



State of New Jersey

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MEMORANDUM

TO: Highlands Development Credit Bank Board
FROM: Lisa J. Plevin, Executive Director
SUBJECT: Municipal Average
DATE: June 20, 2019

I. Overview

Since the enactment of the Highlands Act, use of dedicated state dollars by the DEP Green Acres Program and the SADC Farmland Preservation Program (or any of either programs' local government or non-profit grantees) has required the use of the *dual appraisal* methodology in the Highlands Region. The dual appraisal methodology compares the value of a property using the standards in effect both before the adoption of the Highlands Act (commonly referred to as the "hypothetical value") and those in effect at the time of the appraisal (commonly referred to as the "current value"). The higher of those values is used at the starting point of negotiations with the property owner. It has been represented by members of the public, Green Acres, and the SADC staff, that it is becoming increasingly difficult to obtain the "hypothetical" comparable values of properties, and that use of "*municipal average*" values could be a component of an alternate method for appraising properties impacted by Highlands regulations, most readily through the Farmland Preservation Program.

A municipal average may be established by a Transfer of Development Rights (TDR) Bank with a defined sending zone. In the Highlands Region, the applicable TDR Bank is the Highlands Development Credit (HDC) Bank and the defined sending zone is the Preservation Area. The HDC Bank has not established a municipal average; instead it has established an initial credit value. The HDC Bank is not required to establish a municipal average, but it is the only entity that can establish it across the entire Highlands Region.

Although the Highlands Council recently recommended in the Monitoring Program Recommendations Report that the dual appraisal methodology continue to be used in the future, municipal average could be examined as part of a long-term alternative to the dual appraisal methodology. The applicable statutes (see below) do not define how the municipal average should be calculated and it is unclear from the previous work conducted by the Highlands Council how a municipal average value for the Highlands Region would be developed.

II. Applicability

SADC Farmland Preservation Program applicability:

The Agriculture Retention and Development Act (N.J.S.A. 4:1C-11 et seq.) was amended along with the adoption of the Highlands Act to state (Highlands applicability inserted in brackets):

4:1C-31. c. ...If... 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) [TDR section of the Highlands Act], 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.

Municipal Average value was first discussed in the State TDR Act (N.J.S.A. 40:55D-137 et seq.) as follows (Highlands applicability inserted in brackets):

40:55D-159. b. The development transfer bank [HDC Bank] may, for the purposes of its own development potential transactions, establish a municipal average of the value of the development potential of all property in a sending zone [the Preservation Area] of a municipality within its jurisdiction [the Highlands Region], which value shall generally reflect market value prior to the effective date of the development transfer ordinance [the Highlands Act]. The establishment of this municipal average shall not prohibit the purchase of development potential for any price by private sale or transfer, but shall be used only when the development transfer bank [HDC Bank] itself is purchasing the development potential of property in the sending zone [Preservation Area]. Several average values in sending zone [the Preservation Area] may be established for greater accuracy of valuation.

It is very important to note that, according to the State TDR Act, the municipal average value to be established would be used only when the HDC Bank itself is purchasing the development potential of property in the sending zone. Because the HDC Bank is a TDR Bank first and foremost, it must calculate the municipal average value so as to not interfere with the creation of a private market for credits.

III. TDR Technical Report Values

The Highlands Act states at N.J.S.A. 13:20-13h. [emphasis added] (1) “The council shall set the initial value of a development right. The Office of Green Acres in the Department of Environmental Protection and the State Agriculture Development Committee shall provide support and technical assistance to the council in the operation of the transfer of development rights program. The council shall establish the initial value of a development right considering the Department of Environmental Protection rules and regulations in effect the day before the date of enactment of this act.”

As adopted as part of the Regional Master Plan, the TDR Technical Report considers real estate values prior to the enactment of the Highlands Act as a means for developing the initial value of a Highlands Development Credit (\$16,000). Additionally, through its HDC Estimator Tool, “lost

development potential” is something that can be estimated by the Highlands Council for Preservation Area lots, but is not designed to derive accurate real estate values.

Data gathered to support the TDR Technical Report may be informative to the HDC Bank in establishing a municipal average, but the report did not clearly establish such a value. The values defined in the TDR Technical Report do not readily fulfill the definition of municipal average value found in the State TDR Act. These values are the result of multistep equations used specifically to establish the initial value of the Highlands Development Credit, not a municipal average.