept would be-- I'll use a proposed program that we have been dealing with just for clarity. In the case of the proposed Lumberton program, Lumberton, under this concept, would provide 25% of the dollars. The county is already committed to provide 25% of the dollars. They would be used to match dollars in the State program. So, it would be 25, 25, 50. The municipality would have the ability to actually leverage its funding in that ratio. Then if they determined they could acquire the credits based on the average value in the sending area-- Let's say, if you had 1500 acres and the average value was $2000, you would have a $3 million project; $750,000 would come from the municipality and $750,000 from the county. That would be a million and a half, matched with the State million and a half. That would fund the bank. The concept is, the bank could acquire the credits from the sending area. They would then have easements on the property, and as development occurred, they could sell those credits under the Public Contracts Law to developers in a bidding

situation, as the counties do now, and recycle their money, in essence.

The bill concludes that within 90 days at the end of the calendar year in which such sale occurs, you would pay back the State bank once you recycled your money.

I think that is as simple as I can explain it.

ASSEMBLYWOMAN OGDEN: Thank you, Bob. We will begin first with those who have signed up and wish to testify at this time. The first person on the list is Sue Covais from the New Jersey Association of Realtors.

S U E C O V A I S: Thank you, Madam Chairperson. My name is Sue Covais, and I am representing the 38,000-member New Jersey Association of Realtors.

I am going to highlight some statements that our member, Maurice H. Hageman, II, made at a Committee hearing on these two bills. Our position has remained the same on both areas of problems we have, actually, with both of the bills. Rather, we support the Bocchini bill, but we still have problems with it. But, we have decided to oppose Assemblyman Shinn's bill, and I will go through the reasons why we oppose it.

Our National Association of Realtors and the New Jersey Association of Realtors has a policy. The policy basically states that we believe it is the fundamental right of all private property owners, working through local government, to determine the highest and best value of their land. We maintain that every person should have the right to acquire real property with confidence and certainty that the value of such property will not be unduly diminished or jeopardized by governmental action at any level, without just compensation or the owner's express consent.

We believe in reasonable growth, but maintain that no growth policy, sewer hookup restriction, or building moratoria, by any level of government, is a suitable response to community

development problems. We support the concept of community planning, but we are opposed to unreasonable restrictions and radical changes in existing zoning, where the effects of such actions significantly undermine the value of the property or the reasonable expectations of property owners.

This is why we think that the way Assemblyman Shinn's bill is set up -- A-2622 -- it does undermine the value of a property owner's property.

The first point I would like to make is, we believe that the concept is exciting and has a lot of potential for planning, but the problem is it also has a lot of potential pitfalls. We feel there has to be some kind of a provision -- there must be a mandatory provision for a demonstration project first, before any law is enacted. If there isn't, there will be 300 or 400 different types of TDR programs going on, and there won't be any certainty for a property owner or a developer or a real estate person to deal with any town in any kind of coherent fashion. There will be 400 different ways of dealing with these things.

We believe there should be a mandatory study of the agrinomics of both the sending zones and receiving zones to determine good farmland and the areas that are not good farmland.

Another problem we have with this bill is that it requires all types of land to be included, you know, good farmland plus other land that is not necessarily farmland. It might be wetland, or it might just be barren land. We think that this should be strictly farmland preservation. All other land should be dealt with-- I mean, if there are other preservations wanting to go along -- like Green Acres, or something like that, or wetlands -- that should be dealt with in a separate thing. It should be strictly a farmland preservation bill.

We also think it provides a possibility that a planning board could have a no-growth policy based on this kind of an ordinance. They could work the sending zones and the receiving zones so that they could have no growth. We feel if they are going to determine that everything is good farmland to be saved, then where would the sending zones be? There would be relatively no sending zones left -- I mean, receiving zones left.

We think this should be limited to Class 1 and Class 2 farmland, with other adjoining land or contiguous land necessary to complete the package of land being sent to the receiving zone. We think it is mandatory that there should be a Development Transfer Bank. This provision should be in place at the adoption of this ordinance. We think that is very important. If this kind of a law is enacted in a town, and a property owner wants to sell, there has to be someone there, because if there is no one there, you are restricting that person's right to transfer his property. There has to be someone there -- the municipality, the State -- who is going to pick up that development credit when that farmer wants to sell.

We think that the purchase of these credits should be based on fair market value, not an average value. I don't think our Association would support the concept of a regional approach evaluation. We don't think that is fair. We think the property owner has a right to have his own property determined at fair market value, not based on some kind of average. We think that their individual equity should be protected. Farmers -- this is what their equity is, their land. This is their retirement. This is their equity. This is basically all they have. So we think it is only fair that they should be treated -- that their property should be getting a fair market value.

There are a couple of other points we have on that bill. The five members of the bank do not necessarily have to

live in that municipality. That is just a technical point. If the town has to go outside and get some experts, they should be allowed to go out to get experts to sit on their bank.

Basically, those are the major points in the bill. I think that any transfer development rights bill has to include those kinds of provisions. We support the concepts in Assemblyman Bocchini's bill -- A-2992 -- but we have sort of the same problems. That bill is a little bit more what we are looking for, but the same thing-- There should be adequate funding; there should be a mandatory bank; there absolutely has to be a demonstration project. Although Assemblyman Bocchini's bill says it is a demonstration project, it doesn't-- When I read the bill, it doesn't really have a provision in there for a demonstration project. So, I think that bill has the same problem in the fact that it doesn't really say, "This is a demonstration project, and nothing is going to take effect until the demonstration project is completed."

Again, the same thing about the value of the property. It should be fair market value -- 100% of fair market value -- not a certain percentage of fair market, or some kind of average. Basically, we feel, again, the same thing with this bill. There should be adequate provisions to determine that a municipality cannot down-zone the density of a property and then turn around and institute a TDR program after the values of the property have been depressed from a down-zoning.

Again, the same thing. A demonstration project would allow some kind of certainty, in that there would be a model set up that all municipalities would then have to follow, because a developer, or a farmer, or a property owner really has to have some kind of certainty when dealing with their properties. I think it is only fair that they should get the full market value of their properties. I think the transfer development rights concept is a really interesting concept, and

I think we could work on this. But these are the certain things that we would like to see in that kind of legislation.

I will answer any questions anyone has.

ASSEMBLYWOMAN OGDEN: Do you have any questions, Bob?

ASSEMBLYMAN SHINN: Relative to evaluation, I think using an appraisal background-- I don't know of any process that is fairer to evaluation than the appraisal process. Tell me, if you know what it is.

MS. COVAIS: Well, yeah, the appraisal process is very fair, but you are taking the regional approach to that. In other words, you are going to average all the appraisals, and I don't think that is fair. I don't think that is quite the same as saying, you know, "This person's property is going to be valued at fair market value." If you are taking an average of all the properties, I don't think that is giving the individual property owner the fair market value.

ASSEMBLYMAN SHINN: I think one of the things you have to keep in mind is, the sending areas are usually somewhere in the area of 1500 acres or less. So you haven't got an extremely diverse situation in your sending areas. Of course, the more dense the population, the smaller the sending areas are and the different types of uses, whether it is ag, or wetlands, or what have you. But, usually there is enough sameness in the sending areas to look at that. You may have different classifications; you may have an upland evaluation, wetland evaluation, you may have a road frontage evaluation. So, there is a way to deal with the different categories. But if you restrict every parcel to a full-blown appraisal process, you know, you are looking at two years to get through the appraisal process.

So, there is a necessity to do an average evaluation if you are going to make something work. I think the whole thread to this concept is that if you are going to make it work, you have to have enough simplicity so that when a farmer

decides that he wants to sell his credits, that within a reasonable amount of time-- In our program in the county we have used 60 days. If there is no title problem, he puts an application in and it is approved, and within 60 days you want to give him the money. If you develop a process that is so complex that it takes years to get through appraisals and approvals and committees and actions, that is not the time the farmer wants his money. He wants to do something with a rapid turnaround, and 60 days, I think, is about as quick as you can do it in a governmental process.

But, as you get more complex in site-specific appraisals, those are the problems you run into. We've done that, and we have had some poor experiences. We bought properties-- We bought easements by specific appraisals on properties, but the turnaround time is the problem you run into. Sometimes that becomes so long that the desire to sell credits is gone by the time you get through the process.

MS. COVAIS: Actually, we have not reviewed Assembly Bill 2689. I don't think my committee has officially reviewed it. I see your point in making it simple; that is a good point. But our Association just wants to make sure that that simplicity does not reduce or tend to reduce the value of the farmer's land. We have not reviewed that bill, but we certainly will do so.

ASSEMBLYWOMAN OGDEN: If there are no further questions or comments, thank you very much.

MS. COVAIS: Thank you.

ASSEMBLYWOMAN OGDEN: The next person who has signed up is Sam Hamill of the Regional Association, but I don't believe he is here yet. Next on the list is Tom Norman, of Medford and Old Bridge Townships.

T H O M A S N O R M A N:: Thank you, Madam Chairman. My name is Tom Norman of the firm of Norman and Kingsbury. I have been at this for about 15 years. I started out with a friend

who roped me into this right after law school. But in this case, I am here today representing Mayor Azzarello of Old Bridge Township, who has authorized me to indicate that he supports the Shinn bill, as does Mayor Long of Medford Township.

The reason they are both in support of the Shinn bill is that that particular bill solves problems they are having. Both municipalities are suburban municipalities, generally -- rural to suburban. They are both experiencing strong development pressures. In both cases, both municipalities have had TDR techniques in their regulations for at least six years. With the decision by the Appellate Division in the East Windsor case, there is serious doubt now concerning those ordinance provisions. Both mayors and both municipalities have to basically not implement the provisions. However, they do support enabling legislation to allow them to move forward.

I think it is very important to note that the timing is now right for this type of legislation, because the need now is very clear at the municipal level. In both municipalities, land values within the last five years have quadrupled. To give you a feel for Old Bridge Township, there is an application now by two developers for 18,000 units of housing. The town is only one-third developed and it has 50,000 people. The town has utilized a mandatory TDR in certain sections, and has developed a partial open-space system. Large scale developers are basically desirous of an approach such as this. They want density bonuses. They are willing to acquire areas of open space that conform to a pattern of open-space preservation, as contained in the master plan. It works well for everyone. We have had no complaints.

I just heard some testimony concerning demonstration projects. I sense--

ASSEMBLYWOMAN OGDEN: That is a question I want to ask you.

MR. NORMAN: I sense that if there were a survey of municipalities-- There are at least two I know of -- three -- where voluntary, and in one case mandatory, TDR has been in progress for four years. It stopped only because of the court rulings. The programs have worked very well.

I think a key point is that the legislation and the technique must remain simple. It is a truism that at the local level whatever approach is utilized has to be one that can be explained to a mayor and council in three minutes. If you can't do it, it is not going to work. That is just the practicality of the situation.

I think in suburban towns, land values are such that there is no real concern that property owners will be deprived of land values as a consequence of any land use technique. The pressures are there, and so long as the pressures are there compensation will be paid.

In one rural municipality -- East Amwell Township -- which has had TDR on the books for several years, there is an interesting controversy going on at the moment. The municipality has reached a point where land values are also increasing in value significantly, primarily due to its location near Princeton.

At the governing body level, there is a shift in power from the farm community to those who have moved in most recently, and there is a strong desire to preserve agricultural land. There is also sentiment that exclusive agriculture zoning can be utilized to do that. There is no concern for paying farmers fair compensation or forcing them to stay in agriculture. You simply use it through the police power regulations.

With the advent of Mount Laurel II, exclusive agricultural zoning is probably a technique that may find validity in the courts. If a municipality can show and satisfy its housing responsibilities under the Constitution, it may be

permissible to simply zone for agriculture. I think TDR is a compromise that treats farmers fairly. In a certain sense, I think you are very foolish to ignore the whole process, or to continually ask that the techniques be redefined and refined in order to put off the potential for TDR legislation.

Two points, and then I will stop. In suburban municipalities where there are strong markets, I don't think banks are necessary to support the value of development rights. In a municipality where applications for 18,000 units are in the pipe line, there is strong value, and I believe property owners are certainly not concerned that they will not be compensated. To require the establishment of a bank in that situation is to simply make the process, again, a little more complicated. If there is a real concern with deprivation of property values, courts are always available, and the political process is available. Mayors and governing bodies are responsive to property owners. How many times have you sat at a public hearing before a planning board where three surrounding property owners objected to a particular proposition? The board will spend hours on that. If you have several property owners who are concerned that their lands may be confiscated, the mayors and governing bodies are generally responsive to those individuals. I think that is protection in itself.

I see in the Shinn bill that there is an oversight committee, and I think that also affords protection. The real protection, I think, in either bill, is that the programs and the actual land use plans must be consistent with a master plan and consistent with regional plans, because, in the end, that is really what tells you what is reasonable and what is unreasonable -- whether the actions are arbitrary. I think that so long as those provisions are incorporated within the bills, so long as the bills remain relatively simple so that municipalities can implement legislation, I think the bills

deserve passage. I think the Shinn bill is more important, at least for the municipalities I represent, because they are in a suburban context and they need help right now. To the extent they can preserve open space, the bills are very desirous.

That is our message.

ASSEMBLYWOMAN OGDEN: I just have a couple of questions. The previous speaker said that this could be a technique for no growth. Do you think that is possible?

MR. NORMAN: As an attorney, I would say that just the opposite is true. What TDR forces you to do is identify areas for growth. If a municipality wants a no-growth policy, I think the last thing they would want to do is venture into a program that forces them into an analysis that identifies areas for growth and areas for non-growth.

Once you lay your cards on the table, everyone can analyze your plans, and you basically give it away. A real no-growth policy is not to lay plans on the table at all, but to obfuscate.

ASSEMBLYWOMAN OGDEN: Another point in connection with Bob Shinn's bill where it provides for more than just preservation or transfer of development rights from agricultural areas, and deals with other areas as well-- Do you think that should be a separate bill? Do you think that these should be separated out; in other words, have agriculture in one bill and have TDR for other areas like aquifer recharge, historic districts, etc.?

MR. NORMAN: Generically, there is probably no reason why they can't all be in one bill, but I do feel, from a practical point of view, that it may be worth separating them, because you really have two different constituencies. At the moment, given the strong development drive in New Jersey -- New Jersey is one of the last states in the nation that is still extremely active -- there is a need to protect open space, and that need is greatest in the suburban areas, where the

development pressures are the strongest. To that extent, if a bill could deal with those issues first, that would probably be better.

ASSEMBLYWOMAN OGDEN: Your feeling about the proposal in the Bocchini bill for a demonstration project -- a pilot project -- is that it isn't necessary because there are already towns that are set up to do this. Do you think there is any validity in having a demonstration project so that you have standard guidelines, or isn't that really an issue?

MR. NORMAN: I'm not sure that is an issue. The best analogy I can point to is the whole concept of cluster development. Initially, cluster zoning was created by some inventive person at the municipal level. The same arguments were made that we ought to have demonstration programs to understand how it would affect property owners. Municipalities went off in 100 directions, so you had 100 demonstrations, in effect. The courts ultimately validated the concept, and legislation came along and codified it.

I think in that process it worked very favorably, and towns were able to choose the best aspects of cluster. Also, a demonstration project is difficult in that there are different types of municipalities with different problems. The demonstration may serve to demonstrate a particular issue in one group of municipalities and have no relevancy to the rest. Because New Jersey is basically a complicated State in terms of types of land use municipalities, I am not sure demonstrations will serve much of a useful purpose. In the end, if there is a real problem with compensation and taking, you will ultimately resort to the courts.

ASSEMBLYWOMAN OGDEN: Bob, do you have any questions or comments?

ASSEMBLYMAN SHINN: No.

ASSEMBLYWOMAN OGDEN: Thank you very much.

MR. NORMAN: I heartedly recommend it. Thank you.

ASSEMBLYWOMAN OGDEN: I see that Sam Hamill has come in and has signed up to testify.

S A M U E L H A M I L L, J R.: Thank you. I would prefer to keep my remarks very brief.

ASSEMBLYWOMAN OGDEN: You are speaking this morning on behalf of three counties, or--

MR. HAMILL: I am going to speak on behalf of the Middlesex/Somerset/Mercer Regional Council. The Council is a citizens' organization in Central New Jersey supported by businesses and individuals who are concerned about the future development of the region.

I would like to keep my remarks very brief, however, because I think you have heard a lot of what I have to say. I will just make a few points, and then answer any questions you might have.

First of all, I would like to talk about the urgency of getting some TDR legislation through. We have been talking about TDR for New Jersey for about 10 years. The current legislative proposal was conceived and formulated by the State Agricultural Development Committee almost two years ago. In that time, particularly in the central part of the State, we have been acutely conscious daily of the opportunities we are losing.

The planner for Plainsboro Township, which is one of the rapidly growing areas in Central New Jersey which initiated a TDR program approximately three or four years ago, tells me now that TDR is probably impractical in Plainsboro because all of the prospective sending areas have been developed. So, we have lost the opportunity to implement a TDR program in that Township. Cranbury and East Windsor are other townships that have had TDR on their minds for several years. The likelihood that you could implement something like that lapses everyday, particularly in our rapidly growing central part of the State.

So, as I go to work every morning, I see opportunities -- have seen them for years now -- that are lost. As Mr. Norman said, the only real alternative for a town like Plainsboro now is even sharper down-zoning. They down-zoned recently to six acres in their agricultural zone. If they really want to protect it, they will have to down-zone even more, because that is the only alternative available.

There are probably -- according to the Rutgers survey of several years ago -- 40 or more municipalities in the State that wanted to implement TDR at that time. I would say that there are probably 40 municipalities in our region alone that would like to implement these programs now. So, the urgency of doing something about TDR is something that we are acutely conscious of.

Secondly, I would like to talk about an issue that we have raised, which is expanding the types of areas that could be designated as sending areas. In this respect, I disagree with Mr. Norman -- with what he just said about separating agriculture from other classes of land. I think if we are going to go through the agony of having a TDR bill, we should try to make it cover as many contingencies and possibilities as possible. I think the politics are there for that right now, although you people will certainly have to be the judges of that.

But, we would suggest, as the American Institute of Planners, New Jersey Chapter has suggested, adding to section 6(b) a class of-- I believe the first two possibilities in the sending areas are agricultural lands and then other types of natural resources. We would suggest adding language that I think you have available to you which would allow sending from areas that may not be valuable from a natural resource standpoint and may not be agricultural land, but may be other things as well. I am reminded of two news stories I read recently, one about the loss of land that is valuable to the

Port of New York along the New Jersey shoreline -- piers, warehousing areas that are being turned into condominiums which are eroding the very basis of the region economy. This is a perfect example of how TDR would be useful to protect those kinds of low-intensity uses that are vital to the economic well-being of the region, but may, in a developer's eye, be more suitable for condominiums.

The other example was in The New York Times just, I believe, yesterday, and that was the loss of marinas on Barnegat Bay. Marinas are, I guess in some cases, an uneconomical land use, but they are vital to the recreational well-being of the Jersey shore. To allow a marina owner to transfer some of the development potential from a marina to an area that is more suited for higher intensity real estate development, is a situation that is eminently suitable for TDR.

We would like to see this third category of possible sending areas included in the bill, and I won't bother the language. I'm sure you have that available to you. I will read it if you want, but it is available in the--

ASSEMBLYWOMAN OGDEN: Would you do that? I don't think we have--

MR. HAMILL: It is available in the APA statement that was submitted to you -- the American Planning Association.

MR. MILLER (Committee Aide): At the last Committee meeting?

MR. HAMILL: I beg your pardon?

MR. MILLER: During the last Committee meeting?

MR. HAMILL: Yes, during the last Committee meeting. I have a copy here if you want it, but it is my only copy.

MR. MILLER: Oh, okay.

MR. HAMILL: The third point I would like to make is about the question that has come up about the review of TDR programs by higher levels of government. This idea has come up as a safeguard to make sure that municipalities do not use TDR

as an anti-growth measure where that is not proper, and generally to keep some balance in the system. The present bill -- Assemblyman Shinn's bill -- has a provision in it that allows for county review of municipal ordinances. I like that provision. I think it makes a great deal of sense. I think the counties are intermediate between the State and the localities, and are in a position to see the regional growth trends. Having the counties review TDR programs makes a lot of sense.

Some of the other options that have been discussed are the review by the State Agricultural Development Committee and review by the State Planning Commission. I am a member of the State Agricultural Development Committee and I am not here to speak for them, but I would be very surprised if they would be comfortable as a kind of State-level board of review over municipal ordinances, particularly if these ordinances had to do with more than simply agricultural conservation.

So, I don't think that system makes sense. There is also a tremendous work load that our Committee has, and adding these reviews to that work load, I think, would really kill us. These are my own opinions, and not the SADC's opinions necessarily. However, the review by the State Planning Commission maybe does make sense, because here you have a body that is charged by statute with assistance to local government and a body that would look at local ordinances comprehensively. But, I am not sure that that body would be comfortable reviewing local ordinances in this much detail.

So, I would propose some sort of a multi-level system. I haven't thought this out. Perhaps your staff can think it out more fully. But, a system whereby the county board reviews the local ordinance, and then if any party disagrees with the contents of the review, that review could be appealed to the State Planning Commission for a further decision. That kind of an approach would keep it at the lowest possible level, and yet provide for some sort of a safety valve

in case a developer or an environmentalist or a municipality felt that the county had taken the wrong point of view on this.

So, I would consider some sort of a multi-level system like that. Also, there could be a provision that in the case of a county like your own, which perhaps doesn't have a county planning board involved in these kinds of things, the board of freeholders could request that the State Planning Commission perform these reviews instead of the county planning board. That kind of a flexible system, I think, might be more appropriate than having every TDR program go to a State-level agency. I think that would be cumbersome and alien to the nature of our local levels of government.

Those are the only comments I have at this time. We agree completely with the comments that have been made by the American Planning Association. You have had those on your record for some time.

ASSEMBLYWOMAN OGDEN: Any questions, Bob?

ASSEMBLYMAN SHINN: Yeah, there are a couple of areas. The original language you were talking about that I had a problem with, quite frankly, was-- Maybe it is a geography problem from my point of view, but the recommendation changes "for adding other improved or unimproved areas which should remain at low density for reason of lack of adequate transportation service, sewerage, or other infrastructure, or for such other reasons as may be necessary to implement local or regional plans--" As Sam knows, we have a long history in this business, going back to 1977 I guess -- or '78, I think, when we bought our first easement. We went to the Supreme Court with our TDR program on a taxpayer's suit, essentially that said, "You are paying too much for credits." That became very involved, and one of the tests I try to give everything is, if you implement a program and you buy something, when the taxpayer looks at what he has for his money how does he feel about it? I think in the case of ag land or open space or

wetland, I can see a satisfaction that he has acquired something that is going to provide a public benefit.

Where I had a problem with something like a marina, let's say-- In our case, we have been dealing mostly with our own dollars, and if I had invested money in a marina I don't know how Burlington County taxpayers would feel about, "Why did we pay that marina dollars," you know, "raised by taxation in Burlington County." I guess that was a parochial concept that I had. I am sure that geography dictates different conditions. You brought something up about if you had a decaying important resource that wasn't viable right away, but had future viability-- I can see some merit to that, but I hadn't been able to digest that concept. That is one reason I had problems with it, trying to fit it into the experience pattern that I have had in Burlington County. I think you shed a little different light on it.

MR. HAMILL: These two examples leaped out of the paper at me. I think they made clear to me what I think we have been talking about -- the Hudson waterfront and then this marina example.

ASSEMBLYMAN SHINN: I think one of the things in trying to put this together is that it be administered fairly -- and you're looking at an impossible task, I guess; you have 567 potential administrators -- and that it be dealt with squarely and evenly from the land evaluation concept to the market. We tried to work into the bill, as you know, guarantees that the infrastructure would be there, and if it wasn't, within three years you would either do away with the program or update it. I wanted to share that discussion because you brought up something that I hadn't really considered before.

The other interesting testimony is the review process. I think if we were talking about ag land under the concept of both the ag amendment and the TDR bill now, the

process would be county planning board review, county ag development board review, State Ag Board Development review -- in the case of ag land review and comment currently. You are suggesting that if there were any disagreement unresolved in the process, that the State Planning Commission would make a decision on the resolution of the discussion, I guess. That makes a lot of sense to me. I think in our effort we tried not to tie the hands of a municipality in the bureaucratic process by having six different agencies having to come to a conclusion and action before a municipality could-- I think we have to keep in mind when they do zoning, unless someone challenges it in a court, there is no real county review or State review, and there is no process. So, in trying to put all these processes together, I think you have to look at what is happening in municipalities now, and not over-encumber them so that they are not going to be able to implement what you set out to implement.

Under the appeal concept, I think unless there is a disagreement-- I think that may have some merit.

MR. HAMILL: I feel there is no point in a higher lever of government reviewing it unless there is an issue at the lower level.

ASSEMBLYMAN SHINN: Yeah. I hear two voices in this. You know, we hear home rule, home rule, home rule, and then we hear, "Well, wait a minute, we want State control of this." Trying to balance that-- But I think when you get down to basic zoning, that rests at the municipal level. I think that is where the initiation and the implementation have to come from. I think what we are dealing with is that, I hope, rare case of a municipal situation where they take this out of the context it was designed to be in and have some safeguard to react to that. I think that puts it in the proper context that you described. So, that is an interesting thought. Thank you.

MR. HAMILL: I am also reminded that the League of Municipalities, I believe, formally or informally, proposed

that a State-level appeals body composed of a representative of the State Planning Commission, DCA, and the SADC be put together to review local ordinances. That sounds to me a bit cumbersome.

ASSEMBLYMAN SHINN: Yeah. One problem. There is a process like that with the State Development Credit Bank now. I don't think it has ever gotten off the ground. It is a formulation of department heads chaired by the Commissioner of Banking. To my knowledge, I don't think they have implemented a law that has been in effect since 1980. I don't think that new creation concept is all that it is thought to be conceptually. I think taking an existing structured agency and giving it a role makes a lot more sense to me.

ASSEMBLYWOMAN OGDEN: Sam, one question. What is your feeling about the necessity of a bank within the municipality?

MR. HAMILL: I think a bank should be optional. I came in halfway through Mr. Norman's dissertation on that subject, but it seems to me that in many cases TDR can function adequately without a bank. To require municipalities to establish a bank, I think, would kill such a program in many areas because it would simply be too complicated. So, an optional bank, I think, is possible.

One of the-- I could take up an awful lot of time on TDR, but it seems to me that there are two fundamental things that kind of go together as general theories on how to put this legislation together. One is, as Tom Norman said, to keep it simple, because the thing that killed the first TDR bill was the natural inclination of the legislators to anticipate and deal with every contingency. It got so long and so cumbersome, that it sank of its own weight. We have a very diverse State, and different municipalities function at different levels of sophistication. What may be suitable in one place just isn't going to be suitable in another. So, these mandatory provisions could very easily kill the whole thing.

ASSEMBLYWOMAN OGDEN: Any more questions?

ASSEMBLYMAN SHINN: No.

ASSEMBLYWOMAN OGDEN: Thank you very much.

MR. HAMILL: Thank you very much.

ASSEMBLYWOMAN OGDEN: That is the end of those who asked prior to the beginning of the hearing to speak. Are there others in the audience who wish to speak at this time? (affirmative response) Yes, if you would just identify yourself and the name of the organization you represent.

C. H. C O S T E R G E R A R D: Coster Gerard from the Vernon Coalition for Better Planning. We are cooperating with the Natural Resources Defense Council, who were not able to be here. I am not speaking for them, however.

We have been interested for a long time in TDR, and think it is important as the only way of saving open land, especially agricultural land. The alternative of government purchase of open land is obviously not feasible because the taxpayers wouldn't support such a thing.

After the meeting we had on September 23 in Morristown, and of course, Assemblywoman Ogden was there, we became very concerned about the position of the farmer, how he would come out with TDR. And, using certain numbers that we got from the people in Maryland, it appears to us that the developer gets a remarkably good deal and the farmer will probably come out with the very short end of the stick. We are still studying this matter and would like, if we may, to present to the Committee, later on, some rough figures showing how we think the farmers are making out now, at least in Sussex County, vis-a-vis the developer and how the implementation of a TDR program might affect that. I expect that would be acceptable to the Committee, for us to submit this paper for your consideration. It will be an informal kind of document.

ASSEMBLYWOMAN OGDEN: Would you be doing that fairly soon, Mr. Gerard?

MR. GERARD: Yes, perhaps within 10 days.

ASSEMBLYWOMAN OGDEN: Is there any overall, sort of conceptual way you can explain it now, or do you need the figures?

MR. GERARD: I think it would be more helpful to the Committee if we had the figures and let them draw their own conclusions. I will say, though, that at the moment, the developers, at least in our part of the State, seem to be doing extremely well. The farmer is doing not too well on his sales. We were impressed at that meeting in Morristown. A neighbor of ours and our county agent, Bruce Barber (phonetic spelling), speaking on behalf of farmers and, of course, Peter Furey, brought out points which we had to agree were rather valid. That side of it is of concern to us.

One reason we favor Mr. Shinn's bill is that it does provide, I think, as an option the land bank for the purchase of TDR. I think that would be, at least in agricultural areas, a very important reason for the farmer to go ahead with it -- to approve it, I mean -- and to take part in it. In the event he had to sell land, his development rights, he could do it at a relatively low price, but the ability to sell, if he really had to, is important. I think perhaps the land bank, in some cases, might actually make money down the road, as a bank is really supposed to do. If they would hold onto those rights, they should be able to sell them for a better price down the road as development pressures increase. I think it is conceivable you might find some foundation would even fund such a bank. That is just the merest idea.

In conclusion, we do favor the Shinn bill. We are concerned about the position of the farmer in it. We see no alternative to implementing TDR sooner rather than later.

If I may, I will send this document along to Mr. Miller. Probably my son-in-law, Alan Potter, will be in touch with you. Thank you very much.

ASSEMBLYWOMAN OGDEN: Thank you. Do you have any questions, Assemblyman Shinn?

ASSEMBLYMAN SHINN: I guess the evaluation question is-- I notice that people commenting on the bill -- and I found it from my own perspective -- tended to judge the State by the area that they are most familiar with.

MR. GERARD: Naturally.

ASSEMBLYMAN SHINN: I don't view DTR as a cure-all, quite frankly. I think it is a tool that will work in some areas. I think there are some things you have to have and growth pressure is really one of them, both from a marketability of the credit standpoint and from a land valuation standpoint. If you go into the South Jersey area, where there is no growth pressure, and you do an appraisal to try to get the difference between -- for highest and best use, the highest and best use, in many cases, is ag value. That is what the land is being transferred for, so you come up with zero differential. That is one of the problems, quite frankly, in TDR where there is no growth pressure. You have no differential on appraisal to base your credit distribution on where the highest and best use is agriculture. That is a problem that a municipality in a very rural area with zero growth pressure has. I don't think that is really a problem in Burlington County because of the growth pressure we have. But I think if you got into parts of Salem or Cape May, you may find that the lack of growth pressure may inhibit a TDR program from working because there is very little, if any, difference between agricultural value and development value, because there are no comparables that demonstrate that development value is really there.

It is the appraiser's mission to determine that average value. So, that is a problem that if you look at TDR as a cure-all-- It is really not a cure-all. It is a tool that will work, I think, in many municipalities, but it is not

the panacea that some people would like to think it is. I think it is an important tool, but there are inherent problems that make it nonapplicable in all situations. Lack of infrastructure-- If you have zero infrastructure available, then you have to decide whether you are going to fund a credit bank, establish a credit bank and fund it, and essentially pay for land preservation through acquisition of credits and hold on to them until infrastructure becomes available at some date in the future.

I think you have touched on some interesting points that I just wanted to comment on.

MR. GERARD: One other thing I like about your bill is that it does seem to provide for possible sort of joint ventures between municipalities. A single municipality might not be able to do much in the way of having both a sending and receiving area. Two municipalities getting together, as they do for such things as high schools-- There is no reason that couldn't be done. That is, I gather, optional.

Thank you very much.

ASSEMBLYWOMAN OGDEN: Thank you. Is there anyone else who would like to speak? (affirmative response)

D E P U T Y M A Y O R J O H N R. B E R E C Z K I: My name is John Bereczki, and I am the Deputy Mayor of Mansfield Township.

MR. MILLER: Excuse me. For the record, please, would you spell your last name for the hearing stenographer?

DEPUTY MAYOR BERECZKI: We are one of the communities that are basically rural farming areas now. We are under intense pressure for development. If I had my druthers, I would rather see the program in effect now -- the transfer development rights -- outright, then into effect, rather than take one part of your township and restrict it, and then put all the pressure on the other part of your township, mainly for different reasons such as-- We are in a critical water supply

area now, and you are still going to have that intense pressure and that critical water supply.

There is tremendous pressure for development -- contrary to what Bob said -- in South Jersey. We see tremendous pressure for development in our township now. It is a developers' market right now. The interest rates are low. The farmers are in very bad shape financially, and it is very easy for them to sell out now because of the financial reward involved in that.

Of the two bills we are talking about -- the Shinn bill and the Bocchini bill-- I didn't have much time to go over them, but I would like to say I would rather support Bob Shinn's bill -- we had to support one of them -- for the main reason that I don't want the State to get too involved in it. I am a strong advocate of home rule. I think once you get the State involved and you get the bureaucrats involved, it does defeat the purpose of it. They don't sit here throughout these hearings and listen to all of the comments. They just read what is in the bill, and that's it. That is the way they handle it.

I would like to see it stay as much municipally controlled as you could possible put into it. I realize the State has a lot of money involved in it, and they should have some control of it, but I would rather see it lean toward municipal control, mainly because they know their townships a lot better.

We have, in our community, two farmers, one who owns almost 1000 acres, and one who owns about 200 acres, with the possibility of maybe 200 acres more, who are willing to go into a program. But, up until this point -- and we have been talking about it for two or three years -- it is not moving. For what reasons I don't really know. But, we have people who are interested in getting into the program. We had a referendum a couple of years ago to see if the township

interest was there to put up the township share of the money. It passed, but not overwhelmingly because there was a concentrated effort against it. I guess there were personal reasons why people didn't think we should spend taxpayers' money to preserve farmland.

But, it did win. We have a 1200-acre senior citizens' development going on in our township right now, which is the biggest development. From the people I talk to out there, the reason they moved out there was for the rural nature of the community. They, too, are opposed to overall development coming in and just taking over.

I think the laws now are set up to favor the developer. A municipality has no control-- Well, they have some control, but not much, on trying to have sensible growth in a community. You know, you are involved in the Mount Laurel decision now, which puts a lot of pressure on you to develop your community. The township would like to listen to its citizens and try to have some reasonable growth, but the odds favor the developer right now. I think the way the financial situation is, that favors the developer even more.

I guess that is probably basically the most I have to say. Our community is interested in preserving the farmland. I think that should be the overall goal.

With regard to the young lady from the New Jersey Association of Realtors, I would like you to keep in mind that I feel their main interest -- with all due respect -- is money. You know, they are in a business; they have to make money. I have no problem with that; that is the name of the game here. I think our local interest is preserving the area that the people live in. That is why people move into our community, and I would like to do everything possible to preserve it.

I would like to make note of the fact that I am a licensed electrical contractor who is taking advantage of the

construction boom, but between the two, I would rather see everything done to save the open spaces.

ASSEMBLYWOMAN OGDEN: How is your agricultural land -- the 1200 acres you mentioned -- currently zoned?

DEPUTY MAYOR BERECZKI: Residential/agriculture. One point I would like to make about the 1000-acre piece: This land has been in this man's family for generations. I think it is part of an original grant from the King of England, or the Queen of England, whoever it was back then. He is an older gentleman; I think he is 75 years old now. He wants his farm to stay agriculture. But I think that if something should happen, if he should die, and there is that added pressure of taxes involved, that land may not be able to stay in agriculture. The heirs would more than likely have to sell to satisfy the inheritance tax. I have seen it happen before, because I do a lot of work for farmers.

So, like I say, there are a lot of good concepts for saving the farmland. I am biased toward saving the farmland, not so much other open space. I realize you have to save some other open space, like marinas and stuff like that, and I have no problem with that. But my interest is mainly for farmland.

That is basically all I have to say.

ASSEMBLYMAN SHINN: John, a couple of things. I wasn't referring to Burlington County when I said, I think, "We don't have the problem with differential in values in development," because probably our classic example is Chesterfield, where we bought the property and sold it with the agricultural easement on it. So, we have a pretty rural community, comparable to Mansfield I think in land use, where there was definitely a difference in the value of the property and the value of the easement. Fortunately, or unfortunately, we don't have that problem in Burlington County. But I think as you get further south with Salem and Cape May, the lack of development pressure might give you that appraisal differential.

The other comment you mentioned that if the municipality did not want to accommodate the growth and have the credits go to a growth area immediately -- and you indicated that that might be what you would like to do -- that is a classic situation where you establish a bank, take the credits off the land that you want as your sending area, and retain the credits in the bank. That is an option the municipality has. One of the interesting decisions in our court case was that the judge decided that if the credits had zero value, that the way the program was administered, the public was satisfied with the fact that they had perpetual easements on the land that credits were allocated to.

So, in his court case he looked at the credits as an added benefit if they are ever sold to the municipality. So I think there is good law basis. If a municipality decided that it wanted to establish a bank, they didn't have infrastructure to support growth, they just wanted to hold those credits for sometime in the future as an asset, that they could implement a credit program, participating with the county and, hopefully, the State, and hold those credits without accommodating the growth. That is a conscious decision you are going to tie up your dollars for a number of years, but you would still have the benefit of having the credits should, at some future time, you have the ability to market them.

Those were the two areas that I just wanted to talk about with you. I think you have appointed a TDR committee in Mansfield?

DEPUTY MAYOR BERECZKI: We're working along with Chuck on that right now. We have not appointed a committee yet.

ASSEMBLYMAN SHINN: And the dollars in your bond issue-- How many dollars were in the question on the ballot?

DEPUTY MAYOR BERECZKI: Well, it wasn't really a bond issue. See, we have the authority now if we want to spend money to do something like this-- We have that authority as a

township committee to do that. What we mainly did it for was to get the feeling of the community. We put a figure of $500,000 on it.

ASSEMBLYMAN SHINN: A half a million dollars.

DEPUTY MAYOR BERECZKI: Right.

ASSEMBLYWOMAN OGDEN: Thank you very much.

DEPUTY MAYOR BERECZKI: Thank you for the opportunity.

ASSEMBLYWOMAN OGDEN: Are there others who would like to speak? (affirmative response)

D E P U T Y M A Y O R K A R L B R A U N: Hearing Bob Shinn say the magic word "Chesterfield," I couldn't resist speaking on its behalf. My name is Karl Braun. I am Deputy Mayor and Committeeman in Chesterfield.

ASSEMBLYWOMAN OGDEN: Would you spell your last name, please?

DEPUTY MAYOR BRAUN: I wanted to urge the Committee on and testify to the necessity of passing TDR legislation. Chesterfield Township, for those who do not know, is really on the northern cutting edge of Burlington County and, while not experiencing direct pressure, is feeling the intense development heat from the Route 1 Corridor.

Again, as you've heard, Chesterfield is a very rural community. I think we have taken outstanding measures to promote ag, to continue to, and I think by the passage of a TDR provision-- I think that will greatly aid us on.

When the township benefited by the acquisition of the 600 acres through the State's, county's, and township's participation, I can only go back to a statement made by the Governor at that point saying that this is where it stops. This is where ag begins. To date, we have managed to allow that to continue. Again, by continuing with the TDR legislation, I think we can follow through with it even further.

If I did have a personal preference for a bill, it would be Mr. Shinn's bill. I am somewhat of the same mold as

Mr. Bereczki, who you just heard from, and I think local municipalities should have the lion's share of the say as to where things are going. I think Mr. Shinn's bill does that.

Also, I think the optional voluntary measures of the credit bank is a good provision. I think it allows the flexibility to the local municipality to decide its own destiny, of sorts.

Chesterfield is experiencing pressure. We have done, I think, a lot of work toward farm preservation. We want to do more. We are a small community, and with a bill like this we can probably do a lot more. I think we need the help, and with this type of legislation we can carry it further. That's all.

ASSEMBLYWOMAN OGDEN: Has there been any difficulty in explaining to the citizens of Chesterfield what this involves?

DEPUTY MAYOR BRAUN: Not really. I think we have -- through the process of open hearings and such -- well thrashed out what it means to preserve ag, what it means so far as open space and reducing conflicts with the urban/suburban difference. So it really has not been that way at all. We do have a very active planning board. The majority of the members are farmers who are well-advised as to how things are going legislatively. I think we have a very good nucleus.

ASSEMBLYWOMAN OGDEN: There isn't any resistance to setting up the receiving area?

DEPUTY MAYOR BRAUN: Well, we have a receiving area right now. Chesterfield does have, insofar as the group zone that is stated by the State Guide Plan-- We do have a receiving area that we would like to transfer into. I don't think there is such resistance, no.

ASSEMBLYWOMAN OGDEN: Do you have any questions, Bob?

ASSEMBLYMAN SHINN: Yeah, I have a couple of questions. How long have you had a TDR program in Chesterfield?

DEPUTY MAYOR BRAUN: I believe since 1977.

ASSEMBLYMAN SHINN: I knew you had it--

DEPUTY MAYOR BRAUN: We were the first one in New Jersey to adopt that.

ASSEMBLYWOMAN OGDEN: But it is not actually working. It's just on the books, is that right?

DEPUTY MAYOR BRAUN: Oh, no. It has been adopted. It is working in the sense that our-- Let me say this: We did have a major threat for development in the township several years ago, which precipitated out the acquisition of the land. There was, through court consent, an agreement to participate in the plan. There has not been a direct transfer of lands yet under that program, but we do have it on the books, and we can apply it.

ASSEMBLYMAN SHINN: Just as part of this program--

DEPUTY MAYOR BRAUN: It has quite a complicated history.

ASSEMBLYMAN SHINN: Part of the development act in the State -- the Ag Retention and Development Act -- precludes the use of credits. One of the issues we had to deal with in Chesterfield was, when we acquired the land to have State participation in the easement through the State Agriculture Development Board, it was mandatory to retire the credits. They had a gross allocation of credits, one per acre, and the gap that was issued was 608 acres. So, essentially, you had 608 TDRs that we had to retire, in essence, to get State funding in our easement. That was a very important part of the process, to provide dollars. So the township agreed to retire the credits in order to attract the State funding. That wasn't a viable part of their ordinance, but it was a mandatory part of the State Ag Retention and Development Act to retire the credits.

Chesterfield, since that issue, did an extensive revamping of their master plan and their zoning ordinances. I attended a couple of the planning board meetings and there were classic discussions on TDR and preservation. It was really a

very interesting process that went on in Chesterfield, and Karl has been very involved in that for a long time.

But, the community came to grips with the whole issue of a rural community having a PUB, in essence, right in the core of their prime ag area. For a small community, they came up with a major commitment of dollars -- $400,000 -- at the outset, to offset this major impact that would change the whole nature of their town. So, it was a very interesting process. I guess that is the only impression I have.

DEPUTY MAYOR BRAUN: That's fine. Thank you.

ASSEMBLYWOMAN OGDEN: Thank you very much.

DEPUTY MAYOR BRAUN: I appreciate that.

ASSEMBLYWOMAN OGDEN: Walter Ellis?

W A L T E R E L L I S: Good morning. Thank you for allowing me to speak here today. I guess I probably should--

ASSEMBLYWOMAN OGDEN: Just for the record, would you please give your name?

MR. ELLIS: I am Walter Ellis. I am a farmer, and President of the New Jersey Farm Bureau.

I guess I probably should begin by apologizing, because I probably do not have my thoughts as well organized -- my testimony as well organized as I might, but I have to confess that I didn't know of this hearing today until late yesterday. I think I should make note of the fact that there is no one else here from the farm community who is going to speak. All of the people we hear speaking are people who have, for the most part, other interests. They are people to whom -- at least it seems to me -- the matter is certainly -- at least to some degree -- more on an academic level than it is to a farmer, whose life is involved in the land that he farms and owns.

ASSEMBLYWOMAN OGDEN: Just for the record, Walter, at our first hearing we had Peter Furey speaking on behalf of the Farm Bureau.

MR. ELLIS: Right. I was going to make note of the fact that--

ASSEMBLYWOMAN OGDEN: And the Secretary of Agriculture.

MR. ELLIS: --I will not speak to the specifics of the legislation simply because I think Mr. Furey has, for the most part, done that on behalf of the New Jersey Farm Bureau. And I I think Mr. Brown has, as well, for the Department.

I would just like to make some very general remarks, if I may. We have just finished our annual New Jersey State Farm Bureau Convention, Monday, Tuesday, and Wednesday, and I have to report to you that a large part of the discussion there had to do with land use and, most specifically, in part -- large part -- TDR. I would like to report that I guess the statement is a true one that all who were there -- all of the delegates, and they represent every county in the State; every commodity group in the State; and, every agricultural interest in the State that I can think of-- I am sure that without exception, all distrust TDR.

I would further say that almost all -- although certainly not everyone -- is outright opposed to TDR. We, as an organization, have refrained from taking a policy of outright opposition to TDR for a number of reasons. We agree with Mr. Shinn, Mr. Bocchini, you yourself, Mrs. Ogden, that something needs to be done to preserve farmland, and we applaud your efforts to do that. We do not want to reject any possible tool that can be used to do it. Obviously, our purpose is to make sure that whatever tools are used, that the equity that farmers and farmland owners have in their land is protected.

So, in that regard we think the legislation is very laudable, and we congratulate you on that. But we in the Farm Bureau, even myself, for a large part of the time, have been struggling with TDR for at least 20 years. In our opinion, it just has not been made to work anywhere. In spite of some of the testimony earlier today, where people pointed to TDR

working, it certainly does not work from the perspective of the farmland owner. As one gentleman pointed out, if it is from the perspective perhaps of the developer, or perhaps from the planner, it may have a great deal more merit. But, from the perspective of the landowner, to this point in time, no one has convinced me, anyway, that it is working properly.

Montgomery County, Maryland, is often pointed to as probably the classic example, but if that is a place where it is working, you have to concede then that 10 cents on a dollar to the landowner for his value is considered working.

As I said before, much of the testimony here today -- all of it in fact until I got here, until I came up -- has been from people other than farmers. I'm sorry, but I would be remiss if I were to not at least try to dispel the impression that I am afraid the last gentleman left that TDR is working in Chesterfield Township. Nothing has ever happened in Chesterfield Township. There has never been a development right transferred. Again, if you want to talk about the perspective of the farmers in Chesterfield Township, it just happens that I live on the border of Chesterfield Township, just across Crosswicks Creek. I know every farmer in Chesterfield Township personally, and I don't know one who would agree with a statement that says that Chesterfield Township's TDR works -- not one.

Because of the fact -- whatever the reasons, and I am not sure what they are; probably some of the trouble is in the fact that I have been extremely busy and our whole organization has been busy-- We have not been able to publicize the fact of this hearing; therefore, I would very much request, respectfully, that you consider having another public hearing, with enough notice, so that you might have the benefit of testimony from some of our farmers throughout the State. We would very much like to have you do that, if you would.

ASSEMBLYWOMAN OGDEN: Well, we will consider that, Walter, although this is the third public hearing on this subject. If you are opposed to the TDR concept, what do you propose as an alternative?

MR. ELLIS: I think a great deal more can be done with our Purchase and Development Rights Program. I think there are many things that can be done to improve that. In fact, Mr. Hamill, one of the people who testified here a little bit earlier today, and some others of us, sat on a committee just yesterday afternoon, trying to develop some ways of improving that program, to get it off the ground and get it going more rapidly than it has been in the past.

ASSEMBLYWOMAN OGDEN: We have had that bond issue available for that program since '81.

MR. ELLIS: Right.

ASSEMBLYWOMAN OGDEN: And very little has been spent.

MR. ELLIS: There is no question but that it has not worked as rapidly and as well as it should have. That is the exact question we were trying to address yesterday. The committee was appointed by Secretary Brown. The very purpose of that committee is to see if we can get something going, or figure the reasons for it not having worked as well as it should -- to try to get it going more rapidly.

ASSEMBLYWOMAN OGDEN: As you know, I am finally about to introduce -- it has been being worked on for about a whole year -- the Right of First Refusal, which I see as another approach to possibly getting that to work.

On the other hand, I really see the purchase of development rights as restricted to the areas in which there is not the pressure for development, because where the pressure for development is so intense that you basically have the development rights being equivalent of the fee simple, the $50 million is going to be gone very shortly. It would just really finance, you know, a few thousand acres.

So, I just see something like my proposal as being a benefit where, one, there is not the development pressure, or two, in some communities where maybe there is some development pressure, but the communities don't go forward with the TDR. I just don't see where all the money would be coming from, Walter, as far as acquisition of development rights is concerned; you know, if you are going to buy them, particularly in your areas where the development pressure is intense.

MR. ELLIS: Well, my personal opinion is-- I was active in the original development of the Agricultural Development Act and the Right to Farm Act, and our intention -- at least mine, and I'm sure that of everyone else involved -- was that the original $50 million bond issue was just that, an amount to ask for to start. I think to be realistic, if the State of New Jersey -- the seven and a half million people in the State of New Jersey -- think that they can preserve farmland in this State with $50 million-- I think that is farcical myself. I truly do.

You know, I guess I have to say I am disturbed because -- and I really don't know how else to put it-- I sit, as a farmer, a person who has farmed all of my life, and whose major part of my resources are involved in the land I own, and I see everyone else who has really nothing to do with my farming operation, has never paid a penny of my taxes, has never done anything for me in many, many ways -- or any way -- and everyone else is trying to decide the fate of my land; in fact, my fate. That is the way most of the farmers feel.

Again, to most of them it is a lot more academic. I don't mean to imply that your motives are not laudable motives. They are, in most cases. But to them it is not as personal; it is not as, you know-- I daresay there is not a person who has spoken here today whose personal fortunes would be affected one little bit by whatever happens with regard to this bill. Mine would be, very very drastically, as would all other farmers.

The thing that occurs to me is the saying that-- When I was a kid, I used to play marbles a lot. We played in two fashions. One was, we played for funsies; the other way we played for keeps. This is a for keeps game, really and truly for keeps and, by God, they are our marbles that everyone is playing with. I just want to be darned sure that those of us whose marbles they are have a good, full opportunity to play in the game.

ASSEMBLYWOMAN OGDEN: Your feeling that in the game for keeps the rules are not going to be fair, is because you feel that with the transfer development rights from a sending to a receiving area the farmer would not be compensated in a reasonable fashion.

MR. ELLIS: The theory is good. It sounds good, at least, but it sounds too simple, and obviously everyone here today, including yourself, knows that it is much more complicated than it appears on the surface. Unless if and when TDR is implemented there is a proper set of guidelines and restrictions and regulations, then there is a very, very big loophole, if you will, for municipalities that simply want to stop growth -- have really no other purpose than to stop growth-- They can do that very easily. There is just too much of a chance for mischief to be done by municipal governments, unless the proper safeguards are built into whatever program we have.

In that regard, we have taken a position at the Farm Bureau that we really and truly do need -- if we are going to have a TDR -- a demonstration project, in order to work out whatever problems do surface, because in spite of the best brains and the most research that can be done, once a program is truly implemented and begins to work, we are going to find more problems. I think that is just a given. To put the whole State in a position to be allowed to get into those problems, I think, is almost irresponsible. I think it should be done in a

confined area with one or two perhaps, maybe even three areas where the chances seem best, where the infrastructure is there, as Mr. Shinn talked about a while ago, because obviously it could not work in a lot of places, or would not work in a lot of places. I think almost everyone would concede that. But there are places where it has a pretty good chance. I think it might have a real good chance. I think it should be given every opportunity, and to give it its best opportunity, I think it should be confined to an area, or a couple of areas, where the bugs could be worked out of it before it is allowed to go over the whole State.

ASSEMBLYWOMAN OGDEN: When I asked this question of someone who testified previously, he was against a demonstration project because he said there were so many different circumstances in all of our 567 municipalities, that a demonstration project really wouldn't deal with the many different situations that would come up with the different towns.

MR. ELLIS: Well, when it comes to the development pressure in a particular area, I am not sure that the diversity of the land itself, or the diversity of the agriculture that happens to be involved, or, for that matter, the diversity of the kind of building pressure, whether it be industrial or residential or whatever-- I am not sure that that would have a great deal of influence on the basic rules of how you would work a TDR program. I simply don't-- That doesn't come through, to me at least. Although given the fact that we are a very diverse State, I am not sure that that necessarily means that a TDR program, or any other program of this sort, would need that many different kinds of sets of rules.

ASSEMBLYWOMAN OGDEN: Do you have any questions, Bob?

ASSEMBLYMAN SHINN: Yeah. One misconception we have in the testimony is the TDR program working in Chesterfield. I asked Karl Braun how long he had a program, because I think it

is a classic failure in Chesterfield because of the way it was administered. It was one unit per acre the whole township, the worst possible scenario without a sending and receiving district. The development occurred smack dab in the middle of the prime ag area, so what I was trying to bring out was that essentially TDR did not work in Chesterfield because of the way the program was designed. I was not trying to purport that TDR worked in Chesterfield at all. TDR failed in Chesterfield.

MR. ELLIS: I'm sorry, I misunderstood you.

ASSEMBLYMAN SHINN: Okay.

MR. ELLIS: Sitting back there, I kind of got the impression that the record might show that TDR was working in Chesterfield, and it sure isn't.

ASSEMBLYMAN SHINN: Yeah, TDR failed in Chesterfield -- relative to Chesterfield Commons, that particular project.

The other thing I don't think we probably talked enough about overall is, what is the alternative of TDR relative to farm retention? I guess there are two schools of thought. I spoke before the Annual Farm Convention in about 1983, or something or other. At that time, we were talking about the State Development Guide Plan. My discussion was concentrated on ag zoning, and the fact that I saw that as something in the future. You know, if you look at the State Planning Commission Law, which was passed in 1985, and its mandate, and you look at the new planning effort statewide, it is an effort toward resource planning.

I guess you look at the resource experience, and you put that head-on with individual rights to land, and at some point you are on a collision course. I think if you have one person on 100 acres, you don't have any problems. Hell, you don't need government, you don't need law, you don't have any neighbor problems. Then you get two people for 100 acres--

MR. ELLIS: Tell that to the tax people, will you?

ASSEMBLYMAN SHINN: --and so on and so forth. But, when you get about 100 people on 100 acres, you need government, you need services, and so on and so forth. Then you get into the experience that New Jersey is in, and that is resource exhaustion. We've got it in Burlington County with water, and we are looking at and adopting alternate water plans. That affects agriculture. It is part of the business, as you know.

So, I think what you have to look at in the long term in this whole business is what is happening statewide from a resource standpoint, and what the options are. I got a preview of this in my experience with the Pinelands Commission about how far you can go with zoning. I can tell you right now that if it weren't for me, there wouldn't be a TDR program in the Pinelands, because they had clear legal guidance that they could support one unit for 10-acre zoning without any other program as an economic benefit. That was a long scenario. The credit bank grew out of that discussion for immediate economic relief for someone who was desirous of taking a permanent easement on his property.

As you know, we have had a lot of experience with that, testing public sentiment on whether you want to put your tax dollars in land preservation with three bond issues. So, a lot of my effort has been in trying to have an economic benefit with a loss of beneficial use to farmers. That started in about 1977.

MR. ELLIS: We do appreciate that effort.

ASSEMBLYMAN SHINN: I think my problem is, if TDR doesn't work -- and back in 1976, I think, the State Farmland Demonstration Program, which was headquartered in Lumberton-- Basically, the Legislature said, "Gee, this program is going to cost so many dollars, we are not going to do it this way." That decision was made, and I think they never really bought an easement on anything. In fact, we looked at some of their

appraisals and part of their program in our experience. So, if you take the given that there is not enough money statewide to purchase a direct appraisal easement on each property from the farmers statewide, and you say that that is not a reality, with the legal background of large lot zoning as a zoning pool, and you have to look at TDR in that light, I don't see any alternatives to large lot zoning, other than a way to leverage money through a TDR program.

It is really a compliment to me that Bocchini has a bank in his bill, because I am sort of the father of the credit bank business. Again, I just think it would be unfair to mandate a bank in every situation. But I really see TDR as the answer to the loss of beneficial use for a farmer as an opposition to zoning. I think it is an alternative to zoning. If I go away on TDR, and let's say TDR disappears for a while, if you read the mandate under Public Law 1985, Chapter 398, which is the State Planning Commission Act, and you look at what is occurring resource-wise statewide, I think you really have to look at the alternatives. That is how I looked at this. This is why I felt it was time to really look TDR straight in the eye on a statewide basis, look at the funding issues, and see what we could leverage as far as producing the most dollars -- every one of those dollars is going to go to agriculture -- to try to build some sort of a relationship to really give this thing an even shot as an opposition to zoning, because I think that is the alternative.

I know there is some feeling that some farmers don't think that will ever happen. They think the Pinelands was sort of a quirk, but I can tell you, the same thing that drove the Pinelands is driving the force behind the State Planning Commission, the force behind the State Development Guide Plan, and all those forces are really coming together, particularly with resource depletion. We are seeing it in water; we are seeing air quality problems and acid rain, etc., etc.

So I really think what we have to come to grips with, if it is not TDR, is what is it going to be? If we just sit here and wait, I know what it is going to be. It is going to be ag zoning. I think that is a poor alternative. Quite frankly, I know there is feeling in the municipalities we work closely with that they really would like to do something other than ag zoning, and are willing to put local dollars up in a reasonable amount not to have to do that.

So I think that is the kind of discussion I would really like to see come together. If it isn't TDR, where do we go from here?

MR. ELLIS: If I may, pretty much what you have just said is what-- All those reasons you have enumerated, and they are all legitimate ones-- I don't really disagree with any of them. For all of those reasons, that is why we have not -- we, as farmers -- have not taken an outright stand against TDR, and have tried to hold back our reticence, if you will, and tried to work with you and Mrs. Ogden and Mr. Bocchini, to try to make sure that whatever comes from this is truly a good program, which I know is what you want, as well as we do.

Again, all of those reasons I heard, but I think you have, perhaps, just a little less faith in our society than I, because although I guess ag zoning for the State is, at least in theory, a possibility, at least at this point in time, I refuse to believe that our Legislature and our courts will steal -- I'm sorry, but that is the only word I can give it -- will steal the development rights from all of the landowners in this State. Stealing is stealing, and I don't care whether you pass a law in order to do it or not. It is still stealing. If you do it in the name of the public, it is still stealing. And I don't think -- I really, really don't think -- that if it comes down to it we are going to face ag zoning on the whole State. We will have some municipalities that will try it, and hopefully with a program such as you are proposing, with proper guidelines, we will prevent that.

ASSEMBLYWOMAN OGDEN: Is there anyone else in the audience who wishes to speak? (affirmative response) Yes?

M A Y O R D O N A L D B R Y A N: My name is Donald Bryan. I am the Mayor of Lumberton Township. I thank you very much for the opportunity to speak here this morning.

Lumberton Township contains some of the best farmland in the State. Permanently preserving at least part of it has always been an important aspect of our land use plan. In the late 1970s, Lumberton was the focus of the Agricultural Preserve Demonstration Project, the pilot program, which had broad local support, but failed for lack of funding.

Lumberton voters have consistently and overwhelmingly approved State and county bond issues for farm preservation, and in the last few years we have taken an active role in the county's Farmland Preservation Program under the Agricultural Retention and Development Act. We have looked long and hard at the alternative means of keeping our farms, and believe that the use of transfer development credits holds a great deal of promise for success.

Lumberton is particularly well-suited for a TDR program. It is divided by the Rancocas Creek, which forms an excellent natural buffer or barrier between lands to be retained in farmland and lands to be developed. There is sewer capacity north of the creek, and much of the farmland south of the creek is worked by a younger generation of family farmers who have deep roots in the community. Their families have farmed some of that land for generations and generations.

Lumberton is now getting a great deal of development pressure from the direction of Mount Laurel. Lumberton is adjacent to Mount Laurel, Medford, and some other towns where there is a substantial amount of development that is being completed. We expect that this development pressure will continue to increase within the next couple of years as the widening of Route 38 is completed.

All of the elements necessary for a successful TDR program exist in Lumberton. In fact, a few years ago -- recently, the feasibility of a program was confirmed in a land economics study by Dr. Nicholas (phonetic spelling), whom you may be familiar with.

Lumberton has two realistic alternatives to doing nothing. We can try for an outright purchase of development rights with State matching funds, or a TDR program. Earlier this year, the township authorized $750,000 in capital expenditures for farmland preservation. That may not seem like a lot of money on the State level, but to a small town with less than 5500 people and a limited tax base, it is a lot of money.

At present land values, this amount, even when it is multiplied by county and State matching funds, may not be enough for an outright purchase of all the development rights we need to create a viable agricultural district. TDRs may hold the solution to our problem. They can be purchased and used and prime farmland preserved without any public funds at all, and the money that is available -- the State money, the county money, the township money -- need only be used to fund a development bank, should that be necessary. When the rights are sold, the money would be recycled or used to retire our debt. Taxpayers are only required to bear the costs of the interest, not the entire principal.

I wanted to tell you this to make a point. New Jersey's farmland is where development isn't. Communities with a lot of good farmland, enough to establish a viable agricultural base -- a long-term preservation of agriculture -- do not have large tax bases, and are not capable of raising the large amounts of money that are needed to quality for the State matching funds under the present program. We have to try another way.

A well designed TDR program offers us that opportunity -- useful, valuable rights that when sold would provide our farmers with reasonable compensation. I think we can do it in Lumberton, and I am here today to urge you to act promptly to approve this legislation to confirm our authority to do so, so that we can get our program under way.

Thank you.

ASSEMBLYWOMAN OGDEN: Thank you very much, Mayor Bryan. What is the feeling of the farmers in your town -- in Lumberton -- in terms of a TDR?

MAYOR BRYAN: I think they are very skeptical. I think they feel it is something new; it is something they haven't seen. I think they are very concerned. They want to see what it is going to do before they buy it, really. I think they are very skeptical that the rights created wouldn't be valuable. I think that sums it up. I think if a program were designed and placed in front of them that offered real value -- valuable rights, rights that could be sold, rights that could be sold immediately-- That is what they are interested in.

Our farmers, particularly in this area -- these family farmers -- are-- I mean, they have been farming that land for generations. They don't want to move. They don't want to go to Vineland or the eastern shore of Maryland or someplace else. They want to stay there. But, they are concerned for themselves and the futures of their families that some kind of a program is going to come in and take away their resource. But they don't want to move. They just want to make sure that they are able to continue farming and that their future generations will be able to continue farming.

ASSEMBLYWOMAN OGDEN: Is there any concern that if they either give up the development rights through the purchase or else through TDR, that at some point down the road they are not going to continue farming? In other words, they will have all this farmland, but, for whatever reason, farming would no longer be viable.

MAYOR BRYAN: The farmers that I have talked to are-- They know that there is a residual value to the land to be able to farm it, whether it be for what they are doing now -- and we have all kinds of farming; we have dairy farms; we have orchards; we have grain farms; we have vegetables; we have everything-- There will be some agricultural use for that land so long as they are able to farm it in an economically viable way; that is, that they don't have 50 acres surrounded by dense housing and this sort of thing, and they've got a market, the farm support infrastructure, and those kinds of things -- the co-op survival.

I think they recognize that there is that residual value. They are concerned about the difference -- the amount of value of the development rights, and that is really a big question. It comes down to a question of the price of that, and would you be able to design a program so that that compensation would be sufficient?

ASSEMBLYMAN SHINN: Don, what kind of credit market do you see now in Lumberton? I would like you to talk about the now versus then market potential.

MAYOR BRYAN: Okay. We have a small population. Now we have a substantial amount of development that is already approved, and construction is just beginning on some projects. There is still a lot of undeveloped, unsold land there, some of which would be suitable for an agricultural district, and a lot of which where there is nothing happening on it yet. We have had inquiries from developers. They have been buzzing around Lumberton for the last six or nine months or a year or so with a great deal of interest. We have made inquiries of them what they would think about it. I think we would be able to sell the great bulk of the credits -- 50% or something like that -- within a couple of years; maybe right away. We have had people who are interested in major developments who have indicated an interest in using the TDRs to buy the credits and to be able to

use them. In fact, they are waiting to see what you do and what we do, and that sort of thing.

ASSEMBLYMAN SHINN: Another thing I would like to mention is, Don serves on our Farmland Preservation Advisory Committee. He happens to be the only non-farmer on the Committee. He started this in 1979, I guess. We had a question on the ballot in 1978 relative to spending $2 million for ag retention in the county and, based on the response to that question, we organized -- prior to the Farmland Retention Act -- a Farmland Preservation Advisory Committee. Their mission was to look at a proposed plan to deal with farmland retention and preservation in the county. I was on the Freeholder Board at that time, and basically recommended to the Board that we really concentrate on agriculture in that Committee. There was some criticism for that. It really doesn't qualify-- We are under the grandfather provision of the Retention Act now because we don't have enough non-farmers on the Committee.

I felt that it was very important that whatever policies they were going to set up and recommend to the Freeholders that we were going to try to implement on a county-wide basis, that farmers be comfortable with what they were going to be dealing with on a long-term basis. We loaded it with agriculture. I've got to tell you, that is probably the best Committee I have ever served with, or on, or as ex officio to -- whatever my role was -- because they really grappled with the issues that affected them, rather than an adversarial role with environmental people or non-farmers, but within their own peer group.

A couple of things came up after all those deliberations, some of which surprised me. One, they said we should do everything we could to implement the State ag act; two, we should do the TDR pilot in Lumberton; and three, the Emergency Program, which is a Chesterfield program with a large

impact on a major prime ag area-- We should go in and try to buy that development out. They recommended that to the Freeholder Board and, of course, we did that in the Chesterfield area.

The other thing that was very interesting to me was, they set a minimum acreage for investing county dollars in an ag area. That minimum acreage was 1000 acres, which was quite a surprise to me, quite frankly, because how big, is a farm retention area question, and where do we draw the line, or do we draw the line? This has always been a big issue in this process. For that group of farmers to say, "Really, you need 1000 contiguous acres to promote long-term agriculture without being impeded from residential development, etc." I think it was a major decision in that group. It was a decision made by farmers; it was not made by environmentalists or "do-gooders," and so forth. It was an agricultural decision.

In retrospect, I never would have set that high an acreage if it had been left up to me, but I think it was a good plateau to set because I think it really had a lot of merit.

So, I just wanted to get on the record that this hasn't been a process that has been devoid of agricultural involvement. A lot of this legislation -- parts of it -- have grown out of discussions we have had with farmers. So, it had a lot of front unloading with agriculture, I guess is the bottom line.

ASSEMBLYWOMAN OGDEN: Thank you, Mayor Bryan.

MAYOR BRYAN: Thank you very much.

ASSEMBLYWOMAN OGDEN: Is there anyone else who wishes to testify at this time? (affirmative response)

MAYOR PATRICIA WOLFINGTON: My name is Patricia Wolfington, and I am Mayor of Hainesport Township. I would just like to add a little bit more to what Don Bryan had to say. We are a small township with mixed use of development, agriculture, etc. We are contiguous with Lumberton Township.

We are very much interested in adding to a regional farmland preservation area by adding parts of Hainesport in with Lumberton.

We are also experiencing tremendous development pressures very, very quickly -- very, very quickly -- one of the indications being that we have a code book that we publish, and I think we sold out one issue of it in five years, and we have been through two printings this year. I am beginning to feel like a pimple on a teen-ager's face, just being squeezed in all sorts of directions.

I would like to strongly also say that I support Mr. Shinn's bill. I also support the multi-faceted approach of having the wetlands, historic districts, and whatnot, all under one bill, simply to keep it as simple as possible on a municipal level. Anyone who has served on the municipal level knows how getting one thing passed and then trying to get a second thing passed and then the third item comes up-- It would make it unnecessarily structured if you could do it all in one.

We have in our township, the same as does Lunberton, a very good area south of the Rancocas Creek for farmland. We have a lot of wetlands that are coming under lands adjacent to the creek that are not necessarily identified on the aerial maps. People want to come up to the flood plain area and develop, and whatnot, and a bill of this sort would certainly, you know, be of great benefit to many municipalities. If you look around South Jersey, we are just typical of a lot of the smaller communities that are now in the crush of development, and are also interested in preserving farmland and being fair and equitable to their farmers at the same time.

I do have one question on the farmland; that is, the fair market value. When you regionalize it, how is it updated so that--

ASSEMBLYMAN SHINN: There is a mandatory three-year update in the legislation, but it would be at the local government's discretion to address -- if there is any market shift -- to address the--

MAYOR WOLFINGTON: That is what was concerning me.

ASSEMBLYMAN SHINN: --credit valuation and distribution. The important thing, I think, to address in that valuation, is what you create you have to distribute, and make the decision what your market ratio is going to be. If you are going to create 1000 credits, you have to have 1000-plus credit market, because every piece of land that is going to be developed with bonus densities isn't necessarily going to develop with credits, unless it is a very attractive situation.

So, you have to have more of a market than you have generation, to assure that there is a place for every credit to go. If that isn't possible, then you have to make a conscious decision that if you may want to create a bank, you are going to buy some of those credits and hold them until that market evolves or you create a market for those credits. It is a matter of balancing off the number of credits you allocate to what you can market, and keeping pace with the evaluation of a credit as it relates to the sending area.

The thing to remember, which is a little bit complicated, is that the only time the sending area evaluation really means anything relative to the price of the land, is when you allocate it, because the value of the credit is really determined by what it does as a bonus density in the receiving area, not by the ground it comes from. So, when you allocate it to the farmer-- If you create a bank, it is a different situation, because then you have created an artificial market for the credit which, based on supply and demand, may have a life of "X" -- okay? If we have 100 credits in the county bank now, and we have sold 10, we have a 90-credit surplus, so if someone comes in for five credits, if we say the base price is

$10,000, we are not going to get 12. We are going to get 10 because we have more of a supply now than we have demand.

So, it's an artificial market. But, once it becomes a free market, then the value of that credit becomes how many farmers are willing to sell their credits, and what are they willing to sell them for, versus what they are going to do at the bonus density development end of the pattern. So, they go away from how many credits per acre based as a land valuation--

MAYOR WOLFINGTON: As to how much--

ASSEMBLYMAN SHINN: --and into what it is going to do in development in your growth area. As long as you keep a couple of these concepts rolling around, that the municipality is really the maker of the program. The county just looks at it. The State Ag Development Committee just looks at it and comments. But you are the maker of the program; you monitor it; you update it. You have to be sure it is going to work to be equitable.

MAYOR WOLFINGTON: Thank you.

ASSEMBLYWOMAN OGDEN: Thank you. Yes? (responding to someone in the audience)

F R A N B R O O K S: I am Fran Brooks. I work for the New Jersey Farm Bureau, and with Peter Furey and President Ellis. I would just like to follow up on a couple of President Ellis' remarks regarding the proposed TDR program in New Jersey.

Mr. Ellis did bring up our position regarding demonstration projects and the need for them because we do not-- Until such a program -- all of the aspects of such a complicated program are really worked out, we can't expect such a program to take off and be successful.

Rather than go deeply into that issue, I just want to touch on two other issues we feel strongly about. One is the need for provisions in the State legislation. First off, there seems to be a misconception about the absence or the need for provisions. First of all, people need to know how to act.

Municipalities need to know what procedures to follow. When we speak about provisions, Assemblywoman, we are really talking about general concepts that would be integrated into the bill so that municipalities would have direction about how to set up their programs. Without such provisions in effect, like all regulatory programs, most likely municipalities are not going to have the kind of direction they need.

When I say this, I mean provisions such as having an agronomic study and some of the provisions that Ms. Covais mentioned early on in the hearing. There is a need for them because they need direction on how to set up and construct their programs.

The second point that I would like to put on the record is regarding the bank. There seems to be an idea that the bank need not be mandatory. What we would maintain is simply that the bank might not necessarily need to be fully funded. We have some ideas about how the bank could be structured under a mandatory program that would not place the kind of pressures that people talk about that would be placed on municipalities should the bank have to be fully funded. We would like the opportunity to present our position at another time, perhaps within the next few days, about our ideas on how to develop a bank, such that municipalities would have a bank, but that the bank might not necessarily be fully funded at the time that the legislation was adopted, or the local ordinance went into effect. We would like the opportunity to do that.

The provisions and the bank are two very important points that we feel need to be provided in any legislation that is adopted in the State. I might add that there is also a misconception about the fact that there will be an erosion of home rule if these concepts are built into the basic bill. In point of fact, it will just be the opposite. These provisions will enable the municipality to make the determinations that are necessary, and will give them the flexibility and the power

to maintain their position. It will be just the converse. It will give them what is necessary. It won't be an erosion of their position.

Thank you.

ASSEMBLYMAN SHINN: Fran, before you go.

MS. BROOKS: Yes?

ASSEMBLYMAN SHINN: Are you going to give us some language on what you are proposing?

MS. BROOKS: Yes. We will be more than happy to do that. We are developing the language presently, and we will be more than happy to do that.

ASSEMBLYMAN SHINN: I think that as this bill evolves -- and we have gotten several recommendations for language and adjustments and testimony, and so on -- one of the issues we are trying to deal with is trying to make it as simple as possible. If it gets too structured and too complex, we are afraid it will become unimplementable; too structured in review, too many bureaucratic hurdles to jump through. I think the Retention Act suffers from those, to be quite frank about it. We don't want to get this in the same posture and have too many hurdles that towns have to jump through to do this. I know you are conscious of that, so I will be interested in the language you have.

MS. BROOKS: There is no question that we don't want the bill to be so -- or the law to be so burdensome and so complicated that a community could not possibly deal with it. On the other hand, because TDR is extremely complicated, we do feel that it is very necessary that there be fundamental concepts and safeguards built into that bill -- into any bill that is passed by the Legislature. I think the balance is possible, Assemblyman Shinn. I think it is possible to have a bill that provides the provisions and the safeguards and the concepts that are necessary to satisfy the farm community, and possibly all other landowners, as well as not create a bureaucratic boondoggle, to which you refer continuously.

ASSEMBLYMAN SHINN: Okay; good.

ASSEMBLYWOMAN OGDEN: Thank you.

MS. BROOKS: You're welcome.

ASSEMBLYWOMAN OGDEN: Is there anyone else who wishes to speak? Sharon? (speaking to someone in the audience)

S H A R O N A. A I N S W O R T H: I am Sharon Ainsworth. I work for the New Jersey Department of Agriculture. Our official testimony was given at the first hearing by Secretary Brown, but in sitting in the audience I felt compelled to at least make a few comments.

As you know, primarily our concern has been -- as was stated in our testimony -- the need for equity to the farmer. I would have to say that the individual who represents the Vernon Coalition-- He also mentioned that he had concerns about even the Montgomery County, Maryland, programs, in terms of the actual dollar amounts of money that the farmer is given in exchange for being placed under severe development restructions.

Just from my own personal experience in agriculture, I have worked in the State of Pennsylvania, as well as New Jersey, and I am a native of a rural area in New York State. I just want to let you know that the farmer in New Jersey has to be much more sophisticated than his adjacent neighboring farmers. He is really dealing, as you well know, with a lot of urban pressures, a lot of regulations that other farmers don't contend with. One of the things that Assemblyman Shinn brought up was the situation with the critical water area designation in parts of the State. You know, what is going to happen to a farmer who is placed into that kind of a zone, where he is going to potentially have to pay fees to DRBC? There have been some proposals recently about adding water fees for use. We have had problems in the past when water use restrictions were placed. Nurserymen are not given the same kinds of opportunities to water use as, say, a crop or dairy or livestock farmer would have.

Really, in the State of New Jersey, you should also be very concerned. I mean, I, personally, of course, am in support of preserving farmland in this State, but you have to recognize that it is a very complex situation in New Jersey. You have a lot of restraints on these farmers which they are not subject to in other states. We have been doing some work with the electric utilities. The electric rates -- if you just look at a dairy farmer's costs in terms of his electric rates in the State of New Jersey compared to neighboring states like New York and Pennsylvania, it is just dramatic. So, you know, I would hope that in the course of developing this, that you will take into consideration not only the farmer's equity, but also the kinds of restrictions that may be placed upon them in the future in terms of the economics of, you know, continuing to run a viable agricultural operation.

For example, where I came from in New York State, just in that one county alone there are more acres of farmland than there are in the entire State of New Jersey. Because of that kind of lack of consolidation, it didn't surprise me at all when you indicated that in Burlington County they wanted to have at least 1000 acres of contiguous farmland, just from the infrastructure that is required in producing agricultural crops. To get a business that is willing to be a seed supplier or feed supplier for animals for plant production, you need to have that kind of density. You have to have, in order to keep the local equipment dealer in business-- He has to have enough farmland around him to make it economically viable for him to continue that agricultural infrastructure that is necessary to make the business occur.

So, what happens is, you go to-- For example, out in Pennsylvania you go out near Gettysburg and Lancaster County, Adams County, those areas are primarily rural areas. They have a tremendous agricultural infrastructure. If a farmer has a problem with his tractor, he just goes to the local supply

store, which is just down the street, and he gets it fixed. In New Jersey, it is a major problem. He may have to go halfway across the State to get to the local farm supplier. So, really, you know, having 1000 acres designated as agricultural land doesn't surprise me at all, because just in order to keep the kinds of infrastructure that is necessary for the farm operation, you need that kind of density.

I now live down here in Camden County, and I am very concerned about the fact that there is almost no farmland left in Camden County. About all that is going to be left shortly will be what happens to be in the Pinelands. On the other hand, I have to offset that as compared to what I know, you know, relatively speaking, about what other farmers in this country deal with. The kinds of regulations we have in New Jersey, we are always in the forefront, be it DOT regulations, be it pesticides; you name it, we are always in the forefront.

So, I would hope that in the course of all this you will take into consideration the equity of the farmer, number one, and then also the fact that we would certainly hope that there would be -- from the municipal level -- that any area that does become an agricultural zone, that they have to assist those farmers in coping with all the kinds of complex regulations that New Jersey has just because of the nature of the State.

ASSEMBLYWOMAN OGDEN: Thank you.

ASSEMBLYMAN SHINN: A couple of things, unless you had something, Assemblywoman Ogden?

ASSEMBLYWOMAN OGDEN: No.

ASSEMBLYMAN SHINN: Assembly Bill 2689, supplementing the Ag Retention Act, uses your appraisal process for determining the regional value, but it takes your formula-- I think there is a better way to do that. We are open for suggestions on that, but I think that sort of goes to the equity issue. We are certainly open to comments on that. I

agree. I think that because of the ag money we have in Burlington County, that we are very sensitive to several of the comments you made, particularly about water. The Freeholders have adopted a water alternative plan for Critical Area 2, and we are at the implementation stage already. Ag water use was a major concern to the Board. We expressed that to DEP.

But, you raise some very viable issues, and very good ones, which I think round out the agricultural picture.

MS. AINSWORTH: What is your feeling in terms of time frame, specific amendment recommendations, and the like?

ASSEMBLYMAN SHINN: I would think -- and I am not trying to speak for the Chairwoman -- through the Chairwoman -- but just from my standpoint-- This is our third hearing, and we have gotten comments galore. I think what we would like to try to do is get all the comments in within a reasonably short period of time, so we can get all the ideas considered and involved in the legislation, where applicable.

ASSEMBLYWOMAN OGDEN: Let's say by the end of the month.

ASSEMBLYMAN SHINN: By the end of the month, yeah. I think it is something we ought to do now to get all of our ideas on the table and try to come through with a composite of the best thoughts.

MS. AINSWORTH: Thank you.

ASSEMBLYWOMAN OGDEN: Thank you. Is there anyone else who would like to speak -- to address the Committee? (no response) If not -- if there is nothing else you would like to say, Bob--

MR. MILLER: Madam Chairman, is it your pleasure that we include statements as submitted to the Committee at the previous hearings in the transcript of this record so that they can all be consolidated?

ASSEMBLYWOMAN OGDEN: Yes, I think that would be fine.

MR. MILLER: Several of the witnesses supplemented those previous statements.

ASSEMBLYWOMAN OGDEN: I think that would be helpful to all of us.

If there is no one else who wishes to testify at this time, I will declare the hearing adjourned. Thank you all very much for coming.

(HEARING CONCLUDED)

APPENDIX

Tel: 609 - 267-0198

LESTER C. JONES & SONS, Inc.
Fostertown Road – Box 52
Medford, New Jersey 08055

December 3, 1986

Assemblywoman Maureen B. Ogden
266 Essex Street
Milburn, N. J. 07041

Dear Assemblywoman:-

I read in the news reports of your recent committee hearing on the TDR bills which were recently held in Mount Holly, N. J.

Our family farms in Lumberton Township, one of the areas being promoted by some for a TDR program. We are unalterably opposed to TDR's and my fellow farmers are also strongly opposed.

If there is a need for the community for preservation of Agricultural open space, the Farmland Preservation Program is the proper avenue.

I understand there was testimony by the Mayor of our Township that the farmers were in favor of such a program. This is at variance with the facts. I repeat that I know of none of my neighbors who favor such a program.

We, as farmers, regret that we were not notified of your hearings. At local township meetings, the farmers have turned out in opposition to such a program.

If I can be of any assistance to you or your committee, I would be only too happy to oblige.

Sincerely yours,

Lester C. Jones

J:j

We, the undersigned, who are farmers and landowners in Lumberton Township concur in the thoughts expressed in the attached letter signed by Lester C. Jones.

[illegible] Jones

Irving Jones

Elizabeth K Prickett

[illegible] H. Prickett

Pickhill Bros., William Pickhill, Partner

Daniel L. Kumpel

[illegible] Prickett

TRANSFER OF DEVELOPMENT RIGHTS TESTIMONY
BEFORE THE
ASSEMBLY ENERGY & NATURAL RESOURCES COMMITTEE
OCTOBER 9, 1986

MADAME CHAIRWOMAN AND COMMITTEE MEMBERS, I APPRECIATE THE OPPORTUNITY TO SPEAK BEFORE YOU TODAY ON THE TRANSFER OF DEVELOPMENT RIGHTS LEGISLATION, ASSEMBLY BILLS 2622 AND 2992. I AM TESTIFYING AS BOTH SECRETARY OF AGRICULTURE AND AS CHAIRMAN OF THE STATE AGRICULTURE DEVELOPMENT COMMITTEE. THIS GROUP, THE SADC, OPERATES THE STATE'S CURRENT FARMLAND PRESERVATION PROGRAM.

THE PRESERVATION OF FARMLAND HAS BEEN A TOP PRIORITY DURING MY PAST FOUR AND A HALF YEARS AS SECRETARY OF AGRICULTURE. ONE OF THE DEPARTMENT'S MAJOR PROGRAMS, JERSEY FRESH IS AN INDIRECT EFFORT TO PRESERVE FARMS. INCREASING CONSUMER AWARENESS OF FRESH, LOCALLY GROWN COMMODITIES IS INCREASING THE DEMAND FOR OUR FARM PRODUCTS. HELPING FARMS TO REMAIN PROFITABLE IS ONE TOOL OF FARMLAND PRESERVATION.

IN NEW JERSEY, UNLIKE MOST OF THE NATION, OUR FARMLAND VALUES HAVE CONTINUED TO RISE. AS A MATTER OF FACT, NEW JERSEY HAS THE HIGHEST FARMLAND VALUES IN THE COUNTRY. AN INCREASING PERCENTAGE OF THAT VALUE REFLECTS ITS DEVELOPMENT POTENTIAL FOR NON-AGRICULTURAL PURPOSES.

THE DECLINE IN INTEREST RATES AND THE DESIRABILITY OF LOCATING IN NEW JERSEY HAVE ACCELERATED THE LOSS OF FARMLAND IN RECENT YEARS TO ABOUT 20,000 ACRES PER YEAR.

CONCERN OVER THIS LOSS LED THE LEGISLATURE TO PASS AND THE GOVERNOR TO SIGN THE FARMLAND PRESERVATION ACT IN 1983. THIS LAW ESTABLISHED THE SADC WHICH IS CHARGED WITH IMPLEMENTING A STATEWIDE VOLUNTARY PLAN FOR THE RETENTION OF THIS VALUABLE RESOURCE, OUR FARMLAND. THE PROGRAM INCORPORATED MUCH OF THE CRITERIA OUTLINED IN THE "GRASSROOTS AGRICULTURE RETENTION AND DEVELOPMENT REPORT." THE KEY CONCEPT HERE IS VOLUNTARY. NOT ONLY IS LAND ENTERED VOLUNTARILY, BUT IT ALSO REQUIRES LOCAL INPUT AND CONTROL AND IT COMPENSATES THE LANDOWNER.

THE WAY THIS PROGRAM WORKS IS THAT A LANDOWNER CAN SIGN UP FOR EIGHT YEARS UNDER AN AGRICULTURE RETENTION PROGRAM. IF THAT LANDOWNER DECIDES TO PLACE A PERMANENT DEED RESTRICTION ON THE LAND - TO BE USED FOR AGRICULTURE FOREVER - THE FARMLAND PRESERVATION PROGRAM CAN BUY THE DEVELOPMENT RIGHTS OF THE LAND. THAT IS DETERMINED BY LOOKING AT WHAT THE LAND IS WORTH AS AGRICULTURE LAND VERSUS WHAT IT IS WORTH FOR DEVELOPMENT.

THE PROGRAM IS MAKING SIGNIFICANT ADVANCES. BUT, IT IS CLEAR THAT THE HIGH COST OF DEVELOPMENT EASEMENT VALUES IN SOME AREAS MEANS WE NEED TO INVESTIGATE OTHER TOOLS SUCH AS TRANSFER OF DEVELOPMENT RIGHTS.

THE STATE BOARD OF AGRICULTURE AND THE SADC HAVE BEEN REVIEWING THE TDR PROPOSALS. BOTH GROUPS HAVE MET WITH ASSEMBLYMAN SHINN AND WITH ASSEMBLYMAN BOCCHINI. THE SADC AND THE STATE BOARD HAVE SUPPORTED TDR IN CONCEPT, BUT NEITHER GROUP HAVE TAKEN A FINAL POSITION ON THESE BILLS. WE ARE STILL GATHERING INFORMATION ON THESE TO FORMALIZE RECOMMENDATIONS. AND, WE APPRECIATE THAT BOTH SPONSORS HAVE GIVEN US THE OPPORTUNITY TO HELP REFINE THE LEGISLATION.

ONE OF OUR MAJOR CONCERNS IS EQUITY TO THE LANDOWNER. PRESERVATION SHOULD NOT BE AT THE EXPENSE OF THE FARMER. TDR - WHILE A VALID CONCEPT - CAN FAIL IN REALITY IF THE APPROPRIATE SAFEGUARDS ARE NOT PRESENT.

NEW JERSEY ALREADY HAS A MODIFIED TDR PROGRAM IN THE PINELANDS, KNOWN AS PINELANDS DEVELOPMENT CREDITS. IN 1984, GOVERNOR KEAN ASKED ME TO CHAIR THE PINELANDS AGRICULTURAL STUDY COMMISSION TO REVIEW THE IMPACT WHICH THE COMPREHENSIVE MANAGEMENT PLAN HAS HAD ON PINELANDS FARMERS. ASSEMBLYWOMAN OGDEN WAS ALSO ON THAT COMMISSION.

Our study revealed that the performance to date of PDC's in the private market have been "lackluster" at best. The attempt to return lost equity to landowners by setting up a PDC program was commendable but the necessary safeguards and growth conditions have not been present.

The performance of the PDC program has caused the farm community to have a skeptical attitude toward TDR.

The extension of TDR's statewide requires a cautious approach. Perhaps we should work in selected communities where the necessary conditions exist.

Specifically, what I mean is that before communities get involved in a TDR program it needs to be determined if there is a market for the credits.

And, the agricultural impact needs to be assessed. Is the agricultural sending area in fact, good agricultural land? Does it have good soil types and water availability? Is it economically viable for the land to be maintained for agriculture?

To be truly effective, it needs the support of the farm community.

I WANT TO PRESERVE FARMLAND IN NEW JERSEY. ANOTHER TOOL IS NEEDED. PERHAPS THAT IS ASSEMBLYWOMAN OGDEN'S "RIGHT OF FIRST REFUSAL CONCEPT;" PERHAPS IT IS A TDR PROGRAM -- OR BOTH. WHATEVER THE ANSWER, I URGE YOU TO CONSIDER THE EQUITY OF THE FARMER.

THE ONLY SPECIFIC REQUEST I WOULD MAKE TODAY IS THAT THE SADC SHOULD BE GIVEN A LEAD ROLE IN ANY TDR PROGRAM. THE SADC IS COMPRISED BY STATUTE OF MEMBERS REPRESENTING THE DEPARTMENTS OF COMMUNITY AFFAIRS, ENVIRONMENTAL PROTECTION, TREASURY, AND AGRICULTURE, COOK COLLEGE, FOUR FARMER REPRESENTATIVES AND TWO PUBLIC MEMBERS. THIS GROUP WITH ITS DIVERSITY AND DEPTH WOULD BE AN IMPORTANT SAFEGUARD TOWARD ENSURING A WORKABLE TDR PROGRAM.

FIELD INPUT FROM THE COUNTY AGRICULTURE DEVELOPMENT BOARDS AND THE COUNTY BOARDS OF AGRICULTURE IS CONTINUING TO COME IN. AS THE INPUT IS COMPILED, MORE DETAILED AND SPECIFIC RECOMMENDATIONS WILL BE MADE.

AGAIN, I SHARE WITH YOU THE CONCERNS ABOUT SAVING FARMLAND AND KEEPING THE GARDENS IN THE GARDEN STATE. I APPRECIATE THIS OPPORTUNITY TO TESTIFY AND LOOK FORWARD TO WORKING WITH YOU ON THIS LEGISLATION WHICH COULD HAVE SUCH A DRAMATIC EFFECT ON FARMERS' EQUITY.

LAW OFFICES
MICHAEL A. PANE
A PROFESSIONAL CORPORATION

307 NORTH MAIN STREET
HIGHTSTOWN, NEW JERSEY 08520
TEL.(609) 448-8880

August 12, 1986

The Honorable Robert C. Shinn
223 High Street
Mount Holly, New Jersey 08060

Dear Assemblyman Shinn:

I have set forth below some changes to A 2622 for your consideration. The page references below to your bill are to the typed version I have. (I enclose the first page for your reference.)

The other document enclosed is The League of Municipalities draft, revised as of 1 April, 1986.

Page 4, sec. 5(d). Eliminate. If you allow use of transfers outside the recieving zone you dilute the program by lessening the attractiveness of the recieving zone. The sending zone produces only a certain amount of transferable development potential - no more. To the extent that this is usable outside the receiving zone in connection with variances you lessen the developbility of the receiving zone. As your bill says at page 5 - sec.6(c) - The land in the receiving zone shall be able to accomodate all of the developent potential from the sending zone.

Page 7, sec.8. consider inserting the language as marked at the bottom of page 6, top of page 7, of the League draft.

Page 8, sec.9(c). consider inserting the language as marked at the bottom of page 7, top of page 8, of the League draft. There should be a time limit on use of remaining development transfer. Ten years is reasonable.

Page 8, sec.9(d). consider inserting the language as marked at the middle of page 7 of the League draft. Release of restrictions should be optional with the municipalilty. Good planning may favor release of deed restrictions if the program no longer works. Moreover, the possibility of a later release encourages landowners to participate early in the program, as

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they have nothing to lose if the program later terminates. Thus, optional release allows for greater initial participation and, therefore, succes of the program.

Page 9, sec. 10(b). Clarify. Such lands may for mapping purposes be appropriately shown as being within a zone but should not have any right to development transfer.

Page 9, sec. 11(a).and Page 10, sec. 11(f). Change to read at line 2 "may establish" rather than "shall establish".

Page 11, sec. 11(g). Change to read at line 1 "A municipality directly or through a development transfer bank may...."

We suggest you consider adding items A through F inclusive, set forth at pages 8-12 of the enclosed League draft.

I would be happy to go over this material with you in person if you thought it desirable.

Thanking you for your kindness in this matter, I am

Respectfully,

Michael A. Pane

MAP/tq
Encl.

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4/1/86

CONTENT MEMORANDUM FOR DEVELOPMENT TRANSFER ENABLING LEGISLATION

A. ESSENTIAL ELEMENTS

The following 5 criteria are considered to be the basic guiding principles essential to a feasible and workable development transfer ordinance:

1. identification of resource to be preserved. (satisfied by paragraph 4)
2. identification of development pressures. (satisfied by paragraph 4)
3. receiving areas must be capable of accommodating additional density. (satisfied by paragraph 6)
4. ordinance must be consistent with local master plan. (satisfied by paragraph 2)
5. guarantee of marketability, i.e. there must always be receiving areas capable of accommodating development rights. (satisfied by paragraph 6)

B. DEFINITIONS

("Development" as defined in the Municipal Land Use Law, i.e., "Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction conversion, structural alteration, relocation or enlargement of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to this act.)

"Development Transfer" means the conveyance of development or of permission for development from one or more lots to one or more other lots by deed, easement or other means as authorized by

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ordinance.

"Sending Zone" means an area designated by the adopted master plan and zoning ordinance within which development is to be eliminated or restricted, and which has such other features as are provided for in paragraph 5.

"Receiving Zone" means an area designated by the adopted master plan and zoning ordinance within which development is to be increased, and which has such other features as are provided for in paragraph 6 hereof.

"Development Potential" means the maximum number of dwelling units or square feet of non-residential floor area that could be constructed on a specified lot or in a specified zone under land use regulations in effect on the date of the adoption of the development transfer ordinance, and in accord with recognized environmental constraints.

C. SUGGESTED AMENDMENTS TO MLUL SECTION 40:55D-65

To Provide for Transfer of Development as follows:

(1) A municipality may by ordinance adopt provisions for transfer of development including, if necessary, the issuance of instruments and the adoption of procedures for recording the status of development affected by the provisions of such ordinance.

(2) Such ordinance shall include the specification that the planning board of the municipality shall have the responsibility for implementing the development transfer program. Such ordinance shall be designed to be consistent with adopted master plan of the community.

The purposes of the development transfer ordinance shall be plainly stated in its text.

(This paragraph satisfies criterion #4)

(3) deleted

(4) The planning board of a municipality intending to adopt an ordinance for development transfer shall include in its adopted master plan an analysis of the anticipated population and economic growth and development that the municipality may expect within six years.

Such analysis shall also include the definitions and identification of sending and receiving zones, and provide in accordance with paragraphs 5 and 6 an estimate of the development potential of the sending and receiving zones.

Prior to adoption by the municipal planning board, such analysis shall be submitted to the county planning board for review and the comments of the county planning board shall be part of the record before the municipal planning board.

Prior to the adoption of any development transfer ordinance, the municipal governing body shall determine during hearings on the ordinance that the program is realistically achievable in a functioning market in the light of said analysis as set forth in paragraph 6 hereof. (This paragraph satisfies criteria #1 and 2)

(5) In creating and establishing the sending zone(s) the governing body shall designate a tract(s) in such numbers and of such size, shapes and areas as it may

deem necessary to carry out the purposes of this act; provided, however, that

a. All land in the sending zone(s) contain one or a combination of the following characteristics:

i. Substantially undeveloped or unimproved farmland, woodland, floodplains, swamp, aquifer recharge area, marsh, land of steep slope, private recreational or park land;

ii. Substantially improved or developed in a manner so as to represent a unique and distinctive socio-economic, aesthetic, architectural or historic quality in the municipality;

(6) The receiving zone(s) shall be appropriate and suitable for development and shall be at least sufficient to accommodate at all times all of the development potential of the sending zone(s).

The development potential of the receiving zone(s) under a development transfer ordinance shall appear in the judgment of the municipal governing body based on the evidence presented to be realistically achievable in a functioning market as of the date of adoption of such ordinance. (This paragraph satisfies criteria #'s 3 & 5)

(7) Two or more municipalities may, by substantially similar ordinances, provide for a joint program for the transfer of development, including transfers from sending zone(s) in one municipality to receiving

zone(s) in another.

In any joint program the municipal assessor of each participating municipality shall be exclusively responsible for the assessment of affected property within such municipality.

(8) The planning board of the county in which a municipality is located shall review that municipality's proposed development transfer ordinance in terms of the following criteria:

- consistency with the adopted county master plan;
- support of regional objectives for agricultural land preservation, natural resources management and protection, historic or architectural conservation or other community purposes requiring that development be restricted;
- consistency with reasonable population and economic forecasts for the county; adequacy of present or proposed services and utilities to suitability for concentrated growth;
- sufficiency to accommodate at all times the development potential of the sending zone(s).

Any proposed ordinance intended to protect agricultural land shall be referred by the county planning board to the county agriculture development board established by P.L. 1983, c. 31 for review and comment.

The comments of all county agencies shall be submitted to the municipal governing body within 45 days of

receipt of such proposed ordinance ordinance by the county planning board. If the comments of such county agencies are received in a timely manner they shall be part of the record before the municipal governing body prior to enacting a development ordinance.

The county planning board shall monitor each municipal development transfer program in the county.

(9) All transfers of development pursuant to a municipal ordinance shall be recorded in the manner of a deed in the book of deeds in the office of the county clerk. Such instrument shall specify the block and lot number of the parcel from which the transfer was originally made and that of any parcel to which a transfer is being made.

(10) The county clerk shall transmit to the assessor of the municipality in which the property is located a copy of all such transfers as described in paragraph (9) above. For the purposes of assessing all lands from which or to which a transfer of development is made, lands shall be valued as of the next subsequent October 1 next following such transfer.

Parcels from which development potential has been transferred shall be assessed at their fair market value assuming the absence of such development potential. Parcels to which development potential has been transferred shall be assessed at their fair market value assuming the addition of such development

Consider adding to Bill pg, sec 8

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potential. Nothing in this Act shall be deemed to affect the operation of the Farmland Assessment Act (NJSA 54:4-23.1, et seq.).

(11) Every development transfer ordinance shall provide for review by the planning board and municipal governing body not less than once every six years at the time the municipal Master Plan is reviewed pursuant to NJSA 40:55D-89. Such review shall examine whether the development transfer program as enacted:

(1) has proven to be realistically achievable; and

(2) whether the zoned uses permitted in the sending zone continue to be economically viable.

The planning board and municipal governing body shall consider whether the development transfer ordinance should be amended or repealed in light of such review. In the event that the development transfer ordinance is repealed the municipality may by ordinance vote to release such restrictive covenants as to use of land in the former sending district as have previously been executed in favor of the municipality by landowners in the district as part of the development transfer program. The municipal governing body may vote to release all such covenants or any class or type of same and may make a reasonable charge for the cost of preparing such a release.

An ordinance enacted pursuant to this statute shall provide that in the event that the development transfer program is terminated the municipal governing body shall, prior to such

termination, calculate the development potential of those transfers of development which have been effected from the sending zone but which have not yet been consummated by transfer into the receiving zone.

The municipality shall provide by ordinance for continued use of the outstanding development transfers in an amount equal to such outstanding development potential for a period of not less than 10 years following the termination of the municipal transfer program. This shall be accomplished by establishing density bonuses for development transfers into designated areas of the municipality.

Bill p 8 see 9(c)

D. OTHER AMENDMENTS TO STATUTE TO BE INCLUDED IN THE BILL.

1. An amendment to the Local Lands and Buildings Law at NJSA 40A:12-2(g) to include in the definition of real property any rights transferable under a municipal development transfer ordinance, thus specifically enabling municipalities to buy and sell development transfers. (A)

2. An amendment to Title 46 to include transfers of development pursuant to a municipal ordinance among the documents that can be recorded with the county clerk as an interest in land. (B)

3. An amendment to Title 54 which sets forth the following: (C)

a. The substance of paragraphs 7, 9 and 10 above.

b. That transfers of development are not per se assessible and taxable as real property. Rather, that the assessor's only obligations as to

transfers of development is to assess real property from which or to which transfers have been made the value of the parcel from which or to which a transfer has been made as of the next following October 1. In other words, the assessor looks only to the real property itself and the effect that a transfer of development from or to that parcel has on the parcel's value. The assessor does not value the transfer of rights itself--only its effect on a specific parcel of real property (This is an important concept because development rights may be transferred from parcel A in the sending zone in year 1, not used in year 2 and then transferred to parcel B in the receiving zone in year 3. The assessor's only duties in this case arise in year 1--assessing parcel A after the transfer--and in year 3--assessing parcel B after the transfer). (C)

c. Authorization for the Division of Taxation to promulgate regulations to guide assessors operating under municipal transfer development ordinances.

E. PROMULGATION OF STATEWIDE GUIDELINES.

Within 90 days of the enactment of this legislation, the Secretary of Agriculture shall, in consultation with the State Agriculture Development Committee and the New Jersey Department of Community Affairs, promulgate guidelines to be followed by all (D)

municipalities enacting ordinances pursuant to this statute.

These guideline regulations shall cover the following subjects:

a. The methodology for examining and evaluating the following issues:

i. The nature and extent of development demand within municipality and the county within which the municipality is located.

ii. The nature and extent of the threat to farmland posed by such development demand;

iii. The quality of farmland in the municipality, including the number and size of all farmland parcels;

iv. The type and quantity of housing or other development represented by the development demand as assessed in (i) above.

b. Based on the foregoing, the methodology for ascertaining the economic feasibility of a municipal program for transfer of development.

The intent of this section is to insure that municipalities enacting ordinances under this statute will have a basic uniform methodology for designing transfer development programs.

In the event that a municipality enacting a transfer development ordinance deviates from the methodology as promulgated, the municipal governing body shall set forth on the record of the ordinance's enactment the specific reasons for such deviation.

F. APPROVAL OF ORDINANCES

When an ordinance has been approved on second reading a certified copy of the ordinance and certified copies of the minutes of all hearings prior to enactment shall be transmitted to the New Jersey Secretary of Agriculture and the New Jersey Commissioner of Community Affairs who shall, within 120 days of such transmission, certify that the proposed ordinance complies with this Act and all State regulations issued hereunder. (E)

No ordinance shall enter into effect until such joint certification is given.

In the event that neither the Secretary nor the Commissioner denies certification within 120 days from receipt of the proposed ordinance and certified minutes, or if either the Commissioner or the Secretary certifies the ordinance within the 120-day period and the other neither certifies nor denies certification, the ordinance shall be deemed certified.

G. TERMINATION DATE

This Act is a demonstration program and it shall expire at the end of five calendar years following its effective date.

In the event that this Act is not re-enacted before this termination date nothing herein shall be deemed to effect the continued existence of any development transfer program which has been duly certified prior to the expiration of this Act.

H. ANNUAL REPORT

The New Jersey Secretary of Agriculture and the New Jersey Commissioner of Community Affairs shall annually report to the (F)

Governor and the Legislature on the programs certified and the operation of such certified programs in their respective municipalities enacting same.

STATEMENT

The intent of this legislation clarifies the power of municipalities to implement their master plans by allowing the transfer of development to well-situated areas suitable for intense development while protecting lands that are valuable for agriculture, natural resources management and protection, historic and architectural conservation or other reasonable community purposes. It would provide equity for landowners in restricted areas by allowing them to sell their development potential to developers who, in turn, would use that potential to develop at higher densities in areas best suited and available at all times to accommodate the higher densities. It would also ensure the adoption of feasible and workable ordinances and reduce litigation by establishing a review procedure.

This bill would, thus, provide specific reference to the concept in the law, while describing the concept in terms sufficiently general to accommodate a variety of creative municipal approaches to development transfer.

In addition, the bill amends:

Title 40A to allow municipalities to buy and sell development transfers as interests in land.

Title 54 to provide clarification as to the role of municipal assessors in development transfer projects.

Title 46 to allow recordation of development transfers.

In terms of the fiscal impact of municipal development transfer programs, it is estimated that on the whole the impact on the municipal tax assessment will be favorable because:

1. almost all the land suitable for farmland preservation projects is today qualified farmland. Thus, its present tax yield is minimal.
2. even where affected parcels from which development is to be transferred are "vacant" rather than under farm assessment, the development will at some point be transferred to an eminently developable parcel, most probably giving that parcel an increase in value which will be significant.

Thus, the municipal program will in most cases cause the stabilization of the land rateable base under farm assessment and an increase in the land rateable base under regular assessment.

In the event that a transfer of development program is terminated the municipality would be obligated to allow for use of transfers already made out of the sending zone but not yet transferred to the receiving zone for not less than 10 years in a density bonus program.

At the same time, if a program was terminated the municipality could, if it felt it in the public interest to do so, release all restrictions imposed in the sending zoning on parcels from which a transfer of development had already been made.

The Act requires that municipality ordinances meet duly promulgated state guidelines which insure that the proposed local

program will be based on careful economic analysis as to the development demand and as to the feasibility of achieving a workable program under which owners of agricultural land will be paid adequately for development transfers.

Since development transfer programs are a relatively new concept in New Jersey the Act provides that:

1. All proposed municipal development transfer ordinances will be approved by the Secretary of Agriculture and the Commissioner of Community Affairs prior to entering into effect; and
2. This enabling legislation shall expire at the end of five years after enactment.

Moreover, during the five years this Act is in effect the Secretary and the Commissioner will report annually to the governor and the Legislature on the operation of municipal development transfer programs approved and operating under the Act.

N. J. STATE LEAGUE OF MUNICIPALITIES

Concerns re: A 2992 (Bocchini)

1. Sec. 6 - approval by State & County - what if no approval? (p.4)
2. Sec. 86 - only agricultural - no historic preservation (p.5)
3. Sec. 10d - approval of repeal - why? (p.7)
4. Sec. 11b - restriction can never be lifted (p.7)
5. Sec. 12 - mandatory development bank (p.8)
6. Sec. 12c - ambiguity re: municipal resale (p.9)
7. No guidelines
8. No "sunset" and reporting provisions
9. No other statutory amendments

Michael A. Pane
23 October, 1986

A LOOK AT THE FEASIBILITY OF TRANSFER OF DEVELOPMENT RIGHTS IN NEW JERSEY

Any Transfer of Development Rights (TDR) program must seek to provide for a reasonable equity between landowners and developers. No group should be made to shoulder more than its fair share of the burden of preserving open space--especially farmland--for the benefit of the entire community. Even without TDR, the exchange between landowner and developer can be more emotional than most other business transactions, as the following imaginary dialogue illustrates:

Landowner: I've owned this farm for 50 years and the comfort of my retirement is based solely on the price I can get for selling it. It's good, buildable land and I deserve a larger share of the profits to be made from developing it.

Developer: You have waited 50 years for me to come along; there is nothing preventing you from waiting a lot longer for the price to rise. There is certainly nothing making you sell now. If you want to continue farming for another 50 years--or until the bank forecloses--that's your right. And I have the right to buy another piece of ground from the next farmer down the road. Also, remember that any attempt to predict my profit ahead of time is almost impossible. Developing is always a risky undertaking--many developments just don't work out as planned. Who's to say what the real estate market will be doing a couple of years from now? And suppose they change the zoning after I buy? I should be compensated accordingly for all these risks.

Like all zoning, TDR involves actual or claimed taking without just compensation--in this case on a large geographic scale, possibly the whole state of New Jersey. This makes it doubly important to sort out what will happen under TDR--what the actual economic impact on landowners and developers is likely to be. However, the purpose here is not to offer a definitive study of the economics of TDR--a next to impossible task given the

diversity of New Jersey and our level of expertise. Rather, the hypothetical cases that follow are really an extended speculation as to the kind of thinking that, we believe, must take place before a TDR program can become politically acceptable in New Jersey.

Our hope, then, is to lay some of the groundwork necessary for meaningful discussion. We refer several times to the TDR program now functioning in Montgomery County, Maryland. This is by no means meant to suggest that the TDR arrangement there could be transplanted in New Jersey without alteration. It seems fairly clear that it cannot. Nonetheless, as the most successful example of TDR in operation today, many of its aspects are clearly worth exploring and could even act as a springboard for TDR in this State.

HYPOTHETICAL CASE # 1 - WITHOUT TDR

The first case, based on an actual parcel of land recently sold in Sussex County, outlines a deal between a developer[1] and a landowner as it might take place today, without TDR. Although the tract is in a rural district, it adjoins development and would most likely be placed in a receiving zone. The case presupposes that utilities already exist or that the builder--not the developer--supplies water and sewerage. Although we make no claim that all the numbers are entirely accurate--an almost impossible expectation in a projection such as this--they are drawn from estimates supplied by a developer and by the local township tax assessment office. All the figures in this and the two subsequent cases are given before income tax.

Size of property:	105 acres
Zoning (minimum lot size):	1 acre
No. of lots:	74 (allowing for steep grades, roads and turn-arounds)
Land value per acre:	$6,500.

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[1]Defined here as the individual who buys land, subdivides it, lays down roads, etc., as opposed to the actual builder of houses.

Developer's Costs

Land (6,500 x 105):		$682,500.
Closing costs:		17,500.
Approvals--engineering, legal, etc.:		100,000.
Road cost[2]:	+	1,300,000.
		$2,100,000.
Interest--average outstanding balance (1/2 of $2,100,000 @ 10%) if sales completed in second year[3]:	+	$105,000.
Selling expenses (to brokers, etc.):	+	260,000.
Total paid out by developer:	(A)	$2,465,000.

Developer's Revenue

If lots sell for $55,000 each, (again, based on recent Sussex County prices) gross revenue to developer is $55,000 x 74:	(B)	$4,070,000.

Developer's Profit (B - A) $1,605,000.

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[2]Road cost derived in following manner:
-105 acres x 43,560 (sq.ft./acre) = c. 4,574,000 sq.ft. (s.f.)
-4,573,000 s.f. / 74 lots = c. 61,800 s.f./lot
-Assuming 200' for road frontage, 74 x 200 + 19% (for turn-arounds, etc.) = 17,600' of road
-Divided by 2 (a lot on each side) = 8,800' (length of road)
-8,800' x $150/ft. = $1,300,000 (possibly a little high if no underground utilities)

[3]Admittedly, this may be too short a time frame, but even if it were to take longer to sell off all the lots, the interest figure (and, hence, the overall equation) would not change drastically.

HYPOTHETICAL CASE # 2 - TDR ORDINANCE IN EFFECT

The second case assumes a TDR ordinance is in effect and that the same property is within an area designated a receiving zone. By purchasing 21 TDRs, at $5,000 per 5 acres (arbitrarily using Montgomery County, Md. approximate values), the developer can now double his allowable density, from 74 to 148 lots. Because two 1/2-acre lots can almost certainly be sold for more than one 1-acre lot (that is, the one acre the developer was selling for c.$55,000 can now be sold for, say, 2 x $35,000), his revenue picture becomes considerably brighter. In fact, he now stands to make in the vicinity of $15,000 more per acre. When extended over the entire acreage, the total comes to $15,000 x 74, or $1,110,000.

Developer's costs

Land:		$682,500.
TDRs (21 x 5,000):		105,000.
All other costs same as first deal:	+	1,782,500.
Revised total cost:	(A)	$2,570,000.

Developer's Revenue

Gross revenue to developer without TDR:		$4,070,000.
Increase in revenue because of TDR (15,000 x 74):	+	1,110,000.
Total revenue to developer:	(B)	$5,180,000.

Developer's profit (B - A) $2,610,000.

Clearly, the potential return to the developer through participation in a TDR program is substantial. By these numbers, his increase in profit comes to $1,005,000.

HYPOTHETICAL CASE # 3 - WITH TDR AND INCLUDING UTILITIES

This case, again with a functioning TDR program in place, takes into consideration the cost of utilities in the receiving area, until now assumed to be the builder's responsibility.

It should be mentioned here that one of the major criticisms of TDR by such groups as the Farm Bureau concerns infrastructure (i.e. water, sewerage) in the areas designated for building. They feel that in order to encourage development in receiving areas and thereby create, or strengthen, a market for TDRs the developer should have immediate access to existing or new municipal utilities--something that is not often the case today. That is, the municipalities should be required to provide the developer with assurances that the infrastructure in receiving areas will be able to accomodate TDR-created density bonuses. Otherwise, the developer may not have much incentive to buy TDRs.

As a practical matter, however, it seems that utility-related issues should generally be resolved after--not before--the submission of specific development proposals. Clearly projects will differ as to the extent and type of infrastructure required and as to the parties who ought to bear their economic burden. Consequently, it would be virtually impossible, not to mention prohibitively expensive, to insist that all utilities be in place ahead of time.

In this Case the developer is being asked to take on most of the infrastructure costs--based on his right (earned by purchase of TDRs) to build to a greater density on a site in the receiving area.

Water Supply (estimated cost of system and pipeline for this size development):	$175,000.
Sewerage (package plant and piping):	300,000.
Total:	$475,000.
Previous profit figure (from Case 2):	$2,610,000.
	-475,000.
Developer's revised profit figure:	$2,135,000.

This does not constitute a large profit reduction in terms of percentage (refer to table on p. 10).

POSITION OF LANDOWNERS IN THE SENDING AREA (WITH TDR IN EFFECT)

Possibly the most difficult question in any TDR program is how to set the value for individual development rights. Ideally, the marketplace would be the sole determiner; unfortunately, there is a genuine worry that this would short-change the landowner.

The following numbers, taken from the early stages of the market-controlled Montgomery County TDR program, bear this out:

Estimated market value of development right per acre:	$1,000.
Estimated land value per acre (restricted to agricultural purposes):	+ 1,000.
Sum value of land in Montgomery County ~~receiving~~ sending area (per acre):	$2,000.

Much of the Montgomery County sending area was rezoned to permit only low density development (5-acre in this case) not long before the TDR program was initiated. The resulting average-per-acre value was in the neighborhood of $3,500. Roughly speaking, then, the new land value was 2000/3,500 or 57% of the original value. At first glance, of course, this is a rather unappealing percentage for the average landowner. But if he could accept the compensating benefits available to him (outlined below under Additional Incentives) as sufficient to make up for this apparent loss in equity, he might not object too vociferously to the TDR program.

In New Jersey, the imposition of 5-acre zoning has yet to become a widespread practice and thus land values have not diminished accordingly. Even including less desirable tracts, land values may approximate the $6,500 used above[4]. The question, of course, is whether the market in New Jersey would price the development rights at a relatively comparable figure (57% of $6,500 is c. $3,700). Anything much less than this would be difficult for a landowner to accept.

4The two figures are not entirely comparable because the $3,500 is for acreage in a sending area remote from Washington D.C. and the $6,500 figure (a recent example from Sussex County) comes from a tract that would most likely be in a receiving area, closer to a planned or actual population center. As an average value for open land in New Jersey the latter figure is too high,

but this does not affect the general tenor of what follows.

Considering the incremental return to the developer for doubling or even tripling his density and the rather minor part that the cost of development rights would play in his overall economics, it appears that the $3,700 figure could be attained, at least over a period of time.

A problem arises as to the meaning of "landowner." There are actually two of them involved: the one in the receiving area who sells lots or acreage to the developer and the one in the sending area who sells his development rights. The latter, because he does not want to be penalized by TDR, will want to sell his TDRs for the entire speculative value of his land, less only its worth when restricted to agricultural or other open-space use. However, given that a developer can only be expected to pay so much to the two landowners involved, and if the receiving-area property owner is able to negotiate a good price based on location in a developed area, there will not be much left for the seller of development rights. The following equation might clarify the situation:

Gross return to Developer from sale of lots (A)

\-

His payment to Landowner in receiving area (B)

\+

His payment to Landowner in sending area for TDRs needed to develop at higher density (C)

\+

other costs (D)

=

Developer's Profit (risk factor not included) (E)

So, $E = A - (B + C + D)$

There are several ways to improve the position of the landowner in the sending area. The most important one is based on the assumption that while A increases through TDR purchase (as in hypothetical case 2), B can be kept constant. This would leave additional profit that could be added to shared with C.

Also relevant to the value of development rights, it should be remembered that the landowner is not obligated to sell his rights at any given price. If he waits, the market value is

almost certain to rise as demand for denser development increases in the receiving area. This will hold true, however, only as long as maximum density allowance is obtainable by no other means than buying TDRS from a sending area--i.e. there must be assurances that the zoning authority will not grant variances to permit greater densities without the developer having to incur the economic penalty of buying development rights.

Nevertheless, it is difficult to predict what the market will do in any particular TDR program and, as the numbers above bear out, the experience of development-right sellers in Montgomery County is not yet all that encouraging. Moreover, New Jersey--with its small planning jurisdictions--will pose a problem: developers will choose to avoid municipalities with TDR programs and go to those without them as long as they can.

As noted below in the table summarizing the three hypothetical cases (p. 10), the return to the sending-area landowner comes out to such a low figure that he does, in fact, have cause for complaint if all he can count on is the uncertain market value of his development rights. This provides the strongest possible argument in favor of a development bank or banks.

Additional Incentives

Additional incentives for the sending-area landowner to participate in a TDR program should include those found in the Montgomery County formula: first, his right to construct one house per 25 acres on 1-acre lots (a market for which should exist in many areas, given the assurance to buyer that his surroundings will stay rural in perpetuity); and second, his right to build certain farm-related facilities not permitted under the previous zoning.

Moreover, there are other less quantifiable advantages to a farmer within a district that is certain to remain farmland (or at least open space) as a sending area would be. For instance, the preservation of a "critical mass" of farmland greatly increases the likelihood that agricultural support services (machinery suppliers, milk purchasers, etc.) will continue to be available. Finally, it has been thoroughly documented that farms and housing developments do not mix; the second tend to drive out the first irreversibly.

RECOMMENDATIONS

1. Development Bank or Banks

Landowners in sending areas should be given the option of putting their development rights to the bank but at a somewhat lower price than the 80% of appraised value called for in Assemblyman Bocchini's bill. This negotiability provision might tip the balance in favor of TDR, at least as far as the farming industry is concerned.

It is obvious that this obligation on the part of the bank creates a serious funding problem. Nevertheless, it is possible that the State could provide guarantees to the particular municipalities or group of municipalities whose TDR program the State Department of Agriculture or other agency accepts as viable. Such programs would be activated over a period of time only as the previously-approved ones appeared to be working. This same State agency would provide the expert assistance and drive which does not always exist at the municipal level.

Furthermore, the funding problem might be mitigated if the bank could make payments for development rights over a reasonable length of time rather than in a lump-sum. It seems highly probable that the value of rights in the bank's inventory might increase faster than interest payments due to landowners on unpaid balances, so the bank might actually produce a profit.

The "appraised value" mentioned above adds a regrettable (but we think necessary) complication to the whole TDR concept. In some less difficult cases land in the sending area might be appraised at its agricultural or other open-land value derived from current income. In most instances, however, when a landowner thinks of value he means speculative value, which, of course, can only be realized when and if a developer offers to buy. It is suspected that these owners would consider their contribution to a particular project (their land) to be worth about 50% of the ultimate value--with the other half going to the developer for his expertise, the cost of approvals, roads and so on. As a rule this is neither realistic nor acceptable to developers. In their view the split of "profits" (defined here as the sum of net cash returns to the developer plus sales price received by landowner) should generally be closer to 70% in their favor. This split varies, of course, with the degree of risk assumed by the developer, the form of payment to the landowner and other factors. Using hypothetical cases 1-3 the split in "profits" is as follows:

CASE	1	2	3
LANDOWNER (receiving area)	$682,500 (29.8%)	$682,500 (20.1%)	$682,500 (23.4%)
DEVELOPER	$1,605,000 (70.2%)	$2,610,000 (76.8%)	$2,135,000 (73.0%)
LANDOWNER (sending area)	---	$105,000 (3.1%)	$105,000 (3.6%)
TOTAL "PROFIT"	$2,287,500 (100%)	$3,397,500 (100%)	$2,922,500 (100%)

It is suggested that the bank or banks should use a figure approaching 30% of the estimated "profit" (as defined above)--figured as if TDR did not exist--as the purchase price for development rights. This price should be discounted, however, to compensate for the advantage gained through immediate negotiability gained by the sending-area landowner. The requirement on the part of the Bank to accept puts should perhaps be subject to a sunset provision. In addition, there should be a ceiling on the Bank's purchase obligation of perhaps four times the agricultural or other open land value.

2. Municipal Averaging

We have serious misgivings about this concept and therefore agree with both of the bills before the committee that the number of development rights assigned to different types of land--farm, slope, marsh, etc.--should not be the same, as in Maryland, but should vary according to type. The work of existing agencies such as the Agricultural Development Boards, the Soil Conservation Service, the County Extension Offices and Township Assessors would be useful in making these determinations.

3. Sharing of Development Profits

The idea of requiring developers to share their profits with sellers of development rights appears impractical, but nothing

should prevent this from occuring if the parties involved come to an agreement.

4. Pilot Project

This seems unwise for the following reasons:

a) No such project would be definitive because of the diverse conditions in New Jersey.
b) The Maryland program is a partly adequate pilot project for New Jersey.
c) It would cause needless and costly delay.
d) If enabling legislation is passed, municipalities--with State assistance--would implement TDR programs one or two at a time, starting with the townships which are already interested in TDR. Each program would serve as a pilot for the next one.

CONCLUSION

To recapitulate the principal points:

1. Based on experience, in the average transaction between a landowner and a developer the former is entitled to somewhere around 30% of the "profit," as we have defined it here.

2. With a TDR program in place, there are necessarily two landowners involved in any such transaction.

3. The sending-area landowner will most likely be shortchanged.

4. By holding onto TDRS, sending-area landowners may eventually be able to get 30% of the "profit."

5. Nevertheless, because this is relatively unlikely in the short run (i.e.at the outset of TDR implementation), they should be given extra help.

6. Extra help should include the ancillary benefits noted above, as well as the right to put development rights to a Bank or Banks.

As a final note, it seems that despite the obvious difficulties of TDR, no one has yet put forward an alternative way of saving open land while still providing at least partial compensation to the landowner. The threat of agricultural zoning--that is, simply depriving landowners of the right to develop by government fiat--will almost certainly intensify until some form of TDR is put into place.

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October 9, 1986

Statement of Maurice H. Hageman II

Re: A-2992

Good Afternoon. I am Maurice H. Hageman II and am here before you as a spokesman for the New Jersey Association of Realtors, a trade association of 37,000+ members from throughout the State of New Jersey. We are also part of the 750,000 member National Association of Realtors. The New Jersey Association of Realtors has been involved in the T.D.R. and Farmland Preservation process since the original bills were submitted in the 1975-1976 Assembly sessions. Let me start off by saying that the National Association of Realtors and the New Jersey Association of Realtors have as their statement of policy:

"We believe in the fundamental right of all private property owners working through local government to determine the highest and best use of their land." Further, "we maintain that every person should have the right to acquire real property with confidence and certainly that the value of such property will not be unduly diminished or jeopardized by governmental action at any level without just compensation or the owner's express consent. We believe in reasonable growth, but maintain that no-growth policies, sewer hook-up restrictions and building moratoria by any level of government are not a satisfactory response to community development problems. We support the concept of community planning, but are opposed to unreasonable restrictions and radical changes in existing zoning where the effects of such action significantly undermine the value of the property or the reasonable expectations of property owners."

We have worked with Assemblyman Bocchini on this bill and on the bill he had in the last legislative session, #A-591 (1985) and A-3664, introduced 6/23/83.

The New Jersey Association of Realtors supports the concept and basic provisions of A-2992. However, there are some amendments we feel are necessary, as follows:

1. There should be provisions provided for adequate funding to be in place for this mandatory Bank at the time of the adoption of the ordinance.

2. The Development Bank should purchase the Development Rights at 100% of their individual Fair Market Value. Not all properties have the same value. This varies based on size, shape, topography, drainage and location.

3. Bank Members - There should be a provision that the 5 members of the "Bank" do not necessarily have to live in the municipality. This will allow for the appointment of someone from the outside, should a void of expertise exist in a town in say planning, banking, law or agriculture.

In order for this bill or any T.D.R. bill to be successful, we feel the following items **must** be included:

1. First and foremost, the fair market value equity and property rights of the property owner must at all costs be protected.

2. There should be a mandatory bank for the purchase of these Development Rights from the property owners on a voluntary basis. Further provisions for the adequate funding of this bank must be in place before or simultaneously with the adoption of a T.D.R. ordinance.

3. We feel initially provisions should be made for a few pilot or demonstration projects before we go out full bore and have 300 or 400 individual T.D.R. programs in New Jersey with no real co-ordination.

4. Adequate provisions should be included to insure against collusion or ulterior motives by a municipality who may try to use a T.D.R. ordinance just as a no building growth issue or to stop the construction of a highway.

5. Adequate provisions should also be included that a municipality may not down zone the density of a property or area and then later adopt a T.D.R. ordinance after the values of a property have been depressed.