VOLUME I

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

before the

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

on

ASSEMBLY, No. 3192

(An Act concerning municipalities in relation to planning and zoning and supplementing chapter 55 of Title 40 of the Revised Statutes and known as the Municipal Development Rights Act.)

Held:
William Paterson College
Paterson, New Jersey
March 12, 1975

Committee Members Present:

Assemblyman Vincent O. Pellecchia (Chairman)

Assemblyman John Paul Doyle

Assemblyman William E. Flynn

Assemblyman Clifford W. Snedeker

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I N D E X

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ASSEMBLY, No. 3192

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1975

By Assemblywoman TOTARO and Assemblyman WOODSON

Referred to Committee on Municipal Government

AN ACT concerning municipalities in relation to planning and zoning and supplementing chapter 55 of Title 40 of the Revised Statutes.

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

ARTICLE I

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

2. The Legislature hereby finds that the rate, extent, expense and results of the physical development of New Jersey in recent years have finally forced a recognition of the physical facts of New Jersey life and of the inherent relationship which exists between physical development and those physical facts; that among the most important such physical facts are those concerning New Jersey's size (forty-sixth in the Nation, in terms of land area), population (more than 8,000,000), population density (more than 950 per square mile; first in the Nation), population distribution (89% classified "urban"; 11% classified "rural"), geography (130 miles of coastline, most of which possesses physical beauty or economic value, or both), and land use (more than 1,000,000 acres of land actively devoted to agriculture in 1975, approximately 10,000 acres of which each year is being sold for development and for other than agricultural uses); that the period is long past when uncontrolled, unplanned, unregulated and unrelated physical development could be undertaken without regard for the aforesaid physical facts, and at no cost to the health, happiness, safety and general welfare of the citizens of this State; that while physical redevelopment is constantly necessary to renew and restore declining and deteriorating areas of New Jersey, great care must be exercised in undertaking new physical development which may

result in the destruction and permanent loss of natural assets, structural amenities and those special, distinctive, and often irreplaceable features which have contributed both to New Jersey's history and to its recognition as the Garden State; that the 567 local units of municipal government in New Jersey experience not only the greatest, most immediate and direct pressure for new physical development, but also all the most adverse effects of that development; that the State Government has an obligation to provide municipal governments with adequate and appropriate statutory tools whereby these local units, acting within the statutory framework and pursuant to guidelines provided by the State, may respond to the pressures for, and the burdens imposed by, physical development with sound, rational and comprehensive planning techniques; that these techniques must recognize that the right to own land is separate from the right to develop that land and that a development right may become, under the proper circumstances, a valuable negotiable instrument; that such techniques would permit municipalities to set aside portions of publicly and privately owned improved and unimproved land in permanent preservation zones where new physical development would be prohibited, and require such municipalities to establish other zones where the right to develop the land permanently preserved may be transferred in the marketplace through the sale and exercise of certificates of development rights; and that the exercise by municipalities of the authority to permanently preserve land and transfer the right to develop therefrom pursuant to such a State law, within a framework provided by statute and pursuant to guidelines provided by the State, is within the police power of the State and necessary to insure the public health, happiness, safety and general welfare of both present and future generations.

3. The Legislature declares as a matter of public policy that the preservation by municipalities of certain lands, both improved and unimproved, the prohibition of physical development of lands so preserved, and the transfer of the right to develop such preserved land to other land specifically designated to receive such development, is a public necessity and is required in the interests of the citizens of this State now and in the future.

4. As used in this act unless the context clearly indicates otherwise:

a. "Aesthetic and historic qualities" means those qualities possessed by any building, set of buildings, site, district or zone which, by virtue of its architectural significance, role in an historic event

or general appearance, represents a unique quality or feature in the municipality;

b. "Agricultural use" means substantially undeveloped land devoted to the production of plants and animals useful to man, including but not limited to: forages and sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds; vegetables; nursery, floral, ornamental and greenhouse products; and other similar uses and activities;

c. "Aquifer recharge area" means an area where rainfall infiltrates the ground to porous, waterbearing rock formations for retention in underground pools or acquifers;

d. "Assessed value" means the taxable value of property as established pursuant to the provisions of chapter 4 of Title 54 of the Revised Statutes for purposes of taxation;

e. "Board of adjustment" means the municipal zoning board of adjustment established pursuant to R. S. 40:55-30 et seq.;

f. "Capital facilities" means any substantial physical improvement built or constructed by the municipality to provide necessary services for an extended period, including, but not limited to: streets, roads, highways and other transportation facilities; schools; police, fire and rescue facilities; health facilities; sewer, water and solid waste systems;

g. "Certificate of development right" means the document indicating the existence of a development right;

h. "Compatible use" means two or more uses of land not in conflict with each other individually or as combined;

i. "Density" means the average number of persons, families or residential dwelling units per unit of area in the case of residential use; and the average number of square feet per unit of area, in the case of industrial, commercial, or any other use;

j. "Developability" means the capability of a parcel or parcels of land to accommodate the uses intended or proposed for it at the density intended or proposed for it, based on its topography, existing use, physical composition, desirability and availability;

k. "Development potential" means the possible development of a parcel or site based on its developability and the market in which it exists;

l. "Development right" means the right to develop land as set forth in sections 12 through 22 of this act;

m. "Economic feature" means an economic aspect of the use of a parcel of land which is significant to the economic viability of the municipality;

n. "Exercise of development right" means the submission of a development right to the designated municipal official in conjunction with an application for development approval in the transfer zone;

o. "Farmland" means land being used for agricultural purposes or substantially undeveloped land included in the categories of Class I, Class II and Class III soil classifications of the Soil Conservation Service of the United States Department of Agriculture;

p. "Flood plain" means land subject to regulation pursuant to P. L. 1962, c. 19 (C. 58:16A–50 et seq.), as amended and supplemented;

q. "Governing body" means the chief legislative body of the municipality;

r. "Improvement" means any building, structure or construction on the land, including, but not limited to: houses, stores, warehouses, factories, churches, schools, barns or other similar structures, recreational or amusement facilities, parking facilities, fences, gates, walls, outhouses, pumps, gravestones, works of art, improved or unimproved streets, alleys, roads, paths, or sidewalks, light fixtures or any other object constituting a physical betterment of real property or any part of such betterment;

s. "Land of steep slope" means land of a slope of not less than 25%;

t. "Market value" means the price property and improved property would command in the open market for such property and improvements;

u. "Marsh" means low, spongy land generally saturated with moisture and having persistent poor natural drainage. Marsh shall also include the term "swamp";

v. "Master plan" means the master plan of the municipality prepared and adopted pursuant to P. L. 1953, c. 433 (C. 40:55–1.1 et seq.);

w. "Municipality" means any city, borough, town, township or village of any size or class in the State of New Jersey;

x. "Planning board" means the municipal planning board established pursuant to P. L. 1953, c. 433 (C. 40:55–1.1 et seq.);

y. "Preservation zone" means the district or area in which development is discontinued and has such features as are provided in section 13 of this act;

z. "Recreation or park land" means land whose primary use or purpose is recreational;

aa. "Tax map" means the approved map prepared pursuant to P. L. 1956, c. 48 (C. 40:50–9 et seq.);

bb. "Transfer zone" means the district or area to which development rights generated by the preservation zone may be transferred and in which increased development is permitted to occur in connection with the possession of such development rights, and which has such features and characteristics as are provided in section 14 of this act;

cc. "Use" means the specific purpose for which land is zoned designed or occupied;

dd. "Woodland" means substantially undeveloped land consisting primarily of trees and capable of maintaining tree growth;

ee. "Zoning ordinance" means the zoning ordinace of the municipality adopted pursuant to R. S. 40:55–30 et seq.

ARTICLE II

5. The governing body of any municipality may, by resolution, establish a commission whose general purpose shall be to determine, within a time specified in the resolution, the feasibility of the municipality adopting a development rights ordinance, and upon such determination to make a recommendation to the governing body concerning the adoption of the provisions of this act, all as hereinafter provided.

6. In adopting a resolution pursuant to section 5 of this act, the governing body shall also designate the members of the commission and select its chairman; provided, however, that the commission shall have no more than 11 members, three of whom shall also be members of the municipality's board of adjustment, and three of whom shall also be members of the municipality's planning board; provided, further, however, that where the planning board also acts as the zoning commission pursuant to section 8 of P. L. 1953, c. 433 (C. 40:55–1.8) and R. S. 40:55–33, the members of the commission established herein shall also be members of the planning board except that no more than two members shall be of the same class on the planning board. The chief executive officer of the municipality, the municipal planner and the municipal zoning officer, if such positions exist; and the municipal attorney, unless any of the aforesaid are otherwise appointed to the commission as provided hereinabove, shall also be members of the commission, ex officio. Vacancies among the members shall be filled in the same manner as the original appointments were made. The term of the

members shall be the same as the life of the commission and shall terminate with the conclusion of the commission's work.

7. In the resolution adopted pursuant to section 5 of this act, the governing body may also appropriate to the commission such funds as it deems necessary and sufficient for its work. Within the limits of such appropriations, the commission may appoint and contract with such professional, clerical and stenographic assistants as it shall deem necessary and, where applicable, in the manner prescribed by the Local Public Contracts Law, P. L. 1971, c. 198 (C. 40A:11–1 et seq.). The members of the commission shall serve without compensation but may, within the limits of the appropriations therefor, be reimbursed for such expenses as are actually incurred in the performance of their official duties.

8. Every commission established pursuant to section 5 of this act shall, upon its organization, cause to be conducted a study to determine the feasibility of the municipality adopting a development rights ordinance which shall include, but not be limited to:

a. An analysis of the existing land uses in the municipality, and an identification of any land which might be included within a preservation and a transfer zone if such were to be established pursuant to the provisions of this act;

b. An evaluation of the zoning ordinance of the municipality adopted pursuant to the provisions of R. S. 40:55–30 et seq., if one so exists, on the basis of existing and anticipated land uses and development;

c. The identification of national, State and regional factors and trends which will have an influence on development in the municipality;

d. The identification of the anticipated growth and development the municipality may expect to experience in the next 10 years;

e. An assessment of the development potential of all areas of the municipality on the basis of the projected growth of the municipality, the demand for development imposed by the market and the suitability of the land for such development;

f. The identification and analysis of capital facilities currently existing in the municipality and those that will be required by virtue of the anticipated development.

9. Upon the completion of the study conducted pursuant to section 8 of this act, the commission shall formulate its recommendation and prepare a report to communicate its findings to the governing body of the municipality. If it is the recommendation of the commission that the municipality would not find it in its

best interest to adopt a development rights ordinance, the commission shall detail in its report such information as was available to it which led to such recommendation. If it is the recommendation of the commission to adopt a development rights ordinance, the commission shall prepare a report which shall include, but not necessarily be limited to:

a. The designation of a proposed preservation zone within the municipality in compliance with the provisions of section 13 of this act;

b. A plan indicating the existing and permitted uses of the proposed preservation zone accompanied by a statement detailing the nature and distinguishing features of the zone at present;

c. A tax map for the proposed preservation zone specifying the assessed value of the parcels contained therein;

d. An analysis of the development potential of the land in the proposed preservation zone estimating the market value of the parcels contained therein;

e. The designation of a proposed transfer zone in which the development rights generated by the preservation zone may be utilized;

f. A plan indicating the existing uses of the proposed transfer zone and a statement detailing the permitted uses under the existing zoning ordinance;

g. A tax map for the transfer zone indicating the assessed and market value of the parcels contained therein;

h. A plan projecting the land use scheme in the proposed transfer zone with the full transfer of development rights;

i. A proposal concerning the identification of the total number of development rights assigned the preservation zone and their distribution among the owners of property in said zone.

10. Upon the formulation of its recommendation and report, the commission shall hold public hearings in the manner provided in section 7 of P. L. 1953, c. 433 (C. 40:55–1.7), and within 10 days following the conclusion of the public hearings, shall transmit its recommendation, report and transcript of the public hearings to the governing body of the municipality for its consideration.

11. Within 60 days of the receipt of the documents specified in section 10 of this act, the governing body shall consider the commission's recommendation and report. If the commission recommends the adoption of a development rights ordinance, the governing body may adopt such ordinance by majority vote. If the commission recommends against the adoption of such an ordinance,

the governing body may adopt a development rights ordinance by a vote of two-thirds of the full membership of the governing body. The commission shall terminate upon the action of the governing body pursuant to this section unless otherwise provided for by the governing body. Any ordinance adopted pursuant to this section shall be subject to the provisions of article 1 of chapter 55 of Title 40 of the Revised Statutes (C. 40:55–1.1 et seq.) and shall be considered an amendment to the zoning ordinance, if any, then in effect.

ARTICLE III

12. Every development rights ordinance adopted pursuant to the provisions of this act shall include:

a. The specification that the planning board of the municipality shall have the responsibility for implementing the provisions of any ordinance adopted pursuant to this act; shall hear and review any applications or complaints that may result from the implementation of any such ordinance; and shall make such reports to the governing body as it may require and such recommendations as it shall deem necessary for the successful operation of the ordinance;

b. The establishment of a method for the review and hearing of applications and complaints in the manner provided by article 3 of chapter 55 of Title 40 of the Revised Statutes;

c. The designation and establishment of the preservation and transfer zones as the governing body shall deem necessary and as are consistent with the provisions of this act;

d. The provision that all construction, erection, demolition and development in the preservation zone not heretofore approved shall be prohibited except as provided in sections 15 and 23 of this act;

e. Provisions for the total number, allocation and distribution of development rights in the preservation zone; provided, however, that prior to the adoption of any such provisions in the ordinance all owners of property in the preservation zone shall be mailed a notice informing them of the number of development rights to which they will be entitled under the ordinance, the permitted use or uses on the basis of which such development rights are to be allocated in the preservation zone, the conversion schedule by which such development rights may be applied to another use or uses in the transfer zone, and the manner in which the development rights may be transferred, all as hereinafter provided. Such notices shall also contain the time and place the governing body or its

designate body shall hold a public hearing on the number, allocation and distribution of development rights. Public notice of the hearing required pursuant to this subsection may be given simultaneously with the public notice required pursuant to R. S. 40:49–2 concerning a hearing or hearings held for the purpose of considering any ordinance for final passage; provided, however, that a separate time shall be established for the hearing required pursuant to this subsection and the public hearing or hearings required pursuant to R. S. 40:49–2 shall not be finally adjourned until the completion of the hearing required pursuant to this subsection.

The governing body of any municipality which adopts a development rights ordinance pursuant to the provisions of this act shall appropriate such funds in such amounts and for such purposes as it shall deem necessary and sufficient for the purposes of implementing the ordinance.

13. In creating and establishing the preservation zone the governing body shall designate a tract in such numbers and of such sizes, shapes and areas as it may deem necessary to carry out the purposes of this act; provided, however, that

a. All land in the preservation zone contains one or a combination of the following characteristics:

(1) Substantially undeveloped or unimproved farmland, woodland, flood plain, swamp, acquifer recharge area, marsh, land of steep slope, recreational or park land;

(2) Substantially improved or developed in a manner so as to represent a unique and distinctive aesthetic or historic quality in the municipality;

(3) Substantially improved or developed in such a manner so as to represent an integral economic asset in and to the municipality;

b. The location of the zone is consistent with, and corresponds to, the master plan and zoning ordinance of the municipality if they so exist;

c. The aggregate size of the zone bears a reasonable relationship to the present and future patterns of population and physical growth and development as set forth in the study conducted by the commission pursuant to section 8 of this act, and are incorporated in the zoning ordinance and master plan of the municipality if they so exist;

d. Any nonconforming use or improvement existing in the preservation zone at the time of adoption thereof may be continued and in the event of partial destruction of such nonconforming use or improvement it may be restored or repaired; provided, however,

that such nonconforming use or improvement remains consistent with the nonconforming use or improvement in effect at the time of the adoption of the ordinance; and

e. Land within the preservation zone may be subdivided in the manner prescribed in section 14 of P. L. 1953, c. 433 (C. 40:55–1.14), only for the purpose of ascertaining the development potential and for determining the number and allocation of development rights of parcels contained therein, or, where a change, modification, or amendment to the development rights ordinance has been approved and issued pursuant to section 15 of this act, to provide for such change, modification or amendment.

14. In creating and establishing the transfer zone, the governing body may designate a tract or tracts, which may but need not be contiguous, in such numbers and of such sizes, shapes and areas as it may deem necessary to carry out the provisions of this act; provided, however, that

a. The density, topography, development and developability of each transfer zone is such that it can adequately accommodate the transfer of development rights from the preservation zone;

b. The density of each transfer zone is increased beyond the density otherwise permitted as a matter of right under the zoning ordinance of the municipality, if one so exists;

c. The result of the increase in the density shall be a zone wherein there is a greater incentive to develop at the higher density with certificates of development rights, than at a lower density without such certificates;

d. Development at higher densities in each transfer zone shall be permitted only with the utilization of certificates of development rights and that any development in any transfer zone at a density higher than that permitted by the zoning ordinance without such certificates shall be prohibited;

e. The present capital facilities and municipal services in and for each transfer zone are sufficient to accommodate the increased density of the transfer zone. As used herein "present capital facilities" means those facilities actually in existence and those for which construction contracts have been entered into or which are included in a capital facilities plan adopted by the municipality requiring the construction of such facilities within 5 years of the adopton of such plan; and

f. The overall developability of land in each transfer zone is such so as to offer the most lucrative site possible and available for the transfer of development rights.

Nothing contained herein shall be construed so as to prevent or prohibit a municipality from increasing the number of tracts in the transfer zone at any time upon or after the adoption of a development rights ordinance, using the same criteria as are contained herein, for the purpose of guaranteeing the greater incentive to develop with certificates of development rights as required pursuant to subsection c. hereof.

15. Any regulations, limitations, and restrictions contained in the development rights ordinance shall not be changed, amended, modified or repealed by the governing body or any other officer or agent of the municipality except where the owner of property can demonstrate that such regulations, limitations and restrictions prevent him from a reasonable use of his land; provided, however, that no such change, amendment, modification or repeal of the development rights ordinance shall be granted where such will destroy, change or otherwise alter the nature and characteristics of the preservation zone and the purposes for which it was established. Any application for a change, amendment, modification or repeal of any of the provisions of the development rights ordinance shall be made to the planning board of the municipality which shall hear and decide on the application within 60 days of its receipt. All actions taken by the planning board on any application submitted pursuant to this section shall be subject to review by the governing body of the municipality. No application for development or for the construction of any improvement shall be made where the development rights for the tract in question have been sold or otherwise transferred for use in the transfer zone.

16. Every development rights ordinance shall provide that the certificates of development rights issued in the preservation zone for one use may only be exercised in the transfer zone for that use unless otherwise converted and approved by the planning board as provided in section 20 of this act.

17. Certificates of development rights shall be allocated to the various portions of the preservation zone on the basis of the uses permitted in each such portion of said zone as a matter of right under the existing zoning ordinance, if any, at the time of the adoption of the development rights ordinance; or, in the event no zoning ordinance is in effect, on the basis of uses contained in the development potential determined by the study conducted by the commission pursuant to section 8 of this act and as approved or amended by the governing body. Each certificate of development rights so allocated shall contain on its face, a statement to the effect that it

is allocated on the basis of the specific use or uses cited in the statement, and that it shall be exercised in the transfer zone or zones in a development or developments of such specific use or uses unless converted to another use or uses pursuant to section 20 of this act. The total number of certificates of development rights so allocated shall be equal to and deemed to represent the full and total development potential of all land in the various portions of the preservation zone as a matter of right under the zoning ordinance, if any, existing at the time of the adoption of the development rights ordinance, or on the basis of the development potential of the preservation zone as determined by the study conducted by the commission pursuant to section 8 of this act and as approved or amended by the governing body of the municipality.

18. The total number of certificates of development rights determined pursuant to section 17 of this act shall be distributed to property owners in the various portions of the preservation zone in accordance with a formula whereby the number of certificates distributed to an individual property owner in each of the various portions of the preservation zone shall equal that percentage of the total number of such certificates allocated to the preservation zone that the assessed value of the property of any such owner is of the total assessed value of all property in the preservation zone.

19. Any owner of property in the preservation zone may appeal any determination concerning the number, allocation and distribution of development rights, pursuant to sections 17 and 18 of this act, to the Law Division of the Superior Court.

20. The conversion schedule which every development rights ordinance is required to contain pursuant to section 12 of this act shall provide a means by which development rights allocated pursuant to section 17 of this act on the basis of the uses permitted in each portion of the preservation zone may be exercised for another use or uses in the transfer zone.

Such schedule shall be based on the differing market values prevailing in the municipality for development rights for differing uses and shall be annually reviewed by the governing body and amended, modified and changed as necessary. Every application for the conversion of a development rights shall be received and reviewed by the planning board in the same manner prescribed by R. S. 40:55–35 for amending a zoning ordinance; and any such application shall be granted in the manner provided by the schedule if such application is found to be consistent with the provisions of this act and in the best interests of the municipality. Upon the

granting of any such application, the secretary of the planning board shall notify the county clerk of the converted use of the development right or rights involved in such application.

21. Certificates of development rights shall be taxed in the same manner as real property is taxed, and the assessed value of each uncanceled certificate of development right at the time of the adoption of the development rights ordinance shall be equal to the quotient obtained by dividing the aggregate assessed value of all property in that portion of the preservation zone which is zoned for the particular use or uses to which the particular certificate of development rights applies, by the total number of uncanceled certificates of development rights applying to such particular use or uses. Thereafter, such value shall be determined on the basis of current sales of certificates of development rights in the municipality.

22. Land within the preservation zone shall be eligible for assessment at its agricultural value pursuant to the "Farmland Assessment Act," P. L. 1964, c. 48 (C. 54:4–23.1 et seq.), on the same basis as all other land within this State, upon meeting the agricultural use requirements prescribed in said act; provided, however, that certificates of development rights allocated and distributed to such property shall be taxed pursuant to the provisions of section 21 of this act.

ARTICLE IV

23. Nothing in this act shall be construed to prohibit or prevent the ordinary maintenance or repair of property contained within the preservation zone nor to prevent any structural or environmental change to such property which the building inspector of the municipality shall certify is required by the public safety because of an unsafe or dangerous condition it imposes.

24. Any two or more municipalities may enter into an agreement pursuant to the "Interlocal Services Act," P. L. 1973, c. 208 (C. 40:8A–1 et seq.), to jointly implement the provisions of this act.

25. Nothing in this act shall be construed to prohibit or otherwise prevent a municipality from receiving development rights for municipal property contained within the preservation zone on the same basis as other property owners within said zone, or from buying and selling development rights of other parcels.

26. In implementing any development rights ordinance adopted pursuant to this act, and in fulfilling the requirements of this act, any municipality may establish a Development Rights Bank or other such facility in which development rights acquired by the municipality may be retained and traded in the best interests of the municipality.

27. If any clause, sentence, subdivision, paragraph, subsection or section of this act be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, subsection or section thereof directly involved in the controversy in which said judgment shall have been rendered.

28. This act shall take effect immediately.

STATEMENT

This bill would supplement the present laws concerning planning and zoning to permit municipalities to recognize the existence of development rights on certain properties within their boundaries and to establish a system by which such rights may be determined, allocated and transferred for use in another segment of the municipality. In essence, the bill provides the municipalities of this State with an additional tool or instrument through which they may control growth and its demands while preserving the dignity of natural areas, open spaces, farmlands and developed areas having a unique quality or characteristic.

ASSEMBLYMAN VINCENT OZZIE PELLECCHIA (Chairman): Good morning ladies and gentlemen. At the outset, I would like to thank William Paterson College, Dr. William McKeefery and his executive assistant, Dr. Paul Sherburne, who has been with us all morning, for their fine hospitality. They have been gracious enough to allow us to hold the hearing here, and we certainly want to thank them.

We expected more people to be in attendance today, but others will be joining us from time to time. As I read my prepared statement, please keep in mind that I had planned to present it to a larger group.

The hearing is now in session. On behalf of the members of the Assembly Committee on Municipal Government and myself, may I welcome you to our first public hearing on Assembly bill 3192.

My name is Vincent Ozzie Pellecchia, an Assemblyman representing the 35th District and Chairman of the Municipal Government Committee. Other members of the committee with us today are Assemblyman Clifford W. Snedeker on my right and Assemblyman John Paul Doyle on my left.

The purpose of these hearings is to hear testimony on Assembly bill 3192, designated the "Municipal Development Rights Act." For the record, the bill was introduced by Assemblyperson Rosemarie Totaro of Denville on February 27, 1975, and is co-sponsored by the Honorable S. Howard Woodson of Trenton, Speaker of the General Assembly. Following its introduction, the bill was referred to the Municipal Government Committee for consideration. As a result of this charge, and in light of the importance of the provisions of the legislation, it was the decision of the committee to hold public hearings. For this purpose, we are here today. In essence, the committee wishes

to be exposed to your thoughts on the proposals embodied in the bill so that we may be fully cognizant of its provisions when we give it final consideration. Your cooperation and assistance in this matter, as evidenced by your presence here today, is deeply appreciated.

While the remarks made here today will hopefully enlighten all of us with respect to the provisions and implications of the bill, I feel some responsibility to state for the record the general nature of the legislation in question. In essence, Assembly bill 3192 would permit any municipality in the State of New Jersey to establish a transfer of development rights, or TDR, program to preserve and protect property within its boundaries for historic, economic, or environmental reasons. While I could be quite correctly accused of oversimplifying the bill's provisions by limiting my comments to that nut-shell description, I think that I will exercise the right of the chair in deference to our distinguished guests. My role here today, as well as that of the committee, is simply to learn. I therefore will leave a more detailed exploration of the legislation to you.

If I may, I would like to again exercise the right of the chair and establish several guidelines for the orderly operation of these hearings. First, we would very much appreciate it if you would limit your remarks to a maximum of 15 minutes. While the questions the committee may ask of you following your testimony may expand your time allocation well beyond this period, we respectfully reserve such expansion to our discretion. As you can see, there are a number of people who are interested in testifying today, and we would like to provide everyone with an opportunity to be heard. A second point concerns our hearing reporters. As you know, a transcript of these proceedings will be prepared and will become a matter of public record. Therefore,

in order that your comments be recorded accurately, we ask that you speak in a clear and distinct voice. I would very much appreciate it if the reporters would indicate to me if they are experiencing any difficulty in recording the speakers. Additionally, should you have copies of your testimony already prepared, would you please give them to the committee aide for distribution prior to your testimony.

In conclusion, allow me to again thank you for your appearance and ask that you register with John Helb, the committee aide, who is sitting at the end of the table, so that your testimony may be scheduled.

Our first speaker this morning is the Honorable Rosemarie Totaro, an Assemblyperson representing the 23rd District and the sponsor of Assembly bill 3192.

A S S E M B L Y P E R S O N R O S E M A R I E T O T A R O:

Mr. Chairman Pellecchia and Honorable members of the Assembly Municipal Government Committee, I thank you for permitting my testimony to open this 1st Public Hearing on Assembly Bill Number 3192, the "Municipal Development Rights Act," and compliment you for so swiftly seizing the initiative and commencing serious legislative deliberations on this bill. As I said upon the introduction of the "Municipal Development Rights Act" on February 27th, it is a "bill with a two-line title, a 4-word 'short-title,' and with 28 of what may well be some of the most important and innovative sections of law dealing with planning and zoning in New Jersey that the Legislature is likely to consider this session." I am gratified at the promptness with which you have scheduled Public Hearings on this bill, because your action indicates that you too see this measure as "important and innovative." I suppose I also ought to be grateful, Mr. Pellecchia, that you, who chose Paterson as the site of this Public Hearing, are also the principal sponsor of Assembly Bill Number 1299, the "State Uniform Construction Code Act," since I trust that you investigated the strength of the floor on which I stand and determined that it is adequate to support the weight of the plaster anchors I have been dragging about with me for the last two months.

My bill, Assembly Bill Number 3192, the "Municipal Development Rights Act," is predicated on a very simple and absolutely valid assumption.....that the ownership of land is really the ownership of a BUNDLE OF RIGHTS, among which the RIGHT TO DEVELOP is, perhaps, the most important. Once that concept is grasped it is not difficult to see that the RIGHT TO DEVELOP land may be separated from the land itself, and that if this were to occur, the landowner would retain title to his property, but would not be permitted to develop that property beyond the stage to which it had already developed. By the same token, the RIGHT TO DEVELOP a particular plot of land may be transferred to another particular plot of land, and if this were to occur, the landowner of the plot to which the RIGHT TO DEVELOP was transferred would be permitted to develop that plot to a greater density than would have been permitted previously.

I have already called my "Municipal Development Rights Act," "important and innovative," but I have carefully avoided calling it "revolutionary"; because "revolutionary" is one thing it definitely is not. In addition, although Assembly Bill Number 3192 is MY bill, in that I commissioned its drafting and am its principal sponsor, I make no claims of either "authorship" or "invention" of the TRANSFER OF DEVELOPMENT RIGHTS concept. Town Planners, municipal attorneys, environmentalists, developers, land use "experts" and university professors have known about, written about and actually implemented this concept in various forms in jurisdictions as diverse as New York City; the village of Saint George, Vermont; Southampton, Long Island; Georgetown, Washington D.C.; and Puerto Rico. Here in New Jersey, a team

of planners, attorneys and professors at Rutgers, the State University, have been working on the TRANSFER OF DEVELOPMENT RIGHTS concept for four years, and several New Jersey municipalities are in the process of drafting ordinances implementing this concept within their jurisdictions even in the absence of State legislation.

In fact, what is "innovative" about the "Municipal Development Rights Act" is that it grants permission to municipalities to make use of a land preservation device that has been possessed by the State of New Jersey since 1971. In the "New Jersey Green Acres Bond Act of 1971," which was overwhelmingly approved by the people in the general election in November of that year, the Legislature specifically authorized the acquisition of "development rights(or, the RIGHT TO DEVELOP), conservation easements and other interests less than a fee simple" concerning lands actively devoted to agriculture. The Legislature intended that land actively devoted to agriculture should REMAIN actively devoted to agriculture, but that the RIGHT TO DEVELOP that agricultural land should be acquired by the State. My bill builds upon the precedent established by the Legislature and accepted by the people of this State in 1971, in two ways: Firstly, instead of "purchasing" the RIGHT TO DEVELOP (as was the case under the "Green Acres" program), my bill would permit the owners of preserved land to TRANSFER THE RIGHT TO DEVELOP by selling it to developers or property owners for use on other land that the municipality had specifically determined to be capable of accepting development at a higher density than previously allowed. Secondly,

my bill is not confined to TRANSFERRING THE RIGHT TO DEVELOP only from agricultural land; my bill is, in fact, specifically designed to apply to every one of the 567 municipalities in the State of New Jersey, and to permit each of them to preserve ANY LAND, whether developed or undeveloped. This almost UNIVERSAL APPLICABILITY of my bill makes it particularly appropriate for this public hearing to be held in Paterson, one of the oldest and most highly developed municipalities in New Jersey. I don't expect you have much farmland within Paterson's city limits; but I know very well that you have some of the very finest examples of late 19th and early 20th century architecture within your jurisdiction. You have every right to be proud of your historical and architectural past; I am convinced that my "Municipal Development Rights Act" will give you another tool with which you may preserve the living proofs of that past for the benefit of future citizens of Paterson.

Under the law as it presently is written, just about the only way to guarantee the preservation of property deemed worthy of preservation is for the concerned municipality to purchase title to the property. The courts have quite properly taken a very dim view of municipal measures which have the effect of depriving an owner of the use of his property without providing that owner with just compensation. This has meant that the municipality has faced a difficult, and at times impossible, choice:.... either it acquired the property in question through the use of eminent domain, which meant it had to raise revenue....i.e. municipal taxes; or it saw property worthy of preservation being developed and lost forever. Just as you cannot restore farmland

after a shopping center has been built on it; so can you not restore buildings built in the 19th century when they have been leveled for the construction of 21st century high-rise apartment blocks. The "Municipal Development Rights Act" provides another choice, and it gives the municipality a powerful new tool with which to implement that choice. Under this act, all the municipality need do is determine the size of the area it wishes to preserve and determine the development which presently is permitted on the land within that area. The municipality then designates ANOTHER area within its jurisdiction (called in my bill, the TRANSFER ZONE) which it has determined is capable of absorbing the development which WOULD HAVE OCCURRED IN THE PRESERVED AREA, but which is now prohibited therin. Property owners in the preserved area (called in my bill, the PRESERVATION ZONE) are given CERTIFICATES OF DEVELOPMENT RIGHTS which equal the development they would have been permitted to undertake on their property in the absence of municipal action. These CERTIFICATES are negotiable instruments and, in fact, extremely valuable ones, for builders and developers who wish to increase the density of their developments in the TRANSFER ZONE will be forced to acquire such CERTIFICATES from their owners in the PRESERVATION ZONE. Quite simply, what has been accomplished through the "Municipal Development Rights Act" is that a municipality has been able to preserve property deemed worthy of preservation at no cost to the municipality, no cost to the municipal tax payer, and without sacrificing the interests of the owners of preserved property..... for they have received JUST COMPENSATION through the sale of their CERTIFICATES OF DEVELOPMENT RIGHTS.

The reason it has taken 28 substantive sections of law to provide this relatively simple "tool" to municipalities is that for all its simplicity we in State Government have the obligation to provide standards and criteria which our municipalities may apply to achieve the objectives we seek in this legislation. If any of the municipalities of New Jersey choose to adopt this act we have an obligation to tell them HOW. The 28 sections of my bill do just that: they provide for the appointment of a commission to study the practicability and feasibility of adopting a DEVELOPMENT RIGHTS ORDINANCE and to make recommendations thereon to the governing body; they provide for the creation, if the governing body agrees, and after the conduct of public hearings, of a PRESERVATION ZONE in which development will be prohibited, and a TRANSFER ZONE which will be determined on the basis of environmental criteria as suitable to accept high density development. These 28 sections provide both a framework within which municipalities may fulfill their responsibilities under this act, and a guarantee of equity to the property owners in both the PRESERVATION and TRANSFER zones.

I fully expect each of these sections to be reviewed and scrutinized by the Assembly Municipal Government Committee, and I feel confident that as a result of your deliberations Assembly Bill Number 3192, the "Municipal Development Rights Act" will emerge as a more effective tool to accomplish the purposes for which it is intended.

I see in the audience several "land use" and "planning" experts who will, no doubt, comment in detail on the details of the "Municipal Development Rights Act." I am certain that their

comments will prove of great assistance to the committee and I will not delay your hearing them very much longer. But I really must make two fundamental points about this bill: Firstly, it is permissive. It establishes a statutory framework within which municipalities may, or may not, choose to operate. Municipalities which adopt the provisions of the "Municipal Development Rights Act" will enact ordinances which will result in the permanent preservation of lands and amenities, and which will encourage sound planning and the regulation of future growth and development in a coherent and coordinated manner. Those municipalities which choose NOT to adopt the provisions of the "Municipal Development Rights Act" will not be subject to a single one of its provisions. Secondly, this bill is neither an alternative to, nor a substitute for, the proposals advanced by the very excellent and comprehensive 1973 Report of the Blueprint Commission on the Future of New Jersey Agriculture," for the preservation of approximately 1,000,000 acres of farmland in New Jersey through the purchase of development rights by the State. This bill is, in fact, a perfect complement to those agricultural proposals, for while THIS bill is directed to the preservation of all manner of lands and amenities in any one or all of New Jersey's 567 municipalities, the Blueprint Commission proposals are relevant, by definition, only to those large agricultural tracts present in relatively few municipalities of this State. The Legislature may, therefore, consider THIS bill AND the proposals of the Blueprint Commission either together or separately, without any concern that the enacting of the one would preclude the enacting of the other.

I can only say in conclusion that which I said in the very first sections of the "Municipal Development Rights Act." The fact is that we in New Jersey can no longer permit the unrestricted, unregulated, uncontrolled development of previously undeveloped agricultural and open space lands; nor can we any longer permit the destruction of buildings and physical amenities of historical and architectural worth and their replacement by "modern" and "functional" structures. If we eliminate our historical and architectural past; if we permit the elimination of our farmlands; and if we encourage the filling in and the development of our open spaces we will not only be hurting ourselves and reducing the genuine quality of life in our State, we will, by our destructive actions or, even worse, our equally destructive inaction, be irreparably damaging future generations which will by definition, be deprived of the physical beauty, historical and architectural worth, and the high quality environment we, at least, have known in our lifetime. We will never "prevent growth" in New Jersey, nor would any really sensible person WISH to prevent it absolutely. What we must do, however, is provide for growth where it would be most acceptable and appropriate, while prohibiting it where it would be destructive of the values we as a society hold dear. The "Municipal Development Rights Act" is one way, and you will, of course, forgive me for thinking that it is ONE OF THE VERY MOST EFFECTIVE WAYS, to control growth while at the same time accept growth. For all these reasons then, as section 3 of the "Municipal Development Rights Act" declares, it is a "matter of public policy that the preservation by municipalities of certain lands,

both improved and unimproved, the prohibition of physical development of lands so preserved, and the transfer of the right to develop such preserved land to other land specifically designated to receive such development, is a public necessity and is required in the interests of the citizens of this State now and in the future."

I want to thank publicly the legislative staff, particularly Mark Reifer, and Budd Chavooshian for the input that they have given because I am very proud to sponsor this legislation. I have a concept that I try and live by: Some see things as they are and ask, "Why?" and I dream things that never were and ask, "Why not?" That is what I mean for New Jersey - why not?

ASSEMBLYMAN PELLECCHIA: Assemblywoman Totaro, I want to compliment you on a very clear presentation.

ASSEMBLYPERSON TOTARO: I think that if it is expert testimony you want from planners or legal experts, you will probably be hearing from them. I can say that I was an adivsor to the Regional Planning Association, and I have attended many planning seminars. Since the first introduction of transfer of development rights, I have been interested in it. I can speak on my bill, but I cannot speak as an expert.

ASSEMBLYMAN DOYLE: Assemblywoman Totaro, I want to thank you for giving the Legislature a chance to do something. All too often, it seems that the direction in local, state, or federal government comes from the executive branch, and the legislative branch only gets to consider things. It is nice to see that, whether I wind up agreeing or disagreeing with A-1392, you have given us a vehical to show that we can act and can initiate. With that thought in mind, let me ask you this:

Are you, although the idea is not revolutionary, willing to accept the suggestion contained in the Preamble, and do you think that our constituencies are able to accept the idea that "the right to own land is separate from the right to develop that land"? In American history, but for some limited examples you mentioned in your statement, they have not been taken separately.

ASSEMBLYPERSON TOTARO: I think that the Green Acres concept has initiated it. That has met with great reception. I think that the last bond issue was an example of the fact that people have definitely come to the point where they feel that we have to conserve. I think that we should conserve without penalizing, and that is why I think that this concept is so important.

ASSEMBLYMAN DOYLE: While Green Acres was mentioned, that part of the bond issue has never been used as I understand it. The idea of development rights, which we mentioned in 1970 or 1971 in the Green Acres bond issue, has not been used. So, while we have had some language, we have not seen it in practice in this State.

ASSEMBLYPERSON TOTARO: I am not that familiar with it, but I know that we are not developing our Green Acres unless it is for some specific reason, to enhance the enjoyment of the open space. That has been a policy up to this point.

ASSEMBLYMAN DOYLE: Take, for example, a municipality that has open spaces that it wants to preserve. If it is all open spaces or partially open spaces, that would mean that that already-developed area or some of its open spaces would have to be developed at a greater density to maintain some open spaces, if I understand the concept. Accepting that presumption and going on with the question, doesn't that, to some

degree, create an instant - not necessarily, ghetto, but - highly densified area that works contrary to the whole idea?

ASSEMBLYPERSON TOTARO: I think that architectual concepts today can eliminate the thought of a ghetto. Number 1, you have the townhouse concept; number 2, you have the high-rise concept; number 3, you have cluster zoning. Your PUDs are built with the concept of concentration. In fact, today it is really preferable to preserve some open space in a development so that you will have recharging areas. We have to consider our water resources for the future. So, I basically disagree with any thoughts of a ghetto. A ghetto develops from those who live within it and have disrespect for the environment which they inherit.

ASSEMBLYMAN DOYLE: Let's take, then, the fully urbanized areas in which you want to save that historical area or that industrial area or what little open space might be left to save. Where do you go, if the entire city is presently developed, but up?

ASSEMBLYPERSON TOTARO: I cannot say unless we take a particular city, but every city has vacant lots. This is evident, even if it is a 20 x 100 lot. I have seen it in every city. It is a right, perhaps, for the municipality to preserve that little open spot, and do what New York does, and have mini-parks. It does not necessarily mean that it is going to encompass large areas. This is up to a commission. It is entirely up to the municipality itself to decide if there is any feasibility in preserving and developing areas within its boundaries.

ASSEMBLYMAN DOYLE: I was leading up to this: Might we not have to develop, to a degree, air rights as a consonant to TDR, particularly in urban areas, so that if there is no place to go but up, you will allow the

the person to develop six floors high instead of three floors high?

ASSEMBLYPERSON TOTARO: Assemblyman Doyle, I really do not believe that the air rights concept fits in with this legislation. It might be something that can apply to one particular municipality, and that will be the decision of that commission to set the criteria for that municipality. So, if air rights is the only way that they can develop and they so choose it, it is up to them. This is purely permissive.

ASSEMBLYMAN DOYLE: Let me talk, then, about the commission. Do you think that it is necessary that the local commission that would look into the possibility of a TDR ordinance be totally separate from any other existing body in the municipality?

ASSEMBLYPERSON TOTARO: I think that they should have one command, and I think the fact that they are self-destructing at the end of their mission is important. I think the fact that there will be those on it who are most knowledgeable, such as the planning board and board of adjustment members, is vital. I also would like to recommend that someone from an environmental commission or committee be on it. I think that the commission should be a combination of experts, and that is the only way that a sound feasibility study can be done. Don't just hand it to the planning board because the planning board probably would be very biased from one point of view, and the board of adjustment would be biased from another point of view. If you gave it to the environmentalists, they would look at it from another aspect.

ASSEMBLYMAN DOYLE: The commission called for under this bill would have no more than 11 members consisting of three from the board of adjustment, three from the planning board, the Mayor, the municipal

attorney, the building officer, and the municipal planner. If you added a member of the municipal environmental commission, if there is one, you would use up all 11 slots. I thought there might be some overlapping.

ASSEMBLYPERSON TOTARO: I was just going to say that. I can cite two that we do not have in my municipality.

ASSEMBLYMAN DOYLE: Right. Wouldn't it be wiser if some slots were left for citizen participation?

ASSEMBLYPERSON TOTARO: I think that is what the public hearings are for. You don't want it to get unwieldy. I think that 11 is a large number, and I am glad that there is a maximum in the legislation. Fewer people seem to be able to come to faster determinations.

ASSEMBLYMAN SNEDEKER: Assemblywoman Totaro, you indicate that in the transfer zone, the certificates would be very valuable when they establish a transfer area. Would someone without a certificate be able to purchase land in that transfer area?

ASSEMBLYPERSON TOTARO: The transfer area itself would be owned by individuals already. The commission would set aside a section of the town which they would call the transfer zone. The people would already own their property there. They themselves could purchase the certificates so that they could provide greater density of growth on their acreage. Perhaps they have been permitted one house per acre. They could, then, perhaps, according to the criteria that the commission would set up, have three houses per acre. It would be advantageous to someone who does own land in the transfer zone to purchase these certificates. It would also be valuable for the municipality itself, if they wanted an area set aside in the transfer zone for some municipal purposes, to purchase some of the certificates. It would definitely be valuable to the developer. The

developer would find that building in greater density would be more economical for him, and I think that he would be one of the most important persons to come into a municipality and seek out the certificate.

ASSEMBLYMAN SNEDEKER: Wouldn't you then, though, be putting a penalty on that person who has had to purchase in that area and build on an acre or two, whereas the certificate would allow you to build on a half acre or acre? Wouldn't you be penalizing the individual who has already built in that area and has had to comply with the zoning as it was before? You would be penalizing me, I would feel, if I owned that one acre. I would have to buy those two certificates and take the lots alongside me, or I would have two houses built there by a developer.

ASSEMBLYPERSON TOTARO: I don't really feel that it is a penalty because you have it happening today. You are having master plans revised all the time, and you are having the board of adjustment changing rulings. The community that you moved into - and that I moved into - is not the same. It has been developing in haphazard fashion. The character is being lost. I feel that this legislation will permit the municipality to hold onto the character that made the town appealing to the people who moved there. You would know that there would be a definite plan that, in your area, "X" amount of development would take place. As I said, it permits the character of the municipality to be preserved, and it also provides for growth. If you were in a transfer area, you might be enjoying the monetary gains that you might realize from your land.

ASSEMBLYMAN SNEDEKER: Would you make any provision in your bill for this situation: If I received three, four, or six certificates rather than money, and if after a period of time I could not sell these

certificates, could I be reimbursed? Is there some way that the municipality could pay me for these?

ASSEMBLYPERSON TOTARO: There is a section in the bill that provides for a municipal certificate bank. It would really depend upon what the feasibility study commission sets up in the individual town. As Assemblyman Doyle pointed out, you may be working with a very small town that has very little growth capacity. You may be working with an urban area, or you may be working with a town that is 70 per cent undeveloped, and then it would be up to the municipality to decide whether or not the bank is necessary. I think that any municipality that is going to have a large proportion of it set aside for preservation and development would utilize the bank system. If it is, again, a small town, I don't think that it would be necessary.

ASSEMBLYMAN PELLECCHIA: Assemblywoman Totaro, I don't intend to ask any questions at this time. However, this afternoon many people will be here who are from Paterson and who are interested in some of the problems that this kind of thing has created for the people of Paterson, especially those in the Riverside section of Paterson. While it may not pertain specifically to your bill, there are many questions we will be asking in regard to perhaps amending or adding to your bill.

ASSEMBLYPERSON TOTARO: It will be my pleasure to answer any questions they may have.

ASSEMBLYMAN PELLECCHIA: Mr. Helb, will you please call the next witness.

MR. HELB: Our next speaker will be Mr. B. Budd Chavooshian, a member of the American Institute of Planners and a land-use specialist with the Cook College of Rutgers University.

B. B U D D C H A V O O S H I A N: Mr. Chairman and members of this committee: My name is B. Budd Chavooshian. I am a land-use specialist in the Cooperative Extension Service of Rutgers University. I was formerly the state planning director. I should say that for the last 19 years, I have been in New Jersey, and for most of that time, I was the state planning director. For the last four years, I have been at Rutgers University.

I am gratified, as I am sure my colleague, Dr. Nieswand, will also s t a t e, to speak before your committee this morning. It is almost an anniversary date, to the day, if not the month, of the time when he and I began to work on the concept of transfer of development rights as a land-use control mechanism primarily to assist municipalities in solving a very serious and increasing dilemma, especially in New Jersey. It is t h e fundamental dilemma of trying to balance, on one hand, the growth that is inevitable, in some rational fashion, while, at the same time, trying to preserve what the community feels is important to it in terms of its character, its environmentally sensitive areas, its historic sites, or whatever it feels is absolutely essential to the well-being of that community and all of its citizens, present and future.

Currently, the municipality, in exercising any of the powers given to it under the Constitution and legislation, can merely buy land, either through a Green Acres program or something similar or exercise its police power, namely, through zoning. In both cases, there are serious limitations. On the one hand, as we all know, the municipality's fiscal resources are limited; and, on the other hand, in exercising its police power, its ability to restrict land is limited by the Constitution of the United States, the Fifth

Amendment, and the Fourteenth Amendment; namely, land cannot be taken for public purpose without just compensation. So, the private property rights are protected. No land can be designated as land that will have absolutely no use because it is too important for a public purpose, such as, an aquifer recharge area, an historic area, an agricultural land area, a woodland area, etc. Flood plains, for example, are wetlands. These are all critical areas. They should be protected and preserved, and any kind of development should be prohibited there. But, we cannot do that because we are prohibited from doing that under the Fifth Amendment of the Constitution.

So, the municipality is faced with this terrible dilemma: What does it do in order to try to preserve the quality of life and the character of that community and its very essential, critical natural resources? It cannot do it.

The idea of transferring development rights presents one more tool to the municipality. It gives those who wish to adopt it, those who wish to preserve some of their environmentally critical areas, an opportunity to preserve that land at no cost to the municipality and at no cost to the landowner.

Efforts have been made in the past to try to - and I suppose this was true even in this State years ago -- z o n e land, for instance, for only agriculture, and that would be its only use. The courts soon struck that down. That would be confiscatory; that would be, in essence, a taking. Efforts have been made to try to preserve the character of a community and to preserve some open space by very low density zoning. We are talking now about one acre, two acre, five acre, or even ten acre zoning. In some cases, it was upheld in the courts, and in some cases, it was struck down. The net effect of that, of course,

is that there will be some development there, albeit it will be low density development, if it is five acre zoning, for instance, but there will be some development, and that land will have been developed, and its natural characteristic, to a great extent, will have been destroyed.

These are the problems that can be resolved, to some extent, by the transfer of development rights mechanism. I don't want to repeat the principles of TDR, because that has already been done by Assemblywoman Totaro. It does permit the municipalities to say that in appropriate places, higher densities can be created because the existing community facilities are there, such as, streets, sewers, water supply, etc, and the character of that particular area is changing anyway, whether it be a densely populated urban area or otherwise. I can give illustrations where this has already happened in Trenton. I am sure that it is happening in all other older cities. Single-family neighborhoods are being converted, through the zoning process or the variance process, to multi-family neighborhoods. Eventually, old buildings are being torn down, and high-rise apartments are being built there. So, there is a need to convert that area into a higher density use.

On the other hand, municipalities can designate those areas that it wants to preserve, whether it be an environmentally critical area, an historic area, or something of a very unique economic nature as described in A-3192 and, in so doing, transfer the development potential from the preserved area to that area that it has designated for high density. Higher densities will occur there only with the purchase of the development rights from the people who own the land in the preserved area, thereby making it possible for the people in the preserved area to capitalize on their land value and development value. They would be able to

sell their development potential, which is reflected in their development value, to someone else who will use it in another place identified and specified by the municipality in its new TDR zoning ordinance.

I won't say much more about that. I think that it has been well described, and all aspects of the legislation have been well described. Let me just say one thing: Three years ago when we first began working on this concept, it was extremely difficult, even among my colleagues, to explain it to them, because we were talking about a whole new way of dealing with property and property law and the whole property system. It had never been done in any large measure. New York City had adopted a transfer of development rights ordinance, which is really a transfer of air rights, and Southampton Township on Long Island was discussing it at that time. They subsequently adopted the ordinance. Finally, enough people did understand the potential of this whole new concept of dealing with land. As a matter of fact, all over the country now, people are beginning to talk about it. More and more professionals - lawyers, law professors, planners, political scientists, and environmentalists, generally -- are writing articles that are appearing in law journals and other professional journals. The Urban Land Institute, one of our largest organizations in the country devoted to developing land and the principles of developing land and research in that particular area, has published articles about TDR and growth management, and they have produced - and I think that it will be on the market soon - a two-volume study on growth management controls in this country as they are currently being discussed, used, or researched. So, the entire country, really, is moving in this direction, and many people throughout the nation are looking to New Jersey at this moment. Many people are aware of the fact that A-3192 has

been introduced, and they are waiting to see what New Jersey is going to do about it.

I enthusiastically urge consideration of this concept and the legislation to give our municipalities one more tool that they sorely need in order to solve this terrible dilemma that they are faced with. At the moment, they really have no way of coming out of it.

Thank you very much, Mr. Chairman.

ASSEMBLYMAN PELLECCHIA: Thank you for a fine presentation. Before we begin the questioning, I want to introduce Assemblyman William E. Flynn, who represents the 12th District and is a member of this committee. Are there any questions from the committee?

ASSEMBLYMAN DOYLE: Mr. Chavooshian, I am sure that in deference to the concept of home rule, this bill is, of necessity, permissive. Although it is permissive, it does, in fact, represent a good thing. I am somewhat concerned about municipalities generally being reluctant to accept that which is new. I know that we can cite Medford and Chesterfield and, perhaps, a few others, but I wonder if, by citing them, that they prove the rule that I suggest exists; that is, municipalities in this State don't take the kinds of big steps that A-3192 would allow them to take. I am concerned that we could go through all of this and have very few municipalities picking up the whole concept. Would you comment?

MR. CHAVOOSHIAN: That is always a possibility. I would be foolish to say that many municipalities would immediately embrace it. However, even if only a very few do, I think that those few should have the opportunity to adopt this kind of measure in their growth and development program to give them, at least in their case, what is the right thing. I suspect, however, having been with the State for many years and knowing how

difficult it is to sell new ideas, that you are right. When I first started in 1956 as state planning director, my staff and I spent many nights going around the State to different townships. Some were absolutely adamant against zoning and planning. They had no zoning. I think, at the time, that it was just the reverse - 19 years ago - of what exists today. Today there are about 25 to 30 municipalities that have no zoning ordinances. All the others have. At that time, it was just the reverse. There were only about 30 that had anything that resembled a zoning ordinance - only about 30. The rest had no zoning and virtually no planning, even though the Act had been passed in 1953.

However, over the years, due in great measure, I must admit, to the efforts of the State in selling the local planning assistance program - the so-called 701 program, and about 450 municipalities took advantage of that, entered into the program, prepared a master plan, and established a zoning ordinance - most municipalities have realized the need for zoning because of the pressures of development. It was coming, and they recognized it. Some beat the pressure as it approached; others were a little too late.

Yes, it is possible that very few municipalities will adopt it. In their best interest and in deference to them, I would hope that the Legislature would make this tool available to them so that they could do it. I suspect, however, from my own experience over the years, and from going around the State to get the feedback from municipal officials and planners, that as one or more begin to adopt it, others will look at them, naturally, and also begin to adopt the TDR legislation. PUD, for instance, Planned Unit Development, when it was passed

in, I think, 1968, very few municipalities adopted it. Today we have, I suspect, over 100 who have it.

ASSEMBLYMAN DOYLE: To the degree that it is a good plan, and to the degree that municipalities may be reluctant until they see others adopt it, can you suggest any ways that we could amend 3192 or, in general, provide, either through the State or its fine State Universities, ways to encourage municipalities to go into a TDR program, if it is enacted?

MR. CHAVOOSHIAN: In the legislative proposal that we drafted--- The proposal was not intended as legislation. It was merely the vehicle for our research. We disciplined ourselves, in doing our research, to drafting a legislative proposal which would force us to look at constitutional, legal, administrative, and other types of questions. The last thing that we put in there - because we felt, as you do, that this was very new and would have difficulty being adopted by municipalities because they wouldn't understand it; we had already gone through the PUD experience where lead time or educational time had not been provided and no model ordinances had been developed; no manuals, no how-to, etc., had been developed for use by the municipalities, municipal planners, or municipal attorneys who would have to draft the ordinance - was a provision that the Act, upon its passage, would become effective one year later. During that year, the state planning agency, the Division of State and Regional Planning, would be required to conduct educational programs, develop model ordinances, prepare manuals, etc., and we suggested an appropriation.

In addition to that, I think that we are very fortunate in our State, and in practically all

other States that do have a land grant college and a Cooperative Extension Service, in that we do have in the counties already structured, in the name of the county extension offices, an opportunity to conduct educational programs, workshops, seminars, and a place where people can pick up information on this new concept of TDR.

I think that it is important; I think that it will be done by the Cooperative Extension Service, certainly, and other units of the University. The University Extension Division, I am sure, will conduct seminars and workshops, as it has always done in planning and zoning matters, for municipal officials. Hopefully, the State, even if there is no provision in the Act to require it to do it, will also conduct educational programs and prepare literature, as it has done in the past, along with the board of adjustment on the subdivision process, for example.

ASSEMBLYMAN DOYLE: You mentioned PUD in your answer. You said that there are about 100 municipalities that have adopted it in one form or another. PUD is based upon the 1960s enabling legislation. To my knowledge, only several, at best, PUDs have actually been built. If we can go all the way and encourage municipalities to adopt this because it is a good program, and a number do, how do we go to the next step and see that it is put into existence when the acceptance of the last big change, PUD, has been so minimal, notwithstanding the number of towns that have adopted it?

MR. CHAVOOSHIAN: Sir, I think that one of the problems with PUD is that it requires a special type of developer - someone with the ability, the capital, the expertise, etc., in developing large developments. I am talking about PUDs that are 100 acres or more. The average developer, the average

builder, in our State, and in most States, builds only a few homes a year - five, ten, at most. The larger developers build 25 to 50 perhaps. The very large developers, like Levitt, are the ones who can really move into new towns, or PUDs, and hope for success. So, because of that one constraint, we are limited as to how fast a PUD will be actually developed.

Secondly, we have a problem of changing market conditions. Right now we are in the worst of conditions, as you know. Many PUDs are going bankrupt; many new towns, as you are probably aware, are going bankrupt. There is too much investment of front-end money into this sort of development process to withstand any protracted period of recession. So, it makes it very difficult to move quickly.

Contrast that with TDR which would permit higher densities. Dr. Nieswand, in discussing our demonstration project in South Brunswick, will describe the kinds of densities that we are talking about in the suburban developing areas as opposed to the highly developed urban areas where the density could be, and no doubt, will be, a little higher. We are not talking about high-rise apartments; we are not even talking about garden apartments in South Brunswick. We are talking about single-family homes on slightly smaller lots than what is currently permitted under the existing zoning ordinance. There the community would be creating higher densities which would permit a developer to move in immediately, whether it be a small builder or a medium-sized builder, buy the land, buy the development rights, get a subdivision approved, and begin developing right away. He can buy five acres, ten acres, or whatever he is capable of purchasing. So, in that respect, I think that it can move a lot faster.

ASSEMBLYMAN DOYLE: Do you think, then, that this will help both the small and large builders relate better to our present economic situation?

MR. CHAVOOSHIAN: I think so, and in fairness, I must add this: I have not met with the home builders as a unit. I have met with individual home builders over the years to talk about this concept. Home builders and developers have been in the audience whenever I have discussed TDR, and my general impression has been that what I just said was correct. This Friday I am going to be meeting with the home builders' legislative committee for the purpose of reviewing this bill, and I suppose they want to take some kind of position on it. They have invited me to come and discuss TDR and its various aspects and to d i s c u s s the kinds of questions that you are asking me. They may not feel as I do. I base this upon my own experience as a planner. I did work with Levitt in Levittown, Pennsylvania, so I do have some notion of what a builder goes through. My best friend is a builder in Pennsylvania, and, of course, I have discussed this with him many times, he who has his problems with planners. So, I think that I reflect fairly accurately the thinking among builders.

ASSEMBLYMAN DOYLE: We will probably be hearing from the builders next Wednesday in Toms River. The thrust of what is happening today in municipal services seems to indicate that there should be more of a regionalized approach, not only in zoning, but in the delivery of most services to citizens. To the degree that this is another tool for municipalities to consider their needs, even though the Preamble suggests regional concerns, and the commission suggests they must look at regional matters, wouldn't the enabling of municipalities, rather than counties, or substate districts, or something else, only contribute to the parcelization of what we

are doing rather than to a better and broader view?

MR. CHAVOOSHIAN: It could be argued by those who feel that regionalization is the only answer, and that we must do everything to destroy home rule and destroy the municipality, that this is just one more tool to perpetuate an unfortunate thing. I am not one of those. I believe there is a need for local government; there is a need for certain functions to be performed at the local level, and, currently, that function of planning-zoning is being exercised there. My concern is that until all those rules are changed in local government, we should strengthen local government as much as we possibly can. This is one more way of possibly - at least it has the potential - making local government a little bit more effective and a little more responsive.

Let me add one other thing: Inherent in the concept of TDR, in what we have referred to as incentive zoning, and what Assemblywoman Totaro has referred to, in her bill, in other ways, is that there must be a market for those development rights. It would be a fraud, of course, if development rights were issued to people who owned land in the preserved zone, and there was no transfer zone with an adequate density wherein there would be market. In other words, there would be nobody ready to buy those development rights. The developers would continue to build at the old density and not purchase development rights which would, of course, leave those people with the development rights in the preserved zone with a worthless piece of paper. To create that incentive, our thinking was that the incentive for building must be created in the zoning that will be established in the transfer zone. So, the planning board must look into the region to see what kind of housing market is there, what kind of demand is there, and not arbitrarily decide. I am sure that, in some

cases, it will be done that way. We are proposing that it should not be done that way, and hopefully, there are enough restrictions and enough intent in the legislation that it will not be done haphazardly. When the planning board establishes a new density in the transfer zone, hopefully it will be a density that will really reflect the kind of market demand that exists so that a developer will come in and actually purchase development rights to build at those densities.

I will give you one illustration: Assume that the current existing density in the transfer zone is one house per acre, and the planning board decides, in transferring the development potential from the preserved area into that transfer zone, that it is going to recommend that it be zoned for two houses per acre, or half-acre lots. There may not be a market for half-acre lots. The builder may come in and say, "Well, it doesn't pay me to enter into the problem of going out and looking for development rights and buying them to build a house on half an acre as opposed to a house on one acre. The market is about the same." So, he won't buy them. The incentive is not there. It is not economically attractive. However, if the planning board had looked better into the market, especially the regional market - that is the only market they can really look into because the market doesn't really exist locally; it exists in the region because the builder has a choice of going to any municipality he wants - they may have created, for instance, four units per acre, single-family homes on quarter-acre lots. There may be a much greater market for that. Any developer would run in and buy the land and, perhaps at the same time, buy the development rights if the owner of that land happened to have purchased them. He would acquire land, development rights, submit a subdivision

plan at the rate of four units per acre, get approval, and begin building right waway.

ASSEMBLYMAN DOYLE: That is good for the builder who is shopping around. Let me use an example of a preservation zone of one acre zoning that is going to be preserved with no housing and a transfer zone of one acre zoning that, to compensate for the preservation zone, is going to be developed two houses to the acre. Let us use your builder who doesn't feel that there is much difference and doesn't buy those rights. Accepting all of that, put yourself in the position of the preservation zone property owner. He has had the development rights of his land taken away. He is left with the shell of what he had - one stick, that stick which says "Title" and, thus, payment of taxes, but not development. For that he has gotten a piece of paper which, realistically, I would think, in today's market, is unsalable. Other than a court challenge - and I know that is the last resort, but I would hope that we could provide, within legislation, ways to safeguard the rights of people without always having to resort to court - what do you do in that situation? What should be done? I cannot believe that situation is right.

MR. CHAVOOSHIAN: No, not at all. I think that we, as I said earlier, would be perpetrating a fraud upon the people in the preserved area from whom we have taken away the right to develop. We have to protect them. We have to guarantee the marketability of development rights. If the planning board had, in fact, done a good job and created the incentive zoning in the transfer zone, but nonetheless the builder chose not to take advantage of that, and he is building now at the original density without purchasing development rights, those development rights that he could have purchased will really be

rendered surplus. There is no longer a market for them.

Our thought was, in the work that we did, that within 90 days, if that happened - and it would become immediately apparent, of course, because the builder would ask for 100 building permits when he could have asked for 400 building permits, so we would know right away that 300 development rights in that particular instance were going to become surplus - the planning board would be required to rezone, recreate the market, so that there would always be at least a one-to-one ratio for all the outstanding development rights. No one can ever guarantee that there will be a buyer or that there will be a given price for that. That is done strictly in the free market place, but there must be a guarantee of the marketability of those development rights.

I suspect - and we have thought about this subsequently - that that would be kind of onerous upon the planning board. If a builder came in and could have used three development right but he chose not to, under the law, the planning board would be required to rezone within 90 days. That would have been kind of idiotic and silly. What we are thinking is that there should be some kind of reasonable balance between the transfer zone and its capacity to absorb the remaining, outstanding development rights certificates. There has got to be some kind of balance and some kind of guarantee.

Other people have suggested - and it was discussed just now - that, perhaps, the municipality could have a development rights bank and could purchase the development rights as it chose. It is up to the municipality. As Assemblywoman Totaro pointed out, it is up to the municipality to decide, in the first instance, whether or not it really wants to create a land bank. The conditions in a particular municipality may dictate

that such a land bank may not be necessary. But, that guarantee must be there. Somehow there must be a guarantee of the marketability.

ASSEMBLYMAN DOYLE: Do you think that a constant review of the actual market would help? Do you think that there should be some amendment indicating that this commission would stay alive or that the planning board would be under a mandate to constantly review what is happening with the market experiences?

MR. CHAVOOSHIAN: I do not think the commission should stay alive. I think the idea of a self-destructing commission is unique in Assemblywoman Totaro's bill. I think it is really great. Commissions, unfortunately, remain too long and live way beyond their usefulness.

The planning board should be given that re-responsibility. The planning board should always have that responsibility. That is inherent in the whole planning process. Perhaps, to increase its congnizance of that responsibility, there may be some language included in the legislation to the effect that there shall be a reasonable balance, and that the planning board shall always review to make sure that there is always a reasonable balance between the number of outstanding development rights certificates and the capacity of the transfer zone to absorb them.

ASSEMBLYMAN DOYLE: In order to do that, it might well be that the number of units that could have been built in the preservation zone will wind up being less than the number of development rights given in the transfer zone. Is that not right?

Going back to my two one-acre-zoned areas, you might preserve the same as 20 building permits, but in order to make the market for these TDR rights, you have to create the ability to build four units per acre in the transfer zone. So, you are planning for more

population than you would otherwise have had under existing zoning.

MR. CHAVOOSHIAN: No. You are familiar, obviously, with planned unit development which is a more sophisticated version of clustering. All that TDR does is cluster. It takes the amount of development from one area permitted under the existing zoning and adds it somewhere else. So, it is really clustering. The gross density permitted under the existing zoning remains the same. Nothing changes, so you are not increasing the number of people who could come into the municipality. You are merely shifting the densities around. In the preserved area, of course, you are changing the density to almost zero. Each landowner, of course, will be permitted to build his home whether it is on a five acre tract or a 500 acre tract. He will be selling his development potential to somebody else who will be adding it to another part of the municipality as designated by the municipality in its new ordinance. So, you are merely shifting densities. You are creating higher net densities in the appropriate places and much lower densities in the preserved areas.

ASSEMBLYMAN DOYLE: After TDR, the number of housing units that could be built would be no greater than the number of units that could have been built both within the transfer zone and the preservation zone before TDR. Is that correct?

MR. CHAVOOSHIAN: Right.

ASSEMBLYMAN DOYLE: Let me go back, once again, to the one acre zoning on each side. I am afraid that Bedminster - not to single out that town, but it has been in a couple of Supreme Court cases - and towns like it can use this and not change their response to the needs of our present-day society by creating half-acre lots where there had been formerly

acre lots. The market is not there. You have taken from the preservation zone landowner his right to develop his land, given him nothing in return, and you have not helped the market at all. Is that not what would happen in certain instances, which I don't think are isolated, such as the one acre that you preserve at the expense of building two to the acre in the transfer zone?

MR. CHAVOOSHIAN: Without singling out any municipalities - of course, we have two in the Supreme Court right now: Madison and Mount Laurel, and I'm not accusing them of this - zoning in many municipalities has been used as an anti-social measure. There is no question at all about that. It has been used to keep people out -- any kind of people - and they have been using low density zoning to do that, to accomplish that objective. So, the only people who have come there are those who could afford to buy a large house on a large tract of land. In some parts of our State, a large tract of land is a half acre. In other parts of the State, depending upon the density in that particular region, it may be five acres.

Sure, TDR will be used, unquestionably, by some municipalities for perverted, anti-social reasons. Hopefully, they will be caught up in this, and that will be changed. However, TDR is not intended and cannot be intended to solve that basic problem of requiring a municipality to increase its density. As a matter of fact, I don't think the court decisions in any of them - I haven't read the recent Madison decision - are saying that you must increase the number of people who can live in your town, but they a r e saying that you must provide for housing for all different income levels. You accomplish that, in some measure, when you do increase densities

because, hopefully, you are permitting the builder to build slightly cheaper houses. Instead of a $40,000 house on one acre, he may now be able to build a $37,000 house on a quarter-acre. So, it does reduce the price slightly. In that way, it does meet some of the dictates of the courts. We will know better when the Supreme Court decisions come down. But, I don't think they are going to say, "You must take on more people in your town." They are going to say, "You must change your zoning so that it doesn't become exclusionary and only certain kinds of people can live there." If you can do that by shifting your densities around and eliminating much of your one acre zone, and if you use TDR to do it, all well and good, because at least in one area, there will be no development. But, all that could have occurred there now will be occurring at higher densities elsewhere, which may also mean, not necessarily but possibly, lower-cost housing. Again, it depends on the market.

To solve that other problem that you are speaking about, which the courts may address themselves to, I think it will require other measures. You cannot expect TDR to do that. Again, TDR's only intention is to preserve critical areas and those qualities and characteristics that the community feels are important and need to be preserved.

ASSEMBLYMAN FLYNN: Sir, are you saying that, basically, it is going to be used sparingly in a given community and that it is not going to be on a large-scale? Is that what you are saying?

MR. CHAVOOSHIAN: It would depend upon the municipality. If a municipality had large areas that it would like to preserve and it felt committed to

that type of thing and it felt that it had the general support of the local people, it could go as far as it wished in preserving large areas.

ASSEMBLYMAN FLYNN: It could be used in lieu of the Green Acres program, then, in a community that wanted to go that route?

MR. CHAVOOSHIAN: Yes, it could. However, the Green Acres program, of course, makes the land available to the public. TDR land would not be, of course. It would still be owned by the private---

ASSEMBLYMAN FLYNN: It would be a prohibited zone, then, and would not be publicly used?

MR. CHAVOOSHIAN: That is right.

ASSEMBLYMAN FLYNN: It would still be privately owned?

MR. CHAVOOSHIAN: Right. It could be publicly used only if it was developed in a preserved zone for low-intensity recreation - a campsite, for instance.

ASSEMBLYMAN FLYNN: Do you think that we could put something in the legislation to allow community easements, at no cost, in exchange for the development rights they are getting, or do you think that would go beyond the scope of what you are trying to accomplish?

MR. CHAVOOSHIAN: No, not at all, if I understand your question correctly. If there is a TDR zone, a preserved zone, and the municipality wants public access to it - let's assume that it is a flood plain that is set aside in a preserved zone - and it feels that stream valley is a very important public recreation area, it could now go in and buy that land with or without Green Acres money. Chances are that it would try it without Green Acres money because it would be able to buy the land at its resource value, its residual value, because the development value would have been transferred out, and the owners of that land would

have been compensated for it by being permitted to sell its development value to someone else.

ASSEMBLYMAN FLYNN: You are saying that it would be a minimal cost to the community?

MR. CHAVOOSHIAN: Yes.

ASSEMBLYMAN FLYNN: You wouldn't want to go further and make as a requirement of the landowner getting the development rights that he grant access to the public by way of easement? I take it that you wouldn't want to go that far.

MR. CHAVOOSHIAN: I don't think it is necessary, frankly. I don't think there is anything in the legislation that speaks to that.

ASSEMBLYMAN FLYNN: Not in this bill.

MR. CHAVOOSHIAN: You are suggesting that perhaps it should be included. Perhaps. We have thought about this and we have considered the possibility of the municipality having the option that when it designates a preserved area, it may ask for public access in some portions of that, and it may negotiate some kind of arrangement with the landowner, perhaps even to the extent of assessing the land lower as an incentive for the landowner to permit public access. Frankly, I have not thought enough about that. It is worthy of consideration, and that may be something that could be added to the legislation to enable a municipality to accomplish that particular objective.

ASSEMBLYMAN DOYLE: I think you said that this is, in a sense, a broader form of cluster zoning in that you are preserving certain green areas and allowing high density development somewhere else. Let me make a point that I think is fairly important. When you talk about cluster zoning, you are talking, generally, about a single parcel, although it may be large, so that

the green areas that have been preserved are approximate to and for the benefit of the homeowners who have put their homes on smaller lots. That does not necessarily hold in TDR because you could have a preservation zone that you want to maintain open on one side of town and the clustering of the houses on the opposite side of town. So, haven't you, for those potential homeowners, created a high-density, less aesthetic home site so as to preserve green areas from which they are not going to benefit any more than any other single member of the community, and from which they will benefit less than most because they are further from it?

MR. CHAVOOSHIAN: I hope you don't feel me impertinent when I say this. You are making an association which I don't think is valid. You are saying that high densities automatically mean ghettos, and I am using that term only to dramatize it.

ASSEMBLYMAN FLYNN: I said "less aesthetic."

MR. CHAVOOSHIAN: I realize that, and you will forgive me for it, I hope. I am not saying this to embarrass you or make an awkward situation, but that is not true. First of all, there is no relationship, necessarily, between density and the cost of housing because if there were, people who are buying townhouses today for $40,000, $50,000, or $60,000 could very well move out a couple of miles to another township where they could buy a single-family home on one acre or a half-acre for essentially the same price. They have opted for a townhouse for their own peculiar reasons. I can only use myself for an illustration. I own a home, 75 x 100, in the City of Trenton. I would not have anything larger than that, under any conditions - nothing at all. I do not feel that I am living in a ghetto. I do not feel that I am denied the opportunity to enjoy the open spaces that are elsewhere in the Trenton

metropolitan area.

Secondly, if someone comes to live in a transfer zone that is zoned for high density, he is doing that voluntarily. He is not forced to live there; he is not forced to buy a house there. He still has an option in the same municipality. He can live in those areas where the zoning was not changed and is still one acre. He still has that option.

However, we know from our own experience that there are an awful lot of people who do not want to live on one acre; they don't want three acres; they don't even want a half-acre. I am not the only one. All you have to do is look around the State.

ASSEMBLYMAN FLYNN: A lot of people don't like to mow big lawns.

MR. CHAVOOSHIAN: Exactly.

ASSEMBLYMAN FLYNN: Are you saying that the transfer zone will be undeveloped when it is designated?

MR. CHAVOOSHIAN: No, the preserved zone.

ASSEMBLYMAN FLYNN: What about the people who already live there? You are not saying that they have to live in the transfer zone?

MR. CHAVOOSHIAN: What I am saying is that housing would be built in the transfer zone on quarter acre lots as opposed to the one acre lots of the previous zoning.

ASSEMBLYMAN FLYNN: What about the people who already live in that zone?

MR. CHAVOOSHIAN: You are speaking about people who built their homes earlier - and I think that observation was made earlier by Assemblyman Snedeker - in the transfer zone or adjacent to it and who built their homes on one acre and who now object to having higher densities next to them. Yes, that represents a problem. There is no planner in his

right mind who would say, "Don't worry about it; it's no problem." Any one of you who is a public official and has gone to a public hearing on a zoning change knows that. The whole neighborhood gets on your back because they don't want to see the neighborhood change. That will always happen. Hopefully, the planning board and the commission, under this legislation, would have selected appropriate areas which would minimize that kind of incompatibility so that it would be an area that is generally undeveloped. If it was developed, probably it would be developed in a relatively high density anyway, so the new density would be compatible with that. It would be silly for us to set up a high density in the midst of an area of very low density. Obviously, those people would object to it, and chances are that the municipal officials would not adopt that ordinance.

ASSEMBLYMAN PELLECCHIA: I would like to make an inquiry in regard to the cases that are presently in the Supreme Court.
How would those cases reflect on the situation in Mahwah? Are you familiar with Mahwah's problems?

MR. CHAVOOSHIAN: Whenever I am asked a question regarding a legal opinion, I hedge away from it because I am not an attorney. I would prefer not to answer that question because I might make a serious mistake. If there are any attorneys in the audience, they might address themselves to that question.

ASSEMBLYMAN SNEDEKER: Are you familiar with Chesterfield's plan and Medford's plan?

MR. CHAVOOSHIAN: Yes, sir, generally.

ASSEMBLYMAN SNEDEKER: What is the reason for Chesterfield's plan? It is in my district, and it is a large open-space area. Is it their plan to

preserve the large open-space areas as farmland? Is that what their plan would be in TDR?

MR. CHAVOOSHIAN: Their hope is to preserve the prime agricultural land that is in Chesterfield, and there is a lot of it. They see it rapidly disappearing, not at the moment because, as everywhere, there is no development taking place. But, they are in a key location in the State, as is most of our State, unfortunately. That land is subject to tremendous development pressure. Farmland, unfortunately, is the first land that goes because that is the best land to develop, not the worst land, but the best land. That is where the developer goes first and where an investor goes first to purchase land and to, eventually, develop land. Chesterfield wants to preserve it as much as they possibly can, and they are using a variation of TDR. They cannot adopt a TDR ordinance. At least their municipal attorney has told them that because there is no enabling legislation to permit it. So, they have come up with a variation of that. The idea, of course, is to preserve as much of the farmland as they possibly can by using a technique whereby a developer can build in the so-called transfer zone - I don't know what they call it, but it would be the developmental portion of the community - at higher densities if he buys land, not the development rights in this instance, in the agricultural district. He can take the development potential, or the 100 homes, let's say, that could be built on that agricultural tract, over to his tract and add it to it. That is given to him as an option.

ASSEMBLYMAN SNEDEKER: I am surprised that they are getting away with that.

MR. CHAVOOSHIAN: They have not adopted it yet, sir. There is a good chance that they may

not from what I understand. There are still reservations on the part of the farmers because this, again, is too new. They like the idea. There apparently is no argument with the concept of TDR, but they are a little worried about the possibility of not being able to sell their land, their development rights, or whatever it might be. They don't buy completely what I just told you - that almost any developer will automatically come in and build at the high density, e v e n if he has to pay. He will, of course, have to pay for the land and the development rights. In Chesterfield's case, he will have to buy two pieces of land, but he will combine the two. He will leave one empty, and he will combine the potential of two into one. The farmers feel that this may not happen and that the market may not be there. They say, "Suppose the developer doesn't buy, what do we do with our land?" That is their concern.

ASSEMBLYMAN SNEDEKER: I think they are worried because surrounding Chesterfield is more open land where they may or may not have the same attitude as Chesterfield and where a developer may be able to go in and buy land in addition to the farmland and develop that.

MR. CHAVOOSHIAN: He can only build at low densities in the other towns, whereas in Chesterfield, he can build to a higher density. There is no question that he benefits from the---

ASSEMBLYMAN SNEDEKER: That is what the farmers are afraid of. They may all have some TDR plan. I think that is what they are afraid of in the Chesterfield area. You indicated, when you first started to speak, that there is probably going to be some problem with communities adopting this plan. Do you think the State is going to have to make some sewerage

money and expansion of water facilities available because, in most communities, especially rural communities, this is going to be a great expense. The environmental protection people are requiring that you either have a large portion of land, if you have a septic area, or water and/or sewerage. Do you think that the State will have to put up some funding to encourage municipalities in rural areas to accept TDR - funding for sewerage plants and water plants?

MR. CHAVOOSHIAN: If the state policy is to encourage a municipality to adopt the TDR plan, then it will probably have to couple that with some incentives, such as, providing greater aid for sewer and water construction, street construction, and other community facilities. That will depend upon the State and whether or not it assumes that as its policy position. I cannot speak to that, of course. I am not about to make a judgment as to whether that is good or bad. However, if the alternative is, in the rural areas, or suburban areas, or whatever - we are talking now about land as opposed to historic buildings or anything that might be considered an economic asset or unique asset to the community - that all the land will eventually develop--- I don't care whether it is Chesterfield or any other township you can name in New Jersey. Eventually it will all be developed, and all that farmland and all the aquifer recharge areas and all the flood plains, with some exceptions which will be enunciated by the regulations that will be coming out soon by the State, will eventually be developed. There will be a need for sewer construction, but it will be spread out all over the State. If we can encourage clustering--- In the first instance, the municipality in establishing the transfer zone, must consider whether the so-called infrastructure is there, whether the

sewers are there, whether the water facilities are there, whether the community has its solid waste disposal system established, and whether there is a sufficient source of energy supply. If they are not there, then they could n o t establish a transfer zone because the densities could not be built up.

ASSEMBLYMAN PELLECCHIA: Before we go any further, I would like to take a ten-minute break to give our stenographer a chance to relax her fingers.

(Short Recess)

ASSEMBLYMAN PELLECCHIA: We will now resume the hearing. Are there any further questions of Mr. Chavooshian?

ASSEMBLYMAN FLYNN: Do you have any model TDR ordinances, that have been enacted in our neighboring legislatures, with you today?

MR. CHAVOOSHIAN: No.

ASSEMELYMAN FLYNN: I would like to see what those model ordinances look like.

MR. CHAVOOSIAN: That is exactly why we are undertaking a demonstration project in South Brunswick Township, Middlesex County. We began the project back in July. We are doing this project with the United States Department of Agriculture research money. We are working with the municipalities by unanimous invitation and with the full approval of the governing body there, such as the planning board, and also the mayor. We are working with other agencies like the Environmental Commission, and eventually we will be working with citizen groups to draft a TDR ordinance. Dr. Neiswand, my collegue, with whom I have been working for the past three years, will discuss that particular project. We will end up with a model ordinance.

ASSEMBLYMAN FLYNN: So as of right now there is no such ordinance?

MR. CHAVOOSHIAN: No, but we are more than halfway into it. We have a pretty good notion of what the problems are and how to resolve them and the issues that arise in drafting a TDR ordinance, and we have generally an outline of what should be included in the ordinance. When this is produced, and if the legislation is passed, then municipalities will have at least one model which was not available to them, unfortunately, when the PUD legislation was passed.

ASSEMBLYMAN FLYNN: Assemblyman Doyle alluded to the fact that communities are very reluctant to change their ordinances. One thing I am afraid of

is the front-end cost of establishing the TDR ordinance. That commission looks like a very expensive commission, because in effect they are going to have to either create a master plan or update the existing master plan, plus get a housing study. I would think that the only way you can get a community to do this is for the State to match these funds or even more than match the funds, such as 70-30 or something like that. I just can't see a community spending that kind of money. A commission will do a first-rate job, of course, but if they do a slipshod job, then we won't accomplish a thing.

MR. CHAVOOSHIAN: You are absolutely right, sir. As a matter of fact, the main reason why municipalities got into planning during that 50's and 60's was because we had money to give them through the 701 Program. And it gave them up to a three-fourth's grant, and in some municipalities we paid one hundred percent of the costs, because they needed it and it was important to have a master plan in that particular study of zoning ordinances. It will be costly. There is no question about that.

May I just say one thing about that, however. It should cost a lot of money. Planning should cost a lot of money, but unfortunately planning, being something in the future - and perhaps I am saying this because I am a planner - is something that most people, including municipal officials, of course, are reluctant to put a lot of money into that. They are not certain what the results will be or what the payoff might be in having a plan for their future. Because those same people may not even be around at that time, they don't want to spend too much money. They do just what they need to do to keep, hopefully, one step ahead of the pressure that is upon them.

But there is nothing more important than building in the municipality.

ASSEMBLYMAN FLYNN: What kind of money is being budgeted for the project?

MR. CHAVOOSHIAN: The grant was $28,000. It is a three-year project. The first year is the drafting of the ordinance, and the second and third years will be devoted to conducting, under simulated conditions, again, a market analysis, to see what actually will happen in the marketplace when there is a TDR ordinance and development rights certificates being transferred in the open marketplace, who will be the sellers, who will be the buyers, who will buy them under what condition, what the price might be, how does the total regional market affect the sales of these development rights, et cetera. However, I think, and I can only estimate -- Dr. Nieswand might be able to give a better idea, because he is the private director of this project in South Brunswick -- that his time, my time and the time of other members of the Department, and the time of our graduate students, amounts to a minimum of another $30,000. So I would suspect that we are talking in terms of a $60,000 to $70,000 project. However, you must understand, of course, this is a demonstration. This is a kind of research project. First we are learning. We are doing much more than would normally be done under conditions ---

ASSEMBLYMAN PELLECCHIA: It is really a pilot program.

MR. CHAVOOSHIAN: That's right, it is a pilot program. So, it is a prototype, hopefully, that we are developing. We are spending a lot more money.

Let me just say one more thing about cost. I think there is nothing more important than planning

for the development of the community. There is nothing more important than that. And spending the kind of money we have been spending is hardly enough. There is no business as large as building a municipality. When you add up the total cost of what it will take to build that municipality when it is finally developed, whatever municipality you want to talk about, when all the sewers are provided, when all the streets are built, when all the schools are built, and when all the homes are built, you are talking about a multi-billion dollar industry. It is a tragedy, and it is a real pity that all we can see ourselves spending a year at best is maybe $3,000 or $4,000 or $5,000 which the planning board gets. But if suddenly it goes into a massive planning revision or zoning revision, it might get $10,000 to do that job.

ASSEMBLYMAN FLYNN: Just so I understand this, let's assume a developer or an owner of land has 10 acres in an area of town that is very poor as far as drainage and whatnot, swamp area, and the front-end cost of him getting that land in a buildable condition is astronomical. Now along comes the town, and they put his 10 acres in a preservation zone and give him, I assume, the right to build. Let's say the building density is one per acre in that area. They then give him the right to build ten units in a transfer zone. Doesn't he get a great windfall?

MR. CHAVOOSHIAN: No, because the number of development rights certificates that he would get would be based upon the ratio of his land value to the total assessed evaluation and total land value of the preserved area. So he will only get his fair share.

ASSEMBLYMAN FLYNN: I thought you said it was in terms of getting the same number of units. If you can build

10 in one zone you can build 10 in the other zone?

MR. CHAVOOSHIAN: Theoretically. But that would be based upon acreage. If you would base it only on acreage, it would not take into account the differentiation between land values. There is a differential between that man's land value and the land value of someone a mile down the road who has high, dry land, perfectly suited for development. His land on the open market would command a higher price per acre than the one you are talking about, so the distribution, assuming they both have the same tract size, 100 acres, for instance, of the total number of development rights in order to be equitable would have to reflect the different land values.

ASSEMBLYMAN FLYNN: And that would be in the conversion table?

MR. CHAVOOSHIAN: And eventually that would, of course, be in the conversion table. No, it would not be initially. That would be merely in the allocation. Once the allocation is done, then that particular basis for determining allocations is no longer obtained.

ASSEMBLYMAN FLYNN: You would put in the factor of cost of building on the preservation land, had he built there, in giving him a number of transfer of development rights?

MR. CHAVOOSHIAN: No, that factor is already reflected, presumably in his market value, in his assessed valuation. For instance, if I own swamp land and I can sell it in the open marketplace for $1,000 an acre, and you own dry land not too far away from my land, and you can sell your land for $3,000 an acre. The value of your land on the marketplace has already been established between you and a buyer, and it has already reflected the fact that

it doesn't require the amount of improvement that my land would require. In order to make my land value equivalent to your land, someone would have to spend about $2,000 per acre, as far as buildable land is concerned. If I had initially done that and eliminated the drainage problem, et cetera, my land now, of course, would be worth about $3,000 an acre.

ASSEMBLYMAN FLYNN: How does that reflect on the number of rights to build?

MR. CHAVOOSHIAN: Okay, now, when the total number of development rights is computed by the commission and the planning board, of the total development potential in the preserved area, if your land is worth $3,000 an acre and my land is worth $1,000 an acre, and we both have the same acreage, you should get three times as many development rights as I would get in order to be equitable. Otherwise, because of acreage, and because you could have gotten, let's say, 80 homes on your lot and I could have gotten 80 homes on my lot, if all the improvements were made, then you would be cheated, because I would get the same amount of development rights that you would get, which doesn't reflect the difference in land value. The first thing you would do, of course, would be to go to court and you would probably be sustained.

ASSEMBLYMAN FLYNN: So when you answered the question that Assemblyman Doyle asked you about the same number of people that wind up in a town because it is a one for one ratio, there really is no one for one ratio there.

MR. CHAVOOSHIAN: Yes there is, if you take the entire preservation district, but not necessarily if you take individual tracts. That probably is not making it

clear. Let me use South Brunswick as an illustration. We have tentatively designated 8500 acres of land that we are recommending to the township that should be put into a preserved area. The development potential from that, based upon the current zoning --- I don't remember the exact figures, but 3600 dwelling units could be built on those 8500 acres currently. In other words, if all that 8500 acres was developed immediately under existing zoning, 3600 dwelling units would have been built there.

All we are saying now is that we are going to take that 3600 and transfer it someplace else, and add it to the current existing zoning in that particular area, the so-called transfer zone. We are still dealing with the same number of dwelling units, okay?

Now, every land owner in that preserved zone will get his fair share of those 3600 development units or development rights, as we refer to them.

ASSEMBLYMAN FLYNN: Based on the appraisal of the value of his land and the number of preservation rights?

MR. CHAVOOSHIAN: Right, in ratio to the total.

ASSEMBLYMAN FLYNN: So you have a big assessment problem before you?

MR. CHAVOOSHIAN: Oh, yes, that is one of the costs involved. We happened to pick this municipality. One of the reasons we picked this one was that we knew we didn't have enough money to reassess, and South Brunswick's re-evaluation is rather current.

ASSEMBLYMAN FLYNN: In Section 14-e, it talks about the present capital facilities, in that they have to be sufficient to accommodate the increased density of the transfer zone. Now, won't this be a myriad of problems, real problems, of people going to court and challenging what they got from the transfer zone because the sewer was a thousand feet from their area or two thousand feet? In other words, isn't this

relatively vague as to the phrase "sufficient to "accommodate"? It seems to me to be so vague that it is going to open up the flood gates with court cases with people who feel they should get more by way of development rights.

MR. CHAVOOSHIAN: Well, this is in the transfer zone, of course, and people there don't get development rights. They do get the density.

ASSEMBLYMAN FLYNN: And the person who had land in the preservation zone and gets these transfer rights to the transfer zone is entitled to have capital facilities sufficient to accommodate the increased density. But it seems to me to be so vague.

MR. CHAVOOSHIAN: I think that whatever vagueness may appear in the first paragraph is cleared up in the last paragraph when the legislation defines what it means by "present capital facilities." They define "present capital facilities" as those facilities actually in existence, and those for which construction contracts have been entered into, or which are included in the capital facilities plan adopted by the municipality for the next five years. So you see it is pretty specific.

ASSEMBLYMAN FLYNN: I'm talking in terms of zeroing in on exactly what they mean by "sufficient to accommodate the increased density." If I were a builder, I would want to be relatively close to the sewer lines so that I wouldn't have to spend a lot of money to tie into the sewer lines thereby increasing my costs. Won't there be a lot of litigation involved? A builder could say that the transfer zone was improper, because the sewer lines were a thousand feet away from his land. It doesn't zero in on that.

MR. CHAVOOSHIAN: No. No builder is guaranteed a right to have the lateral or the trunk line right next to his tract. If he has to have it brought in, then, of

course, that is at his expense.

ASSEMBLYMAN FLYNN: I realize that, but it doesn't say what he is entitled to, really. So I would say it is a little bit vague.

MR. CHAVOOSHIAN: He is entitled to the knowledge that the facilities, in other words, the trunk line, for instance, for sewers, or water lines, are there in that area.

ASSEMBLYMAN FLYNN: Where?

MR. CHAVOOSHIAN: In the transfer zone.

ASSEMBLYMAN FLYNN: How close? The transfer zone could be 8500 acres, as you have said. That could be a large area.

MR. CHAVOOSHIAN: Our transfer zone is much, much smaller and selective, so the public facilities are there, or at least are planned to go there. We have picked them so that, in the particular area that is now a transfer zone, there is a trunk line, and any builder in any portion of that transfer zone can tie into it. And that is his responsibility, of course, to bring the sewers over to his tract. That's not the municipality's responsibility. That is his responsibility.

ASSEMBLYMAN FLYNN: You're saying then, if it is in the zone, anywhere in the transfer zone, that would satisfy the requirement for 14-e?

MR. CHAVOOSHIAN: Right, right. If it doesn't exist there, then it is a fraud, of course.

ASSEMBLYMAN FLYNN: I am wondering if it should be more specific. You don't feel that is necessary?

MR. CHAVOOSHIAN: No, because that kind of assurance does not exist today. A builder goes into a particular area because he knows a thousand feet away there is a trunk line, and he can build a lateral from that trunk over to his tract. You can't have a sewer system

completely developed so that every tract of land is served immediately. There are times when a builder will have to tie into it. He knows that when he buys the land, presumably. If he is a builder, of course,he knows that. He pays a price for that land which reflects the ultimate cost that he is going to have to absorb in bringing that sewer over to his tract.

ASSEMBLYMAN FLYNN: Now, earlier we said that a good commission would probably have a transfer zone that would be relatively undeveloped, so that you wouldn't have problems with existing people, but obviously we are not going to have that ideal situation. In fact you have a real balancing problem, because you have to have the capital facilities in the zone already, or at least planned, and on the other hand, you don't want to have too many houses there already, so you really have a delicate balancing.

Assuming there are already people in that zone, under Section 14-d, it seems to prohibit any additional building, other than through this mechanism. Now, do you then mean to preclude the variance procedure in Title XL, so that someone that already lives there could go in and get a variance, or are you saying through this that they could not do that?

MR. CHAVOOSHIAN: It appears under 14-d that a variance would be permitted, but not in the transfer zone. I don't think it says so, but someone could interpret it that a variance in another part of the municipality might be permitted.

ASSEMBLYMAN FLYNN: In other words, according to 14-d, you can't have a variance in the transfer zone other than through this mechanism?

MR. CHAVOOSHIAN: Right.

ASSEMBLYMAN FLYNN: What I'm saying is that for those people that already live in that area, you are basically saying that they will not have the right to go through the usual Title XL procedures to get a variance?

MR. CHAVOOSHIAN: No, they can still get it. If they live in that area, and they have a tract large enough, they already have a variance.

ASSEMBLYMAN FLYNN: Let's say you have a farmer, and the farmer wants to build a house for his son on an adjoining lot. He can't do that under 14-d, because he would have to get a variance under the usual variance procedures. And according to 14-d, he would not be able to do that, because in that transfer zone no variances are allowed other than through this.

MR. CHAVOOSHIAN: The variance insofar as increasing the density, no. But if the farmer is going to subdivide his tract in the transfer zone to a lot size equal to the zoning, then all he has to do is get a zoning approval. No development rights would be required.

ASSEMBLYMAN FLYNN: What if the farmer does not want to do that? Suppose he doesn't want to have a conforming use in that zone. He wants to get a variance, and he probably would have gotten it under the present structure, but under this he cannot do that?

MR. CHAVOOSHIAN: No, because he would be increasing the density. He can do it if he buys the development rights and if he gets a board of adjustment approval, because now he is going to be dealing with a smaller lot size. If it conforms to the new zoning, in other words, the new density, it might permit that farmer to do this. He was previously zoned for one acre, and now wants to build on a quarter-acre lot. He can actually provide a

quarter-acre lot for his son, even though he only owned a total of, let's say, one acre of land.

He can now put on his one-acre lot another house. That house will then be on a quarter acre, if he buys the development right. So he is not denied the possibility of getting a variance. He has already been given that variance by virtue of the adoption of the TDR ordinance.

ASSEMBLYMAN FLYNN: I figured there would be some flack from the people that were in the transfer zone. You know, when you go before the council and you try to get this ordinance passed, you will get a lot of flack from the people that live in that transfer zone. You are in fact taking some of their rights away plus giving greater density. Those people, I think, will be somewhat reluctant to approve this.

MR. CHAVOOSHIAN: I doubt it, and I can only say that because of my own conjecture. But let me give you my logic and reasoning on why I doubt it, sir. If you live in the transfer zone and have a large enough tract, and you had hoped that someday some developer would buy it from you and build at whatever the zoning was at that time, these same conditions continue for you. A developer can still come and buy your tract of land and build at the old zoning, and let's assume it was one-acre zoning. It can still happen, so it hasn't affected you one bit. It has perhaps increased your potential for selling your land, because your land has now an added dimension. A higher density can be built on your land, although whoever builds at that higher density has to purchase development rights. But it has given that added dimension to your land, so it has made it that much more attractive. I don't think anyone living in a transfer zone, if he really understands what this is all about, has much to

complain about. He sees himself now in a much better position to market his land. He has now two prospective buyers of his land, one developer who wants to still build at the old density without purchasing the development rights, and the other one who can build at a higher density by purchasing the development rights. He may also feel, therefore, his land value is higher. He may feel that, and no doubt will, and he will try to get more for his land.

Now, the developer who comes in to buy that land will have to consider how much he is going to have to pay for those development rights. He has to go through this kind of arithmetic. In the last analysis, the developer doesn't want to end up with a unit cost of land per dwelling unit that is any higher than it would have been for him if he just went out and bought an acreage of land and built a single-family dwelling on that one acre. So he is going to have to go through this kind of arithmetic.

There will now be in the marketplace the developer coming in to buy that land in the transfer zone, and he is also going over to buy the development rights. Everybody who owns land, as the marketplace becomes more and more informed, meaning those who own land in the preserved area, knows and understands how this whole thing is working in the marketplace, and it won't take them too long, because those who own land and are out there selling it are going to become pretty sophisticated pretty soon. Otherwise, they are going to lose their shirts, or they are going to make a bad deal, as unfortunately too many farmers in the past have, in this State, because they sold the frontage of their land. They were desperate

and they needed the money. That was the best land they could sell immediately, et cetera, and what they are left with today, unfortunately, is landlocked land. It is a tragedy for many of them, because there is practically no way of selling that land. But the land owner who owns the land, whoever he may be, in the preserved area will feel that now, what used to be a windfall, so-called windfall, for the guy in the transfer zone prior to TDR, who got a zoning change and therefore immediately increased the value of his land --- In other words, if it was initially one-acre zoning, and through the variance process he had a quarter-acre lot, he automatically quadrupled the value of his land. He could turn around right away and sell it for four times what it was worth a week before he got the variance, so that was a windfall. Now the owners of land in the preserved area and the owners of land in the transfer area and the developer himself will want to capitalize on that windfall. Now it is available to everybody, and they will all try to get a piece of it, depending upon how each is informed and how each can barter on the open marketplace.

ASSEMBLYMAN SNEDEKER: I would really like to get back to the ten-acre piece of swamp land that you were talking about, because I got lost back there as to how that can go over.

ASSEMBLYMAN FLYNN: I think it was explained to my satisfaction.

ASSEMBLYMAN SNEDEKER: It wasn't to mine. If I had a ten-acre piece of swamp land zoned for one house per acre, and valued at $10,000 because it was swamp area, I would have to put $30,000 or $40,000 or $50,000 into it to put one house on this acre. Now, when I go over into a tranfer zone, and I sell that land or I get my certificate, you are going to have

to calculate the $10,000 I normally could have gotten, plus the 10 houses I could have built had I put the extra $30,000 or $40,000 into it, and then give me so many certificates to build in a transfer zone. How are you going to keep the price in the transfer zone to what you are going to give me by certificate? What is my certificate going to be actually worth over in that transfer zone?

MR. CHAVOOSHIAN: Actually you are asking two questions, Mr. Snedeker. Let's forget the second one, because the second one will be the value of the development right, which will be only determined on the open marketplace. We will come to that again when I answer the first question.

If your land is worth $10,000 for the ten-acre tract, $1,000 per acre, because of its natural condition, that being swamp land, as opposed to my land, a mile away, also in a preserved zone, but it is high land and it is on the road, and it has other attractive features that your's doesn't have, mine might be worth $3,000 an acre. The same 10 acres is now worth $30,000, whereas your's is only worth $10,000.

You could build 10 homes on your's as I could build 10 homes on mine, but we are not selling homes here. What we are selling, eventually on the open marketplace, is a piece of paper, a certificate to be used someplace else. Now, that certificate has got to reflect the value of your land, not necessarily the number of dwelling units that could have been built on that, but the number of development rights that you have must reflect. In order for this thing to be equitable, we think, the difference in the value of

your land as opposed to my land and other people's land must be shown, so when you end up, let's assume, with 3 development rights, and I end up with three times as many, 9 development rights, we both go out on the same marketplace and sell that piece of paper. It has nothing to do with the kind of land you have, and it has nothing to do with the kind of land that I have. It is just a piece of paper.

Let's assume we are both informed. We are smart, and we both get $3,000 per development right, something about that, let's assume. You have gotten about $9,000 for your development rights, and I have gotten about $10,000 for my development rights, so they are about the same. They equal out. So the value of land is used only as the basis for allocating or distributing the number of development rights. What you eventually get for those development rights is between you and the marketplace.

But I am in that same marketplace with a different number of development rights, which reflects my land value, and that is the only way that we feel this could be equitable. Whereas, if we gave you 10 development rights and gave me 10 development rights, and yet my land is worth three times as much as yours, I am being cheated, and the first thing I would do would be to go to court, of course.

ASSEMBLYMAN FLYNN: What is the inducement for the developer?

MR. CHAVOOSHIAN: I think I may be a little theoretical and say there are three inducements. One is that he is going to now become a developing community, in his opinion, which is much more sophisticated than another town that doesn't have a TDR ordinance, because his is a town that has really concerned itself about the future, about protecting what is desirable in that

particular community, et cetera, and they have set it all aside and have allowed for higher densities to occur elsewhere.

Number two, the builder now can come in and build immediately at those higher densities if he chooses, by merely buying land and eventually the development rights, in order to enable him to do that.

Number three, he no longer has the hassle and the problem of going before the planning board and the board of adjustment and trying to get a variance. That variance is already there, although he has to pay for it in terms of buying the development rights specifically.

But all these advantages are open to him, and I suspect that these are very, very important. In my discussion with various builders, that has been proven to me to be very important. At first, they say,"Well, we are going to have to pay for those development ---

ASSEMBLYMAN PELLECCHIA: There is no question that you have done your homework. You have been very, very informative so far. I also know that you are available for us on next Wednesday, and you also have committed yourself to the committee, so that if we desire it, you will appear before the committee. In lieu of all of this, and because we have so many other distinguished guests, I would ask the committee at this time if they will excuse you and take it up in our executive session, because there are other people who would like to be heard.

MR. CHAVOOSHIAN: Surely.

ASSEMBLYMAN FLYNN: Thank you very much. You have been very enlightening.

MR. HELB: The next speaker is Mr. William Seltzer. He is the President of the Evesham Corporation.

W I L L I A M S E L T Z E R: I don't know if I am before the right forum, or if I should be at Toms River where the builders and developers have been invited, but ---

ASSEMBLYMAN DOYLE: Builders and developers are always invited.

MR. SELTZER: Thank you. At the suggestion of Mr. Helb, I have prepared some formal remarks to try to keep within the context of my knowledge in these comments about the Bill. The best kept secret in New Jersey is the existence of an environmental community in which aquifer recharge areas are identified and perfected, and in which only compatible uses are permitted, in which developability is established for each living unit, in which flood plain is an advertised data , in which development rights are sold to builders, in which marshes are regarded with respect and dignity, in which a preservation zone encompasses the entire town, in which transfer zones are traded, in which woodland is considered the overriding aesthetic appeal, in which animal inventory and vegetation inventory are given full citizenship rights, in which environmental preservation is taught to be an element of urban life, and in which all municipal improvements are installed in advance, in which ratables have quintupled within and without the affected town area in which people are now living, and in which competitive builders are operating.

Technion University in Israel is attempting World Bank financing to computer program the ecological criteria of this community for use by underdeveloped countries. The United States State Department has applied to send foreign industrial builders to inspect this experimental community, and France and Sweden new town agencies have sent representatives. New Jersey

has not found it yet, officially. Nine years ago our company started Kings Grant as an effort to find those elements of the community that were most marketable. We believe people needed modern conveniences and services. We also knew the resultant housing would not sell if it was not competitive. Embarked on a long-range effort, we could do no less than a full scale ecological investigation. This effort resulted in a voluntary reduction of zone density from 7 per acre to 4.5 per acre. It resulted in the forced acquisition of expensive additional acreage. It resulted in small enclaves of housing. It resulted in restricted traffic patterns. The implementation of this plan resulted in extra costs and enormous supervision requirements. The planning board was constantly asked for special exceptions to overcome the township engineer's standard subdivision mentality.

The approval agencies of the State found the project a nuisance with all its changes and special conferences, and funding banks found more pre-development costs than they expected.

But the staff's enthusiasm overcame all, because unexpected support came from grass root citizenry, from newspapers, and from unknown visitors. Driving spectators left their names for future house applications, and 21 million dollars later it opened a curious interest to the public. It was obviously a long-term proposition, but even hard-nosed builders acknowledge it has the competitive edge on any other community as to security, value, beauty and the good life. It costs too much for them.

I tell you this to introduce myself as an ally and friend to those sponsors of the bill. I come to praise Caesar, not to bury him. I come as a practical

fighter in the world of competition and industry, and I come as a constructive critic. We are in a world today when moral obligations of the great state of New York are in default. We are in a world of ever more severe consumer enforcement. We are in a world of specialization where the technical interpretations require trained administrators. We are in a world where funding is the primary ingredient for any implementations. We are in a world of sophisticated needs and hopeful expectations. Assembly Bill 3192 attempts to re-order the patterns of growth, re-order the procedures of processing an evaluation, re-order the market alternatives, and re-order the distribution of power. To my mind this is a revolutionary effort. I applaud your vision, your insights, and your courage, but I think it might be worthwhile to review the history of housing, and to review the history of the community, to measure the impact of proposed changes, to know your customers, and to better focus your efforts on mutually desired goals.

The history of housing I begin with is the depression of the thirties and World War II, which conspired to keep families close together. Many married couples lived with parents and with younger brothers and sisters, even after their own children were born. The end of World War II brought the men back home, and new family formations swamped our economy, and a shortage economy set credit and confidence and exhuberance in motion. The future was confident then. People bought what their monthly budgets would allow in rent equivalent. The sale price was secondary. Home designs, locations, and values were therefore based indirectly on the monthly carrying charge feasibility of the intended final product. Meeting the presumed budget for new family formations was the name of the game

for builders. What optimum mortgage terms would garnish the largest share of house hunters or of apartment shelter seekers was the basic marketing question. That made for a backward system of approach, one that is still to this day alien to other construction industries, architects or even planners.

I will take one minute here to explain that. A $20,000 house level is determined to be the market for this example, because monthly payments of $225, which include mortgage, taxes and insurance payment is deemed to be the maximum volume availability for new housing in a given locale. From this $20,000 is deducted land cost, financing charges, profit allowance, interest during construction, permits, inspection deposits, utility connection charges, architectural fees, engineering and sales costs. After these fixed charges are deducted there remains a balance for what we in the trade call "bricks and mortar," of perhaps $13,000 with which this merchant builder adjusts to a stock production plan to pack in "the most house" features for the money.

The shelter industry grew out of this arithmetic. Although custom and design varied markedly in different areas, good house value brought continuous volume sales records in most metropolitan areas through 1960.

No doubt, much of middle-class values now being questioned stem from this post-war housing pattern, but in its context it was an achievement, one which no other society has matched. In Philadelphia 325,000 row houses flowered in the great northeast after World War II. With 32 houses on each side of the street, the "outdoors" was the common sidewalk, the common

rear alleyway. Four walls contained their investment, not the outdoors. The term "environment" was then a vague global reference, not a house value consideration.

With gradual rise in cost the design of houses and community became less casual concerns, but still the producers targeted markets by economic budgets. More than any other factor, the finance patterns determined both the market and the design of product, and indeed even the method of production. And with this volume orientation, the builders developed efficient production machines to chew up the land, moving ever further out the utility services and mass transit, into the countryside.

The 1960's brought zoning difficulties, more restrictive building codes, and a general awareness of design and housing. People now were selective. They had the luxury of discrimination and the funds for investment. New highways permitted more distant and more attractive locations connected directly with urban centers. PUD and cluster housing, and the idea of mixing housing types became acceptable. People looked at the outdoors. Recreation became big business and affluence found America. But then suburbia began to get its comeuppance. Its pristine calm experienced severe problems, even urban problems. Pollution found us in the 60's, air pollution, befouled lakes and rivers, trash dumps filling up, sewer plants exceeding capacity, even noise pollution. From every corner of the land a gradual awareness of the environment grew and more careful examination of the local community trends brought slow-downs and conflicts.

Pent-up bread and butter demand was essentially satiated during the 50's. The move-up markets spawned and blossomed in the 60's. The 70's brought sewer moratoriums and environmentalism. New suburbs of the 50's

were now urban centers with urban problems. Decline of cities accelerated by the erosion of the economic base commercial centers and industrial plants followed housing to the countryside, further dispersing resources. Taxes, school problems, job opportunities, housing restrictions, and increased tensions between cities and suburbs were familiar issues to all by now. Growing urban rural contentions have resulted in a deeper questioning of communities, of life styles, and of values.

The community became a concern only after the house and home security were satisfied. In fact, more than any other single factor, it was a threat to house and home value that galvanized community effort against down zoning, against bussing to integrate local schools, and against the increased traffic of commercial encroachment. It was during the 60's that this was taking place, when economic conditions were generally secure and rising, before pollution scares, when primary needs were no longer present. We could afford then to look outside and take some responsibility in our new societies.

It was also during the 60's that our mean population age dropped precipitously. The youth culture was taking over and rejecting all our pre-war conceptions. The old work ethic materialism was said to lead to wars, irrelevance and expliotation. A house and family and mortgage were not popular goals among young academia, and women's lib was yet to come. With the old generation went private property, a tumbling vestige of feudalism.

By 1970 the restlessness of the young, the literature of social consciousness, existentialist non-commitment, and romantic idealism began coming together in a concern for global community, and the communication among people, even among generations, was the idea of responsible participation. Environment became everyone's

business, and from it the definition of community follows as an expression of the why and how we live. Home and roots include the outdoors and ever-widening concentric circles. The house is merely a cocoon within.

The idea of place used to be more central to the concept of value than the structure itself. People put more emphasis and more value on neighborhood characteristics rather than types of housing. Home was within the four walls. Roots were the question of place. That was, of course, before the unprecedented dislocation of World War II, before air travel and TV and separate automobiles for each family member. Somewhere there is a place for private property and a basic value to common areas. There has always been a reality to structure and place, and this is now merely more awareness of the latter, and a less urgent need of the former.

At this point in housing history it is important to understand who does what. Who is the builder, who is the land developer, who is to be responsible for the communities we want, the urban sprawl we have gotten, the profit taker who leaves our communities in vexed consternation of our own identities.

Land Development is not widely understood even by the financial community. It is considered a function of housebuilding business, simply large projects requiring street improvements, utility systems, recreational centers. Although of a similar discipline, in fact it breeds separate and distinct risks and targets, with new and different financial characteristics from home building or second home projects. It might better be designated "Land Use Developer".

Land Development is a "return on investment" business, building is a leverage operation. The former requires substantial passive investment (utilities, pre-planning, legal, engineering, zoning, ecological, etc.) before any cash flow evolves. It requires knowledge of the building business to plan practically for the eventual customer, but depends on specialized staff to engineer efficiently, attract local support for zoning, build future political base, and project accurately long term markets.

House building is predicated on an "in and out" money turnover, its central dynamic is production time. The faster he builds, the lower the cost, the larger the market he reaches with lower sales price, the sooner he is out, the greater his return on front-end capital investment. He is a production expediter, a cost controller, a customer service salesman.

Neither Builder nor Developer are the villians as they are often cast. The builder is the instrument of the marketplace, he builds what people tell him they want to buy. The developer's longer range investment demands a longer range view of the marketplace. But both are very sensitive to public services, aesthetic protections, ecological controls, proper and better land use allocations. These elements of community are in reality elements of house value that he can sell. Ability to produce with economy is why financial institutions prefer to think in terms of housing projects, why architect planned communities are oriented about the blocks of housing plots, why zoning arguments center on density of land use. Developers know housing projects are no longer acceptable as satisfying communities nor even secure financial investments. The elements of the marketplace have changed, the security itself is a broader concept than structure alone.

No longer a shortage economy, a more sophisticated public has lived through neighborhood decline, first-home ownership, urban-suburban-exurban conflicts. They look for self sufficiency, at the very least the individual buyer seeks services and protections he lacked before. Community, heretofore characterized as economic level, school quality, shopping access, or distance from central core business/industry districts, is now a more specifically related comparison. Environment, amenities, design quality are urgent matters to the buyers of the 1970's

The 1970's will settle how we get there, the order of priorities and the cost of our national styles of life. The argument is no longer if we do it, but "how" it is to be done. The creation of urban centers, new towns, new communities, that "how" will mean new financing patterns, new traffic design criteria, new concepts of community. And just as in other new forms of production, the question that looms largest is the degree of government involvement.

And the central question I bring to you today is, can we devise incentives to attract the luminous energies to our free system? I am just going to take one minute, one page to delineate a definition between a land developer and a builder, because even my good friend Budd Chavooshian uses them interchangeably. To us in the trade they are different businesses. Land development is not even widely understood by financial communities. It is considered a function of the house building business, simply large projects requiring street improvements, utility systems,

and recreational centers. Although of the similiar discipline, in fact it holds a separate and distinct risk and target with new and different financial characteristics from home building or second home projects. It might better be designated as new community development. Land development is a return on investment business, and building is a leverage operation. The former requires substantial passive investments, with utilities, pre-planning, legal engineering, zoning, ecological considerations, et cetera, before any cash-flow evolves. It requires a knowledge of the building business to plan practically for the eventual customer. But it depends on specialized staff to engineer efficiently, to attract local support for zoning, build future political base, and project accurately long-term markets.

House building is predicated on an in and out money turnover. Its central dynamic is production time. The faster he builds, the lower the cost, the larger the market he reaches with the lowest sales price, the sooner he is out, and the greater his return on front-end capital investment. He is a production expediter, a cost controller, a customer service salesman. It is obvious why financial institutions prefer to think in terms of housing projects, why architects' planned communities are oriented about the blocks of housing plots, and why zoning arguments center on density of land use. But housing projects are no longer acceptable as satisfying communities or even secure financial investments. The elements of the marketplace have changed. The security itself is a broader concept than structure alone. No longer a shortage economy, a more sophisticated public has lived through neighborhood decline, first-home ownership, urban, suburban, and ex-urban conflicts. They look for self-

sufficiency at the very least. The individual buyer seeks services and protections he lacked before. The community, heretofore characterized as economic levels, school qualities, shopping access, or distance from central core business districts, is now a more specifically related comparison. Environment, amenities, design and quality are urgent matters to the buyer of the 70's.

I speak as one who would have indeed fared better under Bill 3192, one who spent millions to educate officials to that which you wish to establish apriori, one who dreams the same dream of birds and trees and deer and people living together and breathing clean air together, and building roots of community together. But I speak also as one who lives daily with technicians who are too technical, with preservationists who seek exclusivity as a primary goal, with ex-urbanites who see the house and public services as central to community, with a market that is limited by economic budgets, with a population dependent on auto transportation, and with banks who cannot risk the long-term community goals. And I speak to an audience which attempts to house those needing housing, rich and poor, young and old, and those oft-slighted in between. I see the mechanics of a stalemate somewhere in Bill 3192.

What appears to be at issue is the promulgation of restrictive zoning. I do not condemn restrictions. On the contrary, I have adorned our own environmental community with four control documents that touch on almost every act one may think of doing there. What I fail to see in the proposed bill is sufficient incentives to the outside investor, to the towns to encourage growth and to public service. To the extent engineering criteria will dominate evaluations and selections, the democratic process of elective decision making will suffer.

Consumerism and protectionism, by whatever name, will constrict production. It is precisely here that I find a basic question in the fundamental philosophy of a pre-planned land use, land value system.

The imposition by trained experts upon a lay public of restrictive town character, and a limitation of opportunity and free choice of a competitive system as a legislative function, rather than a market function, is a basic change, the one that has to be sold. Restriction, the penal police attitude currently in vogue, is not what made America great. It is not what made America a land of free opportunity.

America was built on the incentive system. We must find a direct incentive planning method to produce housing of all types and prices, housing where people want to go, housing compatible with the environment. This is a promise of a democratic, free enterprise system, and this is the promise of America. Mr. Chairman, thank you, again.

ASSEMBLYMAN PELLECCHIA: Thank you, sir. Your complete statement will be included in the record. Mr. Helb, will you call the next speaker, please?

MR. HELB: The next speaker will be Mr. Arthur Rosen, President of Great Falls Development Corporation.

A R T H U R R O S E N: My name is Arthur Rosen, President of the Great Falls Development, Incorporated, an organization devoted to developing the Paterson Great Falls/S.U.M. Historic District. I would like to thank the Assemblymen and their staff for creating this opportunity to be heard as to the merits of Assembly Bill Number 3192, designated as the Municipal Development Rights Act.

I have read the act, and I am familiar with its provisions; however, I feel that the Act has various shortcomings of which I will speak generally in this brief address, and Mr. Silber, a director of Great Falls, will speak

specifically as to some of the legal problems he perceives upon the adoption of the Act. The basic shortcoming I see in the Municipal Development Rights Act is that it fails to come to grips with urban realities of our times. First, in this part of New Jersey, particularly, and generally throughout the East Coast area, there is insufficient real estate available to form the transfer zones that are so necessary for the proper functioning of Transfer Development Rights.

There are those of you who would say that the Act under Section 24 provides for any two or more municipalities to enter into an agreement under the Interlocal Service Act. This is another aspect of the way in which the Act does not deal with urban realities. The socio-economic demographic breakdown of Paterson and similar cities throughout New Jersey, distinguish them from the adjacent municipalities. In Paterson's case for example, it is very doubtful as to whether communities such as Haledon, Hawthorne, Totowa, or West Paterson, would cooperate with Paterson under the Interlocal Services Act for the creation of a transfer zone. To do this would be to increase the flow of our local labor force to neighboring communities, and as local public transportation is quite inadequate, this would cause additional pressure to be placed on these communities for the creation of

low to moderate-income housing with State or Federal assistance. It is unrealistic to believe that such communities would open their doors to this additional pressure for change.

Further, in the urban centers, the real estate is housing intensive and our Community Development Department in Paterson has an extremely difficult task in meeting their housing relocation needs. If we add to this burden the relocation of development rights that this Act would create, an additional urban problem is presented.

As example of such an activity, let us view what might have happened had this Act been law prior to the Route 20/Route 80 highway work in Paterson.

Paterson is a city of 8.5 square miles or 5440 acres, and during the 1969 to 1975 period, the Department of Transportation took, for their work on the previously mentioned highway projects, approximately 135 acres, of which an estimated 80 acres were zoned as industrial property, suitable for both heavy and light industries.

During the same period of time, 70 acres were placed under the Paterson Housing Authority. Against these statistics, add the fact that there is substantially no unoccupied land in Paterson for the transfer of development rights.

Under the act, the State would have come in and claimed by eminent domain the 80 acres of the industrially zoned property rewarding monies to owners of the

property for the rights in the land and in addition issued certificates of development rights under this Act. Purportedly, the people in whom the development rights were vested would not be damaged by the Department of Transportation's activities.

The City would have had the opportunity to levy a tax upon the value of these certificates of development rights; but, however, would not have perforce been able to meet the transfer zone requirements. Community Development would then necessarily have to make the choice between the creation of additional industrial zone areas and the provision for housing. It is my impression that the housing interests might possibly succeed in a show-down against Development Rights interests.

As I have stated above, the Municipal Development Rights Act in several aspects does not deal with reality of the urban situation. I think it is entirely inappropriate as a tool for this community.

Against the backgrounds, I would urge the members of this panel not to recommend the Municipal Development Rights Act. I thank you again for this opportunity to come before this group to be heard.

ASSEMBLYMAN FLYNN: Mr. Rosen, basically what you are saying is that this doesn't do anything for the urban problem, and therefore we shouldn't pass it. But it doesn't do anything for the Botter Decision either. Why wouldn't we take some other act or something that is going to do something for the urban problem? I don't follow your logic.

MR. ROSEN: What I am saying is that this act ought to be amended so as to be applicable to both the urban and the rural.

ASSEMBLYMAN FLYNN: Maybe it would be better to have two separate acts.

ASSEMBLYMAN PELLECCHIA: Assemblyman Flynn and Mr. Rosen, I appreciate everything that is being said. This is my community and I live here. The fact of the matter is that there is no land that is contiguous to Paterson that would be apropos for solving the problem as the act is supposed to do.

I have taken the privilege of inviting other people from the city of Paterson who will be speaking precisely on what Mr. Rosen has said, plus some of the other problems. We are thinking in terms of getting enough information from these hearings in terms of a bill apropos according to the problems that we have here in Paterson. This bill could possibly give relief to those who have been hurt and also to those who are waiting to see what will happen.

So, I think that that purpose will be met later on this afternoon. I only hope, Mr. Rosen, that you will be able to stick around for awhile.

ASSEMBLYMAN DOYLE: Mr. Rosen, I have one question. You say there is little, if any, vacant land in Paterson to have a transfer zone; is that correct?

MR. ROSEN: Yes. There is substantial vacant land

right now, for instance. But it is vacant because it is in the process of being taken for highways or for other development. It appears to be vacant. But it is already assigned.

ASSEMBLYMAN DOYLE: Unassigned vacant land?

MR. ROSEN: Right.

ASSEMBLYMAN DOYLE: To the degree that there is some used land, let us say, a two-story walk up, or three-story walk up, and that was part of the transfer zone wherein we would allow builders to build 5 and 6 stories high and therefore intensify land use in that particular area, does that not provide a suitable transfer zone?

MR. ROSEN: No, I don't think so, because one of the things it would do is take housing, for instance, out of use prior to the new housing being created in the transfer zone. That is the essence of the relocation problem that a city like Paterson has right now. You have to remove housing before you create housing. Because in the transfer zone, as I have heard it described up to now, in a more rural community, the zone doesn't deprive the very facilities it is trying to allow for the creation of.

ASSEMBLYMAN SNEDEKER: I think the case is, though in the case of a two-family dwelling where the family wants to sell the property and move to Florida, that section of land could be a transfer of development zone. They are going to move out and go anyway. Somebody could come in with their certificates and buy that, and you could allow them to build a 5-story apartment in there. Now, you are not getting anybody out of the house, except the two families that have moved away, and yet that can be ripped down and a 5-story apartment building can be built in that area.

MR. ROSEN: I don't think that it would work that way in the city where you would have piecemeal development. You can't build 5-story buildings on a one-house lot.

ASSEMBLYMAN SNEDEKER: If you have a zoned area, this is what you would do.

ASSEMBLYMAN PELLECCHIA: Assemblyman and Mr. Rosen, living in that area and knowing just what they are going through, it would be awkward to take two pieces of property where our fronts run anywhere from 25 to 50 feet frontage as a lot, and maybe you could take 100 feet frontage and place right in the middle of a one or a two-family area a building which would protrude ten stories above the land, and you are going to completely destroy any semblance of planning that we might have had in the city before.

Unfortunately, Paterson does not have the luxury of setting aside some of the property that we are referring to. While from what I have known from this bill so far, and while I am in favor of it, the fact is that Paterson is just not this kind of land situation.

ASSEMBLYMAN SNEDEKER: Paterson would not have to adopt it, then.

ASSEMBLYMAN PELLECCHIA: Would you call the next witness, Mr. Helb?

MR. HELB: Mr. Siegmar Silber, Director of the Great Falls Development Corporation.

S I E G M A R S I L B E R: My name is Siegmar Silber. I am the Director of the Great Falls Development, Incorporated. It is an organization devoted to developing the Great Falls/S. U. M. Historic District. I would like to thank the Assemblymen and their staff for creating this opportunity to be heard as to the merits of Assembly Bill number 3192, which is designated the Municipal Development Rights Act.

I have read the Municipal Development Rights Act, and I believe I understand its provisions. My problem of dealing with this Act is that it creates a substantial level of semantic confusion surrounding the use of the term "preservation".

In contradistinction to the Federal Statutes, the proposed Act defines a preservation area as a "frozen" asset. In Article I, Section 4, subparagraph y. the Act states that "preservation zone" means "the district or area in which development is discontinued and has such features as are provided in section 13 of this Act." In Article III. Section 13, subparagraph a. (2) further provides that such a preservation zone would consist of land 'substantially improved or developed in a manner so as to represent a unique and distinctive aesthetic or historic quality in the municipality'. Under the Federal Statutes preservation, particularly in a historic district, is an arena for activity in which redevelopment, adaptive re-use and, in general terms, revitalization takes place. The provisions of this Act create an atmosphere that would seemingly induce stagnation rather than action.

Historic preservation in Federal terms does not mean non-development, but it means a particular type of development in which the operational and functional activities of a particular preservation zone are optimized and the unique and distinctive aesthetic qualities are retained. Examples of preservation presently seen on the East Coast include Philadelphia's Society Hill area and the Boston's Dock Square area. Both of these are examples in which old, under-utilized structure have been imaginitively put to new and different uses. Under the terms of the Municipal Development Rights Act, an area entitled

"preservation zone" would find great difficulty in locating a developer, because of the confusion that would arise as to the meaning of preservation.

Another area of Federal/State conflict are complication induced by the Act, when placed side-by-side with 42 U. S. C. 4332, subparagraph (2)(c), which provides for an environmental impact statement. Under current case law, environmental impact includes the protection of the quality of life for city residents. In Hanley vs.. Kleindienst 409 U. S. 990(1972) this is interpreted as those factors affecting the urban environment and [profoundly] influences the organization and industrial.

With this Act the environment impact study would be overlayed with an analysis such as is required by Sections 7 through 11 of this Act. This analysis would determine how the property rights and development rights became segregated and how the development rights finally comes to rest in a transfer zone. By the time all the studies, including environmental impact and transfer development rights studies would be completed, the projects would no longer have their original utility. The provision of Article 2, Section 6, would create planning work that was additional planning work created by the Nations Enviromental Protection Act.

Additionally I oppose this Act as it creates area of planning and zoning

bevond that which currently exists and, as Mr. Rosen explained the act, does not alleviate any urban problem.

I would like to thank the panel for providing this opportunity to present my views of the Municipal Development Rights Act. Also, I would like to urge that the act not be introduced into the Assembly for consideration in its present form.

ASSEMBLYMAN DOYLE: This is a private corporation, Great Falls Development, is it not?

MR. SILBER: It is a quasi-public development corporation, under Title 15.

ASSEMBLYMAN DOYLE: In what way would the area be developed?

MR. SILBER: Preserving the facades, and if necessary providing the development of new buildings that would fit within the, let's say, aesthetic format of that area, finding new uses, and in short, redeveloping the area. In a city such as this we are concerned with not so much development but redevelopment. We have used all our area. Now we have to re-use it. This is what Great Falls and a lot of other historic districts are about.

Now, I am not opposed to the basic theory of the act, where you separate property rights from development rights. If , in fact, there is a taking by the State for its purpose of , let's say, any of these rights, there should be compensation both to the property owner and to the developer. But I don't feel that this act necessarily creates a condition under which this could take place. You are going to take somebody's development rights away from them and give them a peice of paper or certificate. I think you should instead just give them cash right there, compensate them. Then you have gotten over the problem of whether you are going to identify a development right. You have done that. Fine, now pay for it.

ASSEMBLYMAN DOYLE: That is condemnation. We already have that.

MR. SILBER: But I don't think you fully pay for development rights under your present condemnation arrangement, and if you want to expand on that, that's a further area for you to work within.

ASSEMBLYMAN PELLECCHIA: We intend to.

ASSEMBLYMAN DOYLE: If the area you are concerned with is neither in the transfer zone or development zone, you would be able to attend a public hearing if Paterson were to decide to think about adopting an ordinance pursuant to this enabling legislation, and you would have no concern with this bill, is that not correct?

MR. SILBER: That's not correct. The place where the problem comes with this bill is that -- take for example, Public Law 89665, where a definition of preservation is as follows: "Preservation includes protection, rehabilitation, restoration and reconstruction of districts, sites, buildings, structures and objects significant in American History, Architecture, Archeology or Culture."

Now, if this bill were to take hold, and you have a Federal statute having this definition of preservation, and have the Statewide statute with the definition of preservation that you have here, where that would be, "Freezing of development in given area," you have a basic conflict of terms. You are creating a lot of confusion.

ASSEMBLYMAN DOYLE: But that would be eliminated by calling the preservation zone the maintenance zone, wouldn't it?

MR. SILBER: This bill, as it stands now, does not do so. You would have to substantially change the bill, and change the terminology, let's say, to be consistent

with your Federal Statute. The other aspect is that you have a great deal of work created here, so that when someone goes about an environmental impact study in an area that includes a transfer of development rights bill, they have a double problem. Because then your consideration of how to dispose of your transfer rights would become part and parcel of such an environmental rights study. You have, by that means, complicated the development and not simplified it.

ASSEMBLYMAN PELLECCHIA: Thank you.

ASSEMBLYMAN PELLECCHIA: Mr. Helb, would you please call the next witness?

MR. HELB: The next speaker will be Mr. Bud Schwartz, who is the Chairman of the Bergen County Planning Board. He is representing the New Jersey Federation of Planning Officials.

B U D S C H W A R T Z: Do you mind if I record my testimony? They always ask me, when I get back home, "What did you do this time?" This way, they will be able to hear it.

I come here today, if you will, wearing two hats. I, first, would like to speak for the New Jersey Federation of Planning Officials, of which I am the vice president. I think that you should be aware of the fact that the New Jersey Federation of Planning Officials has published information with respect to the transfer of development rights. It has distributed a great deal of material with respect to TDR among the planning officials throughout the State. We have, f u r t h e r, had a number of information sessions with respect to TDR, so TDR is not something of which the planning officials of the State of New Jersey are completely unaware. Naturally, everyone does not get everything that you send to them, but it is something that has been generally circulated.

Our legislative committee will meet on the 19th, and I would like your permission to submit a written report from our legislative committee.

I can say, at this time, that I do not think that there is any question that the Federation of Planning Officials considers transfer of development rights a very useful tool and a very meaningful tool and would basically favor this type of legislation, especially on the basis of being enabling legislation which would be optional to towns. Some of the people, for the obvious

reasons of protecting jobs, etc., have some reservations about the creation of commissions, but I would suggest to you that those reservations are minimal. I would be less than accurate if I did not express those reservations to you.

I would say that that sort of capsulizes the feelings of the Federation of Planning Officials, and, with your permission, we will submit something a great deal more definitive after the legislative committee has had a chance to put something together.

Speaking to you now, if I may, as chairman of the Bergen County Planning Board, I should point out to you that we do, in Bergen County, have a pretty good cross-section of problems. We have places like Hackensack. We have Fort Lee, where they are talking about putting in buildings that are 21 stories high and putting 15,000 people into a building. We have towns like the one that I live in, Franklin Lakes, where we have one and two acre zoning. We have towns like Mahwah, which you have heard about, that have great areas of open space. So, we have sort of a microcosm of all the problems.

I don't wish to burden you, but I do think that I should point out to you that I am a member of the Franklin Lakes Planning Board, so I have some idea of what the reaction would be in an area like that. I am the chairman of the Bergen County Planning Board. I am regarded as a "tough" member, if you will. Nonetheless, I have been a member of the Board of the North Jersey Home Builders Association, so I have some idea of what the Home Builders Association is about. I do own considerable acreage of my own, so I know what it is like, from a dollars and cents point of view, to be faced with these kinds of concepts. I have had the opportunity to do an extensive amount of traveling, so

I have had the opportunity to meet with public officials in countries all over the world to discuss these very types of problems. So, I have had the opportunity to see what they do in places like the Soviet Union, Finland, Sweden, England, Spain, Yugoslavia, and others. I have talked with local officials, and I do have some idea of what they are up against. So, I would suggest to you - not trying to make myself look like something I'm not - that my remarks are based on some background.

I would suggest to you, too, parenthetically, that a lot of people complain about legislators going on junkets. When you see the amount of money that is spent and, perhaps, wasted, whether it be on a state basis or on a national basis, I would say that one of the best investments that the State of New Jersey could make would be for legislators like yourselves to go on trips to these places rather than guessing about them. I say this in all seriousness because I believe that if the State of New Jersey were to appropriate $15,000 or $20,000 for a group of legislators to actually see the things that you are speculating about and to see how people have actually made out and to actually visualize these experiences, a lot of these sessions that we have now would not be in a vacuum. They would be tremendously more productive, and you would be doing a great deal for your constituents. I think that it would be taxpayers' money well-spent.

I came here primarily to speak in favor of the proposed bill. I, naturally, have to revise my comments to some extent because it was pointed out by one of the Assemblymen that, if this particular bill is not suitable for a place like Paterson, Paterson does not have to adopt it, and that perhaps some other legislation can be enacted in order to benefit towns like Paterson. However, it would seem

to me that the concept in its present form should be quite beneficial to developed areas. From my point of view - perhaps not with its present terminology - at least, the concept is a very good thing.

I'll talk about Hackensack, but before getting into that, I think that we ought to talk about basic concepts because I think that we have to really define our goals. The question always comes up about the towns with restricted zoning, if you will, or the towns with two acres. You know, being on the County Planning Board and having to deal, on a first-name basis, with the people from Fort Lee and from Franklin Lakes, you have to wonder who is more socially responsible. On one end of the spectrum, you have a town like Fort Lee that decides that they are going to take high-rise buildings on a shoulder-to-shoulder basis and consider putting in buildings that are 15 to 21 stories high and are each going to attract 15,000 people a d a y. Who is going to provide the air? Who is going to provide the water? Who is going to provide the resources that make this possible? Obviously, the other people in the State of New Jersey are going to pay taxes, and they are going to have to provide the offsets.

It could, perhaps, be argued that the people in Franklin Lakes, who want one and two acre zoning, are providing their own offsets, and if their motive, in having one acre zoning, is to provide their own offsets and to protect the quality of life, I would say that there is something to be considered in that respect. But, the basic problem that we are faced with at all times is this: Who is going to provide the offsets?

It would seem to me that this type of legislation makes it possible, or provides a medium, by which we do, in fact, provide the offsets.

We have also heard it said that we lower the cost of housing by increasing the density. We say that we are going to rezone land from one dwelling unit per acre to 12 units per acre, and we are going to decrease the cost of housing. Well, the fact, in my opinion, is that we are not going to decrease the cost of housing at all. We are merely going to transfer the cost because, if we are going to put 12 dwelling units in a particular spot, we are going to have to provide the facilities, the resources, and the offsets somewhere else. Again, in Franklin Lakes, if we decide to zone for garden apartments and we put 12 or 14 families on an acre where we have been formerly putting one or two, somewhere else in the State of New Jersey someone is going to have to pay taxes for the water resources and the open space to compensate for it. So, I think that the concept of cost is worth considering, and I would suggest to you that we do not decrease the cost by increasing the density. In contrast, we merely transfer the cost to someone else.

Let's talk about some of the things that happen in Bergen County, as an example, which might, perhaps, be applicable to what you are working on here. Let's take three typical examples. All these typical examples, I think, get us down to the question of the value of land, or the market value of land, and we always end up talking about whether something is economically possible considering the market value of the land. The problem is that the people who establish the market value of the land are you people in the Legislature and the local officials.

Let's take an example of what happens in Fort Lee. A fellow owns a one-family dwelling which is worth, say, $35,000 or $40,000 on a comparably small lot. Six or nine fellows get together in the

Town Hall and decide that they are going to allow a high-rise building. Now, that $40,000 house becomes worth $250,000 if it is demolished. Again, getting back to the problem in Paterson, the house is worth five times as much if it is demolished than if it is left standing, by an Act of the governing body.

Now, where do we fail and where, in my opinion, can you do something about this situation? We fail because we don't, as a State - because the State makes the requirements - require that the municipality, at the same time that they rezone, impose the various restrictions that go with the land.

The point is this: If the Borough of Fort Lee concurrently had said that they were going to rezone the land instead of just taking the master plan and saying that they were going to put apartments at a specific spot--- The moment they say that they are going to put apartments there, everybody believes that the land is now worth $150,000 an acre. From that point on, that is what it costs, and everybody says, "Well, we can't develop it economically; we can't make this thing pay." If concurrently - and I am suggesting that, perhaps, this concept be made a part of this law - with the rezoning, or the redistribution, of the land-use patterns, the specific criteria for the use of that land were spelled out, here is what would happen: In Fort Lee, if they had said, "You are going to have to put your parking underground so that, instead of having a sea of macadam, we will have green space on top," it would not have cost anybody anything. The developer would have known that he could only obtain so much in the form of rent, he would have known that his building costs would remain the same, and he would have gone to the property owner, from whom he would have

purchased the property, and he would have said, "Bad news: You are not going to have a bonanza. Your property is not going to go from $40,000 to $250,000. It is going to go from $40,000 to $80,000 because there are certain costs which are imposed on me and which I am going to have to face. Therefore, I can afford to pay less for the land."

These types of concepts also occur when you get into transfer of development rights. So, one of the things that I am suggesting to you is this: If the requirements for the use of the land are spelled out at that time, the tremendous windfalls and wipe-outs will not occur.

Again, you are knowledgeable and sophisticated people, and I think the fact that I have suggested the idea will either get you interested or not get you interested. If there is any interest, you can always talk about it later.

With respect to a town like Saddle Brook--- Everybody's been through Saddle Brook; the Marriott Hotel is at the intersection of Route 80 and the Garden State Parkway. Mr. Furber developed that, and Mr. Furber is a pretty reasonable man. He bought the land, I believe, from Mr. Paley. They are both human beings. We are all out just to do our respective jobs. If, at the time that this thing occurred, there had been a transfer of development rights concept available in Saddle Brook, it would have been a very simple thing to say to Mr. Furber, "You are going to put your tall building up. You have to, in effect, provide 25 or 30 acres on the other side of town to compensate for the fact that you are putting your high density over here." What I am suggesting is this: There are rational arguments for providing, in developed areas, the open space distant from the newly created intense development for a number of reasons.

First of all, one of the reasons would be because the land is not available adjacent to it. Secondly, you may be creating an office complex, or you may be creating an industrial park, or you may be creating something else. So, I think that there are many valid situations where you could create this thing on the other side of town.

As another example, we have, in Franklin Lakes, a 200 acre tract which is very rocky. Franklin Lakes is a one acre town. I'll probably get my head knocked in for taking this particular position, but the fact still is that if you have a 200 acre tract and you have one or two acre zoning, you can only get 70 or 80 dwelling units on that land under the present zoning. It means that you are going to have to wreck the side of the hill. There will be all kinds of costs, and you are going to have something like Beverly Hills which is going to be extremely expensive for people. You are only going to serve a few people, and you are going to ruin a beautiful piece of wild, open space.

If the developer were permitted to do, as an example, what they do in many, many other places and put in six or seven-story buildings and make room for quite a number of people, you could preserve 90 per cent of that space. That is an example, of course, which is already available under present law and present zoning.

There are many situations like that where you would have to get involved with a number of property owners, and you would have to protect the land by a pre-existing plan.

So, I am saying, by way of concurrence, that I think that this type of legislation is a very good thing.

Getting back to the City of Hackensack, if you will: What is happening in our cities is the same thing that happened in Europe. In Europe, they had wars, and buildings got knocked down, and people were impoverished. They have had to knock down city block after city block after city block of two-story dwellings. They didn't put up a five-story dwelling here or a six-story dwelling there or more garden apartments. If you put up two-story garden apartments, or whatever, you cover the whole thing with bricks and macadam. What they have all done is this: They have put up a tall building in the center of the former six-block area, and they have created a park around it. In the City of Leningrad, they decided that there was no point to having 12-story buildings; you might as well have 18-story buildings because when a fellow gets off the elevator, he doesn't know where he is anyway. By that token, if the building is a little taller and you have the same number of people, you can provide more green space for people.

When you get into those types of concepts - and I certainly am not prepared to give you the answers - it does make room for transfer of development rights in places like Hackensack and Paterson where you are going to have urban renewal, or you are going to have blocks taken out, or where the land may not be available directly adjacent. In other words, there is the concept that if you are going to provide housing for people, you ought to provide green space, and, perhaps, you can go up. I won't dwell on that, but I will suggest it as a possibility.

I will make one final comment on the bill itself. On page 6, paragraph 8, lines 16 through 24, the bill outlines the manner or sequence in which deliberations shall be made. I would question again

the matter of priorities. The bill talks about making projections of what the population will be. Again, I realize that my comments may not be strictly on the bull's eye with respect to this bill. I may not be talking about the bill, but it is mentioned in the bill, and it is conceptualized. I would like to influence your thinking to the extent that you, perhaps, would give some consideration to some of these concepts. If you will notice, the emphasis, to a certain extent, is on projections. I would like to suggest to you that if you are the people who are entrusted with the future of our State - and I believe that is the case - I would like to suggest to you that the emphasis is, in my opinion, a little bit out of place. We talk a great deal about projecting, and we do not talk very much about planning. To me, the emphasis of planning is to influence the outcome of future events. Whenever we ask people to make projections, we are saying to them, "If we are going to go on in the same direction, at the same rate of speed, and do the same types of things we have been doing, this is where we are going to wind up." We have all been to meetings where someone says, "In 1980, the population will be this; in 1990, the population will be that." I am saying to you, as the people who shape the future of New Jersey, that you would do well to be thinking in these terms: What do we want New Jersey to be; how are we going to make it what we want; how are we going to avoid traveling at the same rate of speed and in the same direction?

What they do in other places is this: They take an inventory of the State, or the county, or whatever, and the first thing they do, in making determinations, is try to d e c i d e how many people the area will actually hold. They try to decide the

capabilities of the State, county, or region, and then they go ahead and make land-use decisions based on those capabilities.

Getting to the point - and I am sure you would like me to do that - you can talk all you want about planning rather than projecting; you can talk all you want about the concept of first taking inventory and then doing what is reasonable and possible, but you cannot really implement any of this good planning in our free society - you could do it in the Soviet Union by just telling people where to move - without a Transfer of Development Rights Act or something similar. So, if we were to come up with good plans, I am suggesting to you that I do not think that it would be possible to implement those plans without a bill such as this.

In c o n c l u s i o n, I would reiterate one point, and that is that I would urge you to consider putting into this bill some sort of requirement that if people are to rezone or redecide what their land-use pattern will be in their towns, they should be required to simultaneously spell out the specific criteria under which this thing will be developed so that the land values and market values don't get so immediately out of whack that you cannot deal with the thing as a practical matter.

I appreciate your giving me this time, and I thank you for your patience.

ASSEMBLYMAN PELLECCHIA: Thank you. We appreciate your taking the time to testify today. Are there any questions?

(No questions.)

Thank you again, Mr. Schwartz.

Mr. Helb, will you please call the next witness?

MR. HELB: The next speaker will be Ralph Seligman, who is a professional planning consultant and chairman of the Roosevelt Planning Board.

R A L P H S E L I G M A N: Mr. Chairman and members of the committee: Had I known that Mr. Schwartz was going to be here, perhaps I might not have come, yet I would like to speak about a matter of specific interest to my community. I don't know whether or not you have had anyone speak who was from localities other than the cities.

I am from the area of the gentleman from Chesterfield; I am from Monmouth County. I stopped by today because, as a consultant, I am on my way to the Village of New Paltz, which is an historic community in New York State. It has 17th century stone houses, an area not described, as was the case with Paterson.

I would like to speak very briefly about zoning with equity. It is a problem that has concerned me as a planning consultant and as chairman of the planning board.

Roosevelt is down at the bottom of the 567 municipalities. Yet, it is not the least distinguished in the State. It is probably the only planned community that is also a municipality. It was built by the federal government in the 1930s. It has its own facilities. It is a "green belt" town that has 50 per cent of its land still in agriculture.

It is the preservation of that agricultural land that has concerned us. We all drive through it on our way to our developed section, and the farmers are all friends of ours. We have felt that while we wanted to preserve it, we did not want to penalize the farmers. There were no remedies under traditional

zoning to do this. As other members of Mr. Schwartz's constituency, we have followed TDR with a great deal of care.

I would say that it seems to be, to me, the only way in which we can both preserve open space and meet our responsibilities, as you mentioned, Senator, for accepting whatever our regional share of population may be. The idea of a development district makes sense to us. We happen to be into water sheds. If we were to develop our agricultural district, we would have difficulty with transmitting water, sewers, etc., whereas if we were to develop, in our already built-up areas - that is, include facilities which we have had difficulty contemplating up to now: garden apartments, senior citizen housing at higher density--- We have half acre zoning, certainly not among the highest in the State. We have a population among whose numbers there are sufficient poor so that we could qualify for Office of Economic Opportunity assistance. If we are to maintain the 50 per cent of land, which was the original plan for the community, when it was designed as an agro-industrial community, I really do not see how we can permit the kind of random development which would break up land thus making it no longer suitable for agriculture. For us, transfer of development rights is a solution.

In New York State, I have worked with the same situation on a much larger scale. I have planned rural townships ranging in size from 30 square miles to 100 square miles in which the agricultural resources are of primary importance. One outstanding example is the town of Marlboro which is 30 square miles, the center of the apple-growing industry in the mid-Hudson area. If apple growing goes out in Marlboro, there will be an implosion, and the general apple market

will disintegrate because apples will be produced at less than the critical volume necessary to attract the fertilizer people, the pesticide people, the co-ops that market them, etc. Yet, in passing a zoning ordinance for the town of Marlboro, it was not possible to protect those agricultural areas which are responsible for the major activity in the town, mostly because it was impossible to separate development rights from other forms of property rights, and the farmers raised the question that has been raised here: What if I need extra money? I am going to have to sell off land, and I want to be able to develop the land. Yet, the intrusion of homes into a primarily agricultural area, highly specialized as this is, will obviously cause the decline of that particular kind of industry.

New Jersey has analogous areas.

I am here also because I asked Mr. Chavooshian, having read about his program, to talk to the farmers of Marlboro, and I will tell you that the farmers were very receptive to that particular kind of solution. I think it is a program that has attracted support among a wide number of local officials, planning officials, and people who own land.

Thank you for giving me this opportunity to appear before you.

ASSEMBLYMAN PELLECCHIA: Are there any questions?

ASSEMBLYMAN DOYLE: I am somewhat familiar with Roosevelt. Millstone Township is part of my district. If it is half homes and half farmland, and the homes are built on small lots in the area of 60 x 100 or 75 x 100---

MR. SELIGMAN: They are 100 x 200.

ASSEMBLYMAN DOYLE: I didn't realize they were that big.

MR. SELIGMAN: We are looking to reduce the lot size and still keep the same gross average density.

ASSEMBLYMAN DOYLE: That was going to be my question. How do you put houses in the middle of 100 x 200 lots to compensate for the houses that could have been built on the farmlands? Are you going to be sacrificing some of the farmland to preserve the rest?

MR. SELIGMAN: Yes.

ASSEMBLYMAN DOYLE: You have to sacrifice some of the farmland to preserve the rest?

MR. SELIGMAN: By and large, in any community of this kind--- You know, you speak about rural communities. You always have a hamlet. I don't care if it's Chesterfield or somewhere else. You are going to have an already built-up area. It is there because the accessibility is good. Our houses are where they are, in part, because they are near the school, they are served by water and sewers, etc. There is always a reason why they are there. In planning, if you are going to expand, you try to expand around the periphery. You are not going to plunk things down in the middle of it, but you are going to expand reasonably out from it. Unless you have TDR with one part as your development district and another part as your holding district, you are not going to get the kind of reasonable pattern which you love to see as a planner. You are willing to accept more houses, but you want to do it in a reasonable way. You can't do it with equity because the farmers will want to sell their land in competition with people nearby who want to sell their land unless you give the outlying people some equity in order to provide an incentive for building closer in. So, yes, we would sacrifice some land, but it would be approximate land, not distant land.

ASSEMBLYMAN PELLECCHIA: Thank you very much, Mr. Seligman.

Mr. Helb, will you call the next speaker?

MR. HELB: The next speaker will be Grace C. Harris, who is a licensed professional planner in the State of New Jersey, a member of the American Institute of Planners, and is speaking as executive director of The Planning Association of North Jersey.

G R A C E C. H A R R I S:

The Planning Association of North Jersey has long been interested in the preservation of open space in our area and would like to encourage municipalities in North Jersey to plan for the retention of open areas within their boundaries.

Since we received a copy of the proposed legislation, the "Municipal Development Rights Act" only last week, we have not had an opportunity for a full study and referral to our Board of Directors for a formal position. We have referred the proposed legislation to our State Planning Policy Committee and will subsequently issue a report.

The Planning Association of North Jersey has no official policy on the proposed legislation at this time. However, speaking as an individual, I would like to raise the following questions and would hope that they could be answered at an appropriate time.

1. It would seem advisable that the designation of areas to be preserved and transfer zones should be based on a comprehensive plan for overall community development. The bill appears to be worded so that one particular area could be designated for preservation at the outset and other areas could be added later.

Would it not be advisable to have a determination first on the total population to be allowed in the community based on natural resources, physical characteristics of the land and existing development? This would then be followed by a comprehensive designation of areas to be preserved. On the basis of the total population and development which could be supported in the community, it would then be possible to determine the total number of development rights which could be assigned.

It would not seem advisable to designate preservation zones and transfer zones on a piecemeal basis. The amount of open space required in a community is closely related to the total population goal. The population cannot be permitted to increase beyond the point where air quality and water quality standards can be achieved.

2. Would it not be advisable to try to determine open space preservation on a regional basis rather than a municipal basis? In our North Jersey area we have many municipalities which have no vacant land left. It is too late to preserve open space in these communities. Yet on a regional basis, the densities of these built-up municipalities should be considered in setting up regional open space goals. I think this relates to some of the questions the people from Paterson were asking.

3. A third question involves the procedure to be used to assess the value of a development right - or to assess the value of land in a transfer zone which might, for example, accommodate 15 dwelling units per acre under traditional zoning and 30 dwelling units per acre if the owner acquires development rights. On what basis is the tax assessment determined? As long as the real estate tax is the primary source of municipal income, it would seem necessary to answer these assessment questions before a community could decide on the advisability of passing a municipal development rights ordinance.

4. A fourth observation is that while the proposed legislation might result in the preservation of open space areas, these areas would not, in most cases be public open space. They would supply the "breathing room" we need but would not make open space available for the use of the general public. I think this relates to something Assemblyman Flynn said about conservation easements, etc.

That completes my statement. I would be happy to answer any questions you may have.

ASSEMBLYMAN DOYLE: I think you have pointed out some questions that we ourselves have. Thank you.

ASSEMBLYMAN PELLECCHIA: Thank you very much, Ms. Harris.

Mr. Helb, who is the next witness?

MR. HELB: Mr. Smith Freeman, who is representing the Sierra Club of New Jersey.

ASSEMBLYMAN PELLECCHIA: Welcome, Mr. Freeman.

S M I T H F R E E M A N: In addition to being a member of the executive committee of the Sierra Club, I am also on the Hopewell Township Planning Board, which is, perhaps, even more relevant for present purposes.

I would like to express my strong support for passage of the Transfer of Development Rights Bill as soon as possible. There are few actions that the State Legislature could take which would have a more constructive and positive effect on local land-use regulations. As the first article of the bill expresses, there is a widespread demand for municipal government to take a more active role in preserving open space and preserving environmental amenities. The traditional tools of zoning are not really suited to this task. Trying to preserve open space by zoning tends to be indistinguishable in practice from exclusionary zoning.

Out and out prejudice and narrow selfish interests can masquerade successfully as environmental concern.

Those responsible for municipal planning, on the other hand, are discouraged in their desire to implement needed environmentally based restrictions on development. They fear to come into conflict with the court which rightly distrusts anything that suggests exclusion.

The transfer of development rights can cut across this confusion. It will make it easier to prevent development of critical areas and valuable municipal open space. Exclusionary zoning will no longer be so easily able to masquerade as being environmentally motivated.

I believe that the provision of low and moderate-cost housing would actually be promoted by this innovation.

The transfer of development rights concepts complement the planned unit development idea. The latter permits the provision of community open space in immediate proximity to residential development where it can be enjoyed for recreational use and provide islands of open space throughout the developing community. The transfer of development rights approach, on the other hand, permits the planned preservation of areas of local or regional significance. It permits the preservation of tracts of land which may be more extensive than could be achieved through PUDs or are not physically contiguous to an area where high density development is feasible. Most important of all, the transfer of development rights idea permits the municipality to take the initiative in systematically designating those areas whose preservation of open space can enhance the future quality of life in that community.

Permitting the transfer of development rights would also complement a statewide plan for the preservation of agriculture. I don't feel that it would replace it. It would not eliminate the need for such a statewide plan.

The plan proposed in A-3192, which I think is basically a very good way to proceed, defines, essentially, an intramunicipal program. It cannot be everything to all men, and I think that there is a need for a intramunicipal program as well as a statewide program.

This program would be workable primarily for those municipalities which possess both remaining open land and active development pressures. Economically viable agriculture, however, is distributed very non-uniformly over the State. The most viable tends to be in municipalities with a very high proportion of agricultural land and little in the way of immediate development prospects. No strictly local program can address this problem. It would remain for something like the Blueprint Commission.

So, this is not the complete solution to the agricultural problem which does not mean it isn't the solution to something.

Turning to the specific enabling bill, A-3192, I think that the approach which it defines is a very sound one. It strikes me as the most workable TDR plan which I have seen to date. On the basis of my planning board experience, I think our own municipality could and would make use of an opportunity of this nature. I do have some suggestions for changes which I believe would enhance the effectiveness of the legislation and avoid some possible problems. I will take these up in order of importance rather than in the order in which they occur in the bill.

I would like to suggest the addition in section 13 a, Article III, where it is defining the reasons which suffice for defining a preservation area, of "wildlife habitat" to that list. There is no way at the present time in which wildlife habitat could be included unless it were defined as recreation, which, perhaps, is unnecessarily restrictive.

I would also like to suggest, in that list of reasons for preserving some particular area, the class of lands which are "stony, or highly erosion prone, or otherwise unsuited for development." That may be too broad a category, but I think something like that---

ASSEMBLYMAN DOYLE: Should we add those to the kinds of areas that could be preservation areas?

MR. FREEMAN: Yes. Those two suggestions would, then, be "wildlife habitat" and "land which is stony, o r h i g h ly erosion prone, or otherwise unsuited for development."

There is a third category which is a little trickier and which I would like to suggest for your consideration. That is to add to that list so-called "partial areas." I don't know how familiar you are with this concept. I put together a definition which I think is probably as good a way of explaining what they are as any other I could think of. These are areas of "shallow, steep, stony, or saturated soils in juxtaposition to streams which contribute the major portion of storm runoff and the development of which is especially likely to promote downstream flooding." In other words, it is possible to define a certain class of soil types in juxtaposition to streams to which the major danger of downstream flooding could be attributed and the development of which is most likely to be harmful as far as downstream flooding is concerned. Of course, downstream flooding resulting

from development is one of the major problems in many rapidly developing areas. So, I think that the inclusion of these "partial areas" as warranting preservation and warranting restrictions on development of this character might be worth serious consideration.

The next equally important concerns the tax assessment aspects of this. In section 21, Article III, it seems to be saying that the taxable value of the TDR is equal to the total market value of the property itself. It would seem as though the logical way to proceed would be to split up the prior market value into two pieces, one of which is the TDR and is taxed, and the other is the residual value of the land and is also taxed. That residual value of the land, one would think, would be assessed using basically the same sorts of criteria as are used in the farmlands assessment. Even when the development right is removed, it is still good for something. It can be used for agriculture, it can be used for forestry, etc., depending upon how you define the preservation zone and what uses you are permitting in that preservation zone. You have not taken the right to exclusive use of that land. Many of the other rights to use that land have been left to the owner, and it still has value. You don't know what that value is initially. You have to wait and see how these things are bought and sold in the market place; you know that. In the meantime, you have to have some initial way of assessing that land. I think the method that is used in the Farmland Assessment Act, which is basically to try to estimate its use value, would be the reasonable way of doing that.

In any case, the sum of the two pieces of the land, the development rights which are now transferrable and the remaining use value of the land, ought to be the

market value of the land because, at present, that market value represents both of these categories of rights.

So, I would suggest in that section that instead of dividing the aggregate market value in the zone by the total number of TDRs issued, I would divide the difference of the aggregate market value and the estimated residual value by the total number of TDRs issued and regard that as being the taxable value of the TDRs for the zone.

Similarly, there is a need to spell out explicitly - I think this is a point which can be of concern and which should be discussed explicitly in the bill - exactly how the land which has been stripped of its TDRs is then to be assessed. I suggest that until a history of transactions is built up on which the assessors can base their determination, the suggestion be that they use a use-value assessment as is used in assessing farmlands but with appropriate modifications if different uses are permitted.

Furthermore, I think that section 22, which t a l k s about the continued assessment of land as agricultural, is now redundant, unnecessary, and confusing because, after all, this land is not just a courtesy or privilege any longer if it is assessed at its agricultural use value. By God, that's all it's got. Now, it could not equitably be assessed as anything other than its agricultural value.

There is one other point which relates to this list of values which warrant preservation, and that concerns, in section 4 u, the definition of "marsh." I think the definition of "marsh" is unnecessarily restrictive and confusing. "Marsh" is

defined as "low, spongy land generally saturated with moisture." I submit that it is not terribly clear what "low" and "spongy" mean and that it would be a better definition to say "marsh means land seasonally saturated with moisture." Many marshlands are saturated during some seasons and not during others. So, I would delete "low, spongy" and substitue "seasonally" for "generally."

In Article II, section 6, line 5, it is stated that the three members of the board of adjustment should be on the commission which defines the initial plan. In our particular municipality, the zoning board of adjustment is regarded as a quasi-judicial body which is insulated from the political hassles of the township. I believe there are some recent court cases which regard it as being improper for the planning board, for example, to even recommend certain kinds of actions to the zoning board. So, I bring up the question: Is it really appropriate to have members of this quasi-judicial body on a commission of this nature? It is my interpretation that the reason they are there is because of the importance of assessed valuations to developing this plan. I would suggest that instead of having members of the board of adjustment, who may really not be terribly expert at assessing land, the municipal assessor or some other qualified assessor be required to be a member of this commission. I think that would fill that need.

It is stated in section 13 b among the requirements in defining the preservation zone that it be consistent with the master plan and zoning ordinance. Of course, the master plan and zoning ordinance reflect feasibilities as they exist at the present time, and you won't find, in these master plans, any zone for agriculture or any sort of preservation.

The whole idea of this is that it is going to increase the range of actions which municipal governments take. They can think bigger than they have in the past. I think you have to anticipate that the master plan is going to be narrower and more confining than what you are going to want to see them come up with in using this ordinance. So, it has got to be anticipated, I think, that the master plan and the zoning ordinance will not be completely consistent with what you are shooting for in implementing this transfer of development rights plan. I think that that section which alludes to consistency with a master plan could be confusing.

This sort of thing comes up in other places and, perhaps, in a more serious way. In section 14 b, for example, this is a tricky point because there is a very reasonable problem involved. The density of the transfer zone is supposed to be increased over the existing zoning. Well, you certainly want to end up with a two-tier zoning system. You want the lower tier, which is the one without the transfer of development rights, to be at some appropriate level in relation to the previously existing zoning, and you want the other tier to be higher. But, suppose you have a municipality which has already "bitten the bullet," provided for low-cost housing, provided for high-density housing, and has already zoned certain areas for high density. That township is being penalized if it has to use that existing high density as the base above which it puts the second tier. So, I would suggest that the municipality be permitted to do one of two things: to either use the prior existing zoning as the base density for the first tier or use some appropriately defined average, township-wide, of the zoning so that, if it had already defined a zone which had the density high enough so that there was a need, for

example, for open space elsewhere in the municipality to provide recreational area for the people living there, the municipality would then be able to set the lower tier of the two-tier zoning below the pre-existing zoning density which it had. In other words, if a municipality is contemplating making a zoning change, it really ought to make a zoning change to an unrealistically low level beforehand so that it can use that as being the lower tier to make sure that the second tier is economically advantageous, which is important. If it has really already tried to zone everything for the highest and best use and optimum density, then it would essentially be precluded from an effective transfer of development rights program. Well, that is a difficult point, and that is my suggestion.

In section 14 e, there is another aspect of the same thing. In many cases, a municipality would need to provide services and capital facilities only for the higher tier of the zoning and might not have planned already for those capital facilities. So, it should be permitted - and it should be stated in such a way that it is clear that it is permitted - for the municipality to have contingencies in its plans and to have, say, the provision of municipal water supply to an area---

ASSEMBLYMAN PELLECCHIA: Mr. Freeman, may I interrupt you for one second? You are raising some valid points, and they will certainly be important to the committee. Would you be available for a workshop session of the committee so that we could better go into the details of some of the things that you are suggesting?

MR. FREEMAN: Yes, certainly. I feel guilty, too, about taking up so much of your time when there is a long line of witnesses.

ASSEMBLYMAN PELLECCHIA: The information that you are giving us is the kind we need in order to make

a better bill. I would appreciate it if we could invite you to our first work session on the bill.

MR. FREEMAN: I would be very happy to accept.

ASSEMBLYMAN PELLECCHIA: Thank you. There will be no need, then, to go through all your suggestions.

MR. FREEMAN: I think that everything remaining is of a character which could be discussed more appropriately in that kind of setting.

ASSEMBLYMAN PELLECCHIA: I thank you for your courtesy.

MR. FREEMAN: I will simply, then, thank you for the opportunity to be present and reiterate my support for the concept.

ASSEMBLYMAN PELLECCHIA: We will contact you before the first work session on this bill.

MR. FREEMAN: Fine.

ASSEMBLYMAN PELLECCHIA: Mr. Helb, please call the next speaker.

MR. HELB: Our next speaker will be Mr. William Beren from the League for Conservation Legislation.

W I L L I A M B E R E N: Good afternoon. My name is William Beren, and I represent the League for Conservation Legislation, which is a coalition of environmental groups in the State formed to lobby for environmentally sound legislation.

It is encouraging to us to note that the committee recognizes the effect that land-use patterns have on the environmental quality of the State, and I would like to thank the chairman for the invitation to appear here today to testify on behalf of the bill.

Going back through history, New Jersey has, as I think we all recognize, become a leader in land-use legislation through its protection of New Jersey's environmentally critical areas. I specifically cite passage of the Wetlands Act, the Coastal Areas

Facility Review Act, and the amendments to the Floodplains Act a couple years ago. These so-called critical areas are further protected by recent court decisions upholding the right of municipalities to zone these areas so as to inhibit development. These refer particularly to critical areas.

Yet, many land areas throughout the State, of environmental and recreational importance to the State, cannot be classified as "critical" but are nonetheless in need of protection. I refer to the freshwater wetlands of the State, the beautifully forested mountain areas of the Delaware Valley and the northern part of the State, the Pine Barrens in the South, and, of course, our farmlands and historical sites.

As my native New York City is finding out, zoning alone is not sufficient to protect these resources. Recent court decisions there have seriously set back the city's attempts to protect and preserve historical landmarks by labeling historical designation as an "illegal taking" of private property, the property being taken being the right to develop the land. You may have heard that Grand Central Station, as great a landmark as that, is under serious threat because of a court suit which took away its historical landmark designation.

Given this situation, transfer of development right, therefore, emerges as an important new technique for preservation of important physical resources, both those which are man-made and those which are natural.

Some of the advantages of TDR are:

1. It relies on the market economy and does away with the huge capital requirements to the public sector that purchase of property entails. These are programs such as the Green Acres and proposed Blueprint Commission on Agricultural Open Space.

2. It allows municipalities to direct development to those locations which are best suited for development, ecologically speaking.

3. It tends to encourage higher density development along with the creation of green belts. Such a land-use pattern has many advantages over the current system of sprawl, including better access to mass transit, lower energy consumption, and the cheaper cost of providing services such as roads, sewers, schools, etc

On the other hand, TDR is not the only or even the best solution. It does have its drawbacks. Some of the disadvantages are:

1. As this bill is drafted, there is no guarantee that decisions as to where development will or will not occur are in the best interests of a sound environment.

2. There is no guarantee that the preservation zone will, in fact, be preserved permanently. Of course, depending on your point of view, the temporary nature of preservation may be a "plus" rather than a "minus," giving options to future generations on planning their communities.

3. I think one of the most serious drawbacks to the whole concept of TDR is the tremendous bureaucracy it would create in terms of the certificates of development setting aside property values, etc. This carries with it enormous potential for abuse.

In balancing these advantages and disadvantages, it is LCL's conclusion that while not offering the total answer, nonetheless, TDR can be an immediate and useful means of preserving uneconomical, yet nevertheless important, resources. It is still an untested theory, and it deserves to be given a chance to be tested.

We, therefore, urge the passage of A-3192 in the hope that it will be given a chance to develop and we can see how it works in reality.

I would like to quickly review specific problems we do have with the way the bill is drafted. These will be along the same lines as those which Smith Freeman has suggested.

In terms of membership on the commission that is going to decide where to set up the zones as defined in section 6, we would like to note the absence of municipal environmental commissions and local soil conservation districts, which would certainly have the expertise to deal with the environmental aspects of where development should and should not occur. We believe that they should be included, in some way, in the formation of this commission.

A major problem we have with the bill is the language in sections 8 and 9, which set up the areas that the commission should investigate, primarily in the absence of a natural resource inventory being required on the part of the municipality. LCL takes a strong stand that no identification of either a preservation or transfer zone should take place in the absence of a natural resource inventory. If you are not familiar with what a natural resource inventory is, it is basically a study of all land within the municipality describing its environmental characteristics. Such an inventory, thus, would identify in a scientific manner those locations best suited and those locations worst suited for development. We would then have some kind of scientific basis and environmental basis by which to make these decisions. We strongly urge that a natural resources inventory be mandated for any municipality considering TDR and that the inventory be used as the basis for their recommendations.

In section 13 a, we are not sure that we agree with the language that says that one of the factors for inclusion in the preservation zone is "an integral economic asset in and to the municipality." If it is an economic asset to the community, it should be self-sustaining and not in need of preservation. We do not feel strongly either way about that.

In regard to section 13 b, the location of the zone should be consistent with the natural resources inventory as well as with the town's master plan or zoning ordinance.

We are confused by the language in section 13 c. We feel the size of the preservation zone should be related to the desired density in the transfer zone. We are not really sure what the present language means. We can work this out at your workshop.

We do have a prime problem with section 14 e, where you limit densities in the transfer zone to the present capacity of the capital structures there. We feel that it is a direct contradiction to the other parts of section 14, where the intent is clearly to increase density beyond its present capacity. If you increase density in the transfer zone beyond present capacity, you are going to have to exceed current capital structures. We feel that section should be deleted or other language inserted.

The last point we have picks up on Smith Freeman's comments with regard to the property tax assessment. Section 22 allows for reduced assessment of land only if that land comes under the requirements of the Farmland Assessment Act. As we have discussed, the Municipal Development Act is going to include property on a much wider basis than purely agricultural land. It will deal with open space that is forested, not necessarily agricultural; it will deal with

historic districts in cities, etc. These things will not qualify for the Farmland Assessment Act. Therefore, the definition of what qualifies for reduced property tax should be expanded to include any property included in the preservation zone.

ASSEMBLYMAN PELLECCHIA: Thank you for your presentation.

Mr. Helb, would you please call the next witness?

MR. HELB: The next speaker will be Mrs. Thomas W. Streeter, who is vice-chairman of the Environmental Commission in Morris Township. She is here today as a concerned citizen.

M R S. T H O M A S W. S T R E E T E R: Mr. Pellecchia, Mrs. Totaro, gentlemen: I only heard about this meeting last night at 6:00, so I came mostly to learn. But, in listening to the discussion, several points caught my attention. As you heard, I am vice-chairman of the Environmental Commission in Morris Township. I also have worked very actively for the Speedwell Village, which is now a national landmark, and for the Patriot's Park, which runs along the Whippany River. I even gave 17 acres of land to that. So, you can see that I am very much interested in the general good of the community. But, also, I am a landowner, and I have been trying to understand if the landowners are getting a fair break in the transfer of development rights, or is it all done with mirrors?

Take, for instance, a suppositious case. Suppose a family has lived on a large piece of land for about 50 years. The parents have died. They have regarded this as an asset in their estate as part of their children's inheritance. Under the present zoning laws, the children could sell that land if they found

a developer that could meet with the proper requirements. The federal government would take a large bite with the capital gains tax, but they would have hard cash left over. With this handful of development rights, it has been said that there must be marketability, and this is obviously so because they are not worth anything but paper unless there is. On the matter of delay, this new area may not be developed for five years or so. Meanwhile, the owners of the land can do nothing with it.

It seems to me that there is needed here some form of underwriting if you are really going to give the landowners a square deal. That should be taken into consideration. I don't know how you can work it. It is really a matter of trying to get something for not very much, the way it's set up now. There is too much element of risk on the part of the landowner in the alleged compensation.

I would like to say that I think that this is a very interesting suggestion. As one gentleman said, it hasn't been tested. Maybe it should be tested, but it will be a terrific bureaucracy. I have been impressed with the enormous number of complications involved; it's sort of a can of worms. Is it going to be, really, very much more helpful to the situation than the present zoning and master plan arrangement?

ASSEMBLYMAN PELLECCHIA: The purpose of the hearing is to determine that. Thank you for your testimony.

That concludes the formal part of the hearing. I want to thank all those who testified.