

PUBLIC COMMENTS SUBMITTED AT HIGHLANDS
COUNCIL MEETING ON JANUARY 17, 2019

Comments to Highlands Council, January 17, 2019

My name is Deborah Post.

I have asked for a small relaxation of the comment time limit today. I simply cannot convey a complete understanding of the Municipal Average in three minutes. I would also like to be able to answer your questions.

I have passed out a packet. It includes a Resolution in connection with the Municipal Average which will be adopted at the State Agricultural Convention next month. The odds of it failing are nil.

I ask that this Council adopt a similar resolution. Such a resolution costs not one penny, requires no work of your staff, and does not conflict with a single goal or policy of the environmental lobby to my left because it does not impact the environment.

Please reference the yellow underlining in the statute in your packet. Section 31 little c addresses the valuation of easements. Two appraisers are typically retained by the government, not by the landowner, to value the easement for the purpose of negotiations.

I emphasize the word “negotiations” because the crafting of this statute clearly anticipates that the landowner and the county government will *negotiate* a mutually acceptable price. Time limitation does not allow me to walk you through the statute’s process...please do read it...

The appraisals are just to be a cap on what can be paid, a maximum. See little h on the second page.

“No development easement shall be purchased at a price greater than the appraised value determined pursuant to subsection c. of this section or the municipal average, as the case may be.”

The concept of a cap is important to the Municipal Average.

Back to little c on the first page please. The Highlands Act added an alternative to using two appraisals. The Highlands Act said that the Municipal Average can be used instead of the two appraisals.

It says if this Council has established a tdr bank, then

“the municipal average of the value of the development potential of the property in a sending zone established by the bank may be the value used by the board in determining the value of the development easement.”

The Highlands Act says that we can use this Council’s data, this Council’s analysis of lost development potential in the Highlands Region. **Simply, we want that opportunity.**

Right now the SADC simply says “no”. An arbitrary, capricious and flat “no”. We have no recourse.... despite it being the clear intention of the Highlands Act drafters for us to look to this Council’s work, this Council’s data, for valuation of our loss. We would not need to ask you for this resolution if the SADC was cooperative and reasonable. If staff advises that conversations are being had with the SADC please know that these will lead nowhere constructive.

The Municipal Average is found in the appendix to your TDR Technical Report. It is just shorthand for the average lot value by town and by zoning. It’s the build lot value.

The number of lots each property owner lost is found in your estimator data base. The column is headed “Lost Dev Opp” or lost development opportunity.

Lot value times the number of lost lots is the development easement value. Bingo. Transparent. Fair & equitable.

We want to use this Council’s analysis. Why? Because fifteen years after the Highlands Act, there are no bona fide development comparable sales in the Highlands region for appraisers to fairly appraise the loss. The depressed value of unbuildable Highlands land is being used by the appraisers and that is not rendering a fair and equitable easement value.

We don’t even care if the dual appraisal methodology is extended...because it is no longer producing a fair and honest value of our pre-Highlands development potential. We just want to use the Municipal Average, your Municipal Average, the bona fide Lot Values. Please help make this happen.

May I answer your questions please?

Resolution for Ag Convention Consideration

WHEREAS, the Highlands Water Protection and Preservation Act (the “Highlands Act”) modified Section 13c of the Agricultural Retention and Development Act to include “if...the Highlands Water Protection and Planning Council has established a development transfer bank ... , the municipal average of the value of the development potential of property in a sending zone established by the bank may be the value used by the board in determining the value of the development easement” in lieu of two appraisals; and

WHEREAS the Highlands Council has established a bank and has determined the municipal averages for all Highlands communities in sending zones; and

WHEREAS the Highlands Act section 6n stated a “need to provide just compensation to the owners of [the Highlands] lands”, who are largely farmland owners; and

WHEREAS fifteen years after the passage of the Highlands Act appraisal methodology no longer finds appropriate development potential comparable sales in the unbuildable Highlands region; and

WHEREAS in fairness and equity to New Jersey’s landowning farmers, who have been good stewards of the land, just easement valuation must be an agricultural priority,

THEREFORE be it resolved that we the delegated of the New Jersey state agricultural convention meeting on Feb _____ endorsed a change in the statute such that the verb “may” in the foregoing section of N.J.S.A. 4:1C-31c be deleted and the phrase “shall, at the landowner applicant’s request,” be substituted therefore.

And Be It Further Resolved that we encourage the State Agricultural Development Committee to allow landowners this option under their current authority to interpret the state regulations.

4:1C-31. Offer to sell developmental easement; price; evaluation of suitability of land; appraisal

c. Two independent appraisals paid for by the board shall be conducted for each parcel of land so offered and deemed suitable. The appraisals shall be conducted by independent, professional appraisers selected by the board and the committee from among members of recognized organizations of real estate appraisers. The appraisals shall determine the current overall value of the parcel for nonagricultural purposes, as well as the current market value of the parcel for agricultural purposes. The difference between the two values shall represent an appraisal of the value of the development easement. If Burlington County or a municipality therein has established a development transfer bank pursuant to the provisions of P.L.1989, c. 86 (C.40:55D-113 et seq.) or if any county or any municipality in any county has established a development transfer bank pursuant to section 22 of P.L.2004, c. 2 (C.40:55D-158) or the Highlands Water Protection and Planning Council has established a development transfer bank pursuant to section 13 of P.L.2004, c. 120 (C.13:20-13), the municipal average of the value of the development potential of property in a sending zone established by the bank may be the value used by the board in determining the value of the development easement. If a development easement is purchased using moneys appropriated from the fund, the State shall provide no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the cost of the appraisals conducted pursuant to this section.

Lost Lots x Lot Value = Easement Value

"Lost DevOpp" "Municipal Average" Development Potential

Bingo's Easy's Transparent's Fair & Equitable's

From TDR Technical Report Appendix

HUNTERDON COUNTY - AVERAGE LOT VALUE PER MUNICIPALITY = Municipal Average in statutory standpoint

COUNTY	MUNI	High Density Residential	Medium Density Residential	Suburban Residential	Low Density Residential	Rural Residential	Resource Residential	Estate Residential
Hunterdon	ALEXANDRIA TOWNSHIP	\$89,375.73	\$114,015.35	\$139,645.50	\$161,738.27	\$171,353.99	\$201,869.73	\$235,888.55
Hunterdon	BETHLEHEM TOWNSHIP	\$94,085.53	\$111,344.78	\$122,802.83	\$137,530.77	\$142,788.15	\$164,632.55	
Hunterdon	BLOOMSBURY BOROUGH	\$79,976.25	\$97,750.72	\$113,147.58	\$125,937.20	\$157,314.39		
Hunterdon	CALIFON BOROUGH	\$99,872.32	\$104,834.78	\$108,487.52	\$112,860.43	\$153,981.21	\$246,056.23	

From Allocator To Bl Data Base

Lost Development Opportunity = Lost Lots

LOST DEV OPPS AFTER CONSTRAINTS CONSIDERED LOW	LOST DEV OPPS AFTER CONSTRAINTS CONSIDERED HIGH	LOST DEV OPPS AFTER CONSTRAINTS CONSIDERED APPLYING REGIONAL ZONING FACTOR - LOW	LOST DEV OPPS AFTER CONSTRAINTS CONSIDERED APPLYING REGIONAL ZONING FACTOR - HIGH	LOST DEV OPPS AFTER CONSTRAINTS CONSIDERED APPLYING LOCATION FACTOR - LOW	LOST DEV OPPS AFTER CONSTRAINTS CONSIDERED APPLYING LOCATION FACTOR - HIGH	ESTIMATED HDC LOW	ESTIMATED HDC HIGH	ESTIM
15	16	27.15	28.96	52.67100155	56.18240166	53	56	53 to 56
4	5	7.24	9.05	14.04560041	17.55700052	14	18	14 to 18
15	16	27.15	28.96	52.67100155	56.18240166	53	56	53 to 56
5	6	9.05	10.86	17.55700052	21.06840062	18	21	18 to 21
1	2	1.81	3.62	3.511400104	7.022800207	4	7	4 to 7
5	6	9.05	10.86	17.55700052	21.06840062	18	21	18 to 21
1	2	1.81	3.62	3.511400104	7.022800207	4	7	4 to 7
2	3	3.62	5.43	7.022800207	10.53420031	7	11	7 to 11

d. Nothing in this section shall be construed to preclude the reformation of a municipally approved program, as initially created pursuant to the provisions of this act.

e. Any landowner not included in a municipally approved program may request inclusion at any time during the review conducted pursuant to subsection a. of this section. If the board and the municipal governing body find that this inclusion would promote agricultural production, the inclusion shall be approved.

L.1983, c. 32, § 22, eff. Jan. 26, 1983, operative Jan. 26, 1983.

1 N.J.S.A. § 4:1C-24.

4:1C-30. Withdrawal of land; taxation

a. Withdrawal of land from the municipally approved program or other farmland preservation program prior to its termination date may occur in the case of death or incapacitating illness of the owner or other serious hardship or bankruptcy, following a public hearing conducted pursuant to the "Open Public Meetings Act," P.L. 1975, c. 231 (C. 10:4-6 et seq.) and approval by the board and in the case of a municipally approved program, the municipal governing body, at a regular or special meeting thereof. The approval shall be documented by the filing with the county clerk and county planning board, by the board and municipal governing body, of a resolution or ordinance, as appropriate, therefor. The local tax assessor shall also be notified by the board of this withdrawal.

b. Following approval to withdraw from the municipally approved program, the affected landowner shall pay to the municipality, with interest at the rate imposed by the municipality for nonpayment of taxes pursuant to R.S. 54:4-67, any taxes not paid as a result of qualifying for the property tax exemption for new farm structures or improvements in the municipally approved program, as authorized and provided in the Constitution, and shall repay, on a pro rata basis as determined by the local soil conservation district, to the board or the committee, or both, as the case may be, any remaining funds from grants for soil and water conservation projects provided pursuant to the provisions of this act, except in the case of bankruptcy, death or incapacitating illness of the owner, where no such payback of taxes or grants shall be required.

L.1983, c. 32, § 23, eff. Jan. 26, 1983, operative Jan. 26, 1983.

4:1C-31 Offer to sell developmental easement; price; evaluation of suitability of land; appraisal

a. Any landowner applying to the board to sell a development easement pursuant to section 17 of P.L. 1983, c. 32 (C.4:1C-24) shall offer to sell the development easement at a price which, in the opinion of the landowner, represents a fair value of the development potential of the land for nonagricultural purposes, as

determined in accordance with the provisions of P.L. 1983, c. 32.

b. Any offer shall be reviewed and evaluated by the board and the committee in order to determine the suitability of the land for development easement purchase. Decisions regarding suitability shall be based on the following criteria:

(1) Priority consideration shall be given, in any one county, to offers with higher numerical values obtained by applying the following formula:

$$\frac{\text{nonagricultural developmental value} - \text{agricultural value}}{\text{landowner's asking price}}$$

(2) The degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture; and

(3) The degree of imminence of change of the land from productive agriculture to nonagricultural use.

The board and the committee shall reject any offer for the sale of development easements which is unsuitable according to the above criteria and which has not been approved by the board and the municipality.

c. Two independent appraisals paid for by the board shall be conducted for each parcel of land so offered and deemed suitable. The appraisals shall be conducted by independent, professional appraisers selected by the board and the committee from among members of recognized organizations of real estate appraisers. The appraisals shall determine the current overall value of the parcel for nonagricultural purposes, as well as the current market value of the parcel for agricultural purposes. The difference between the two values shall represent an appraisal of the value of the development easement. If Burlington County or a municipality therein has established a development transfer bank pursuant to the provisions of P.L.1989, c. 86 (C.40:55D-113 et seq.) or if any county or any municipality in any county has established a development transfer bank pursuant to section 22 of P.L.2004, c. 2 (C.40:55D-158) or the Highlands Water Protection and Planning Council has established a development transfer bank pursuant to section 13 of P.L.2004, c. 120 (C.13:20-13), the municipal average of the value of the development potential of property in a sending zone established by the bank may be the value used by the board in determining the value of the development easement. If a development easement is purchased using moneys appropriated from the fund, the State shall provide no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the cost of the appraisals conducted pursuant to this section.

d. Upon receiving the results of the appraisals, or in Burlington county or a municipality therein or elsewhere where a municipal average has been established under subsection c. of this section, upon receiving an

② FMV of easement determined

tion 31

Landowner makes offer

negotiations happen...

③ Board decides whether to accept/reject landowner offer

4:1C-31

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application from the landowners, the board and the committee shall compare the appraised value, or the municipal average, as the case may be, and the landowner's offer and, pursuant to the suitability criteria established in subsection b. of this section:

(1) Approve the application to sell the development easement and rank the application in accordance with the criteria established in subsection b. of this section; or

(2) Disapprove the application, stating the reasons therefor.

e. Upon approval by the committee and the board, the secretary is authorized to provide the board, within the limits of funds appropriated therefor, an amount equal to no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the purchase price of the development easement, as determined pursuant to the provisions of this section. The board shall provide its required share and accept the landowner's offer to sell the development easement. The acceptance shall cite the specific terms, contingencies and conditions of the purchase.

f. The landowner shall accept or reject the offer within 30 days of receipt thereof. Any offer not accepted within that time shall be deemed rejected.

g. Any landowner whose application to sell a development easement has been rejected for any reason other than insufficient funds may not reapply to sell a development easement on the same land within two years of the original application.

h. No development easement shall be purchased at a price greater than the appraised value determined pursuant to subsection c. of this section or the municipal average, as the case may be. *caveat on cap*

i. The appraisals conducted pursuant to this section or the fair market value of land restricted to agricultural use shall not be used to increase the assessment and taxation of agricultural land pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c. 48 (C.54:4-23.1 et seq.).

j. (1) In determining the suitability of land for development easement purchase, the board and the committee may also include as additional factors for consideration the presence of a historic building or structure on the land and the willingness of the landowner to preserve that building or structure, but only if the committee first adopts, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations implementing this subsection. The committee may, by rule or regulation adopted pursuant to the "Administrative Procedure Act," assign any such weight it deems appropriate to be given to these factors.

(2) The provisions of paragraph (1) of this subsection may also be applied in determining the suitability of land for fee simple purchase for farmland preservation

purposes as authorized by P.L.1983, c. 31 (C.4:1C-1 et seq.), P.L.1983, c. 32 (C.4:1C-11 et seq.), and P.L.1999, c. 152 (C.13:8C-1 et seq.).

(3) (a) For the purposes of paragraph (1) of this subsection: "historic building or structure" means the same as that term is defined pursuant to subsection c. of section 2 of P.L.2001, c. 405 (C.13:8C-40.2).

(b) For the purposes of paragraph (2) of this subsection, "historic building or structure" means the same as that term is defined pursuant to subsection c. of section 1 of P.L.2001, c. 405 (C.13:8C-40.1).

L.1983, c. 32, § 24, eff. Jan. 26, 1983, operative Jan. 26, 1983. Amended by L.1988, c. 4, § 3, eff. March 9, 1988; L.1989, c. 86, § 15, eff. June 5, 1989; L.2001, c. 405, § 3; L.2004, c. 2, § 28; L.2004, c. 120, § 44, eff. Aug. 10, 2004.

4:1C-31.1. Farmland within certified agricultural development area; sale by landowner; acquisition by committee; resale; payment of taxes by state

a. Any landowner of farmland within an agricultural development area certified by the committee may apply to the committee to sell the fee simple absolute title at a price which, in the opinion of the landowner, represents a fair market value of the property.

b. The committee shall evaluate the offer to determine the suitability of the land for purchase. Decisions regarding suitability shall be based on the eligibility criteria for the purchase of development easements listed in section 24 of P.L.1983, c. 32 (C.4:1C-31) and the criteria adopted by the committee and the board of that county. The committee shall also evaluate the offer taking into account the amount of the asking price, the asking price relative to other offers, the location of the parcel relative to areas targeted within the county by the board and among the counties, and any other criteria as the committee has adopted pursuant to rule or regulation. The committee may negotiate reimbursement with the county and include the anticipated reimbursement as part of the evaluation of an offer.

c. The committee shall rank the offers according to the criteria to determine which, if any, should be appraised. The committee shall reject any offer for the purchase of fee simple absolute title determined unsuitable according to any criterion in this subsection or adopted pursuant to this subsection, or may defer decisions on offers with a low ranking. The committee shall state, in writing, its reasons for rejecting an offer.

d. Appraisals of the parcel shall be conducted to determine the fair market value according to procedures adopted by regulation by the committee.

e. The committee shall notify the landowner of the fair market value and negotiate for the purchase of the title in fee simple absolute.

f. Any land acquired by the committee pursuant to the provisions of this amendatory and supplementary act shall be held of record in the name of the State and