

PUBLIC COMMENTS SUBMITTED AT HIGHLANDS  
DEVELOPMENT CREDIT BANK BOARD MEETING  
ON JUNE 28, 2019

## **Written Comment Submission of Deborah post to the HDC Bank board of Directors. June 28, 2019**

Due to some personal conflicting appointments I, Deborah Post, a highlands landowner holding 80+ proxies of highlands' landowners authorizing me to speak and advocate on their behalf am unable to attend the special meeting the HDC Bank Board in connection with its consideration of the Municipal Average. Please accept and consider my written comment submissions in lieu of formal public comment.

//Section 31c of the Agricultural Retention and Development Act, aka ARDA provides the local agricultural development boards with sole discretion to decide whether development easement sales will be valued and priced using appraisals or, alternatively, the Municipal Average established by the transfer of development bank if the development easement sale is in a tdr sending zone. The statute is clear that the Municipal Average methodology is to be established and implemented by the TDR Bank. the HDC Bank is such a tdr bank governing all Highlands sending zones. The Municipal Average analysis was developed and documented in detail under the Highlands Council administration of Eileen Swann with participation by staff members Jeff Le Java and Tom Boarden and the assistance of Integra Resources, a financial advisory firm retained to assist in the development of the tdr program mandated in the Highlands Act. the TDR Technical Report, a supporting document to the Regional Master Plan memorializes this process and was adopted with the Regional master Plan.

At a recent Highlands Council meeting it was announced that the current Highlands council staff, also staff to the HDDC Bank found the Municipal Average complex, complicated, difficult and/or arcane and did not fully grasp all the statutory definitions. Herein lies a serious problem. The current staff has no historical understanding or experience with the development of the TDR technical materials. This is not a good excuse to drop the ball and duck the Bank's statutory duty to manage the Municipal Average process. /The June 10 2019 memorandum similarly indicates a lack of clarity regarding the Municipal Average and its application under ARDA section 31c. this is not acceptable.

A careful and detailed reading of the TDR Technical Report itself is a recommended and useful exercise for all staff and board members of the HDC Bank. the Technical Report itself details the application and development of the underlying municipal averages and its language tracks the statutory mandates which are cited throughout. If staff and the Board find the Technical Report too complex and difficult, possibly the retention of financial advisors, even the original advisors might be considered to help educate staff and bring all up the Municipal Average learning curve.

The application of the Municipal Average methodology is little more than an elementary school arithmetic problem. That the Bank and its staff can not solve a fifth grade arithmetic problem is both embarrassing and unacceptable.

The application of the Municipal Average methodology is little more than an elementary school arithmetic problem. That the Bank and its staff can not solve a fifth grade arithmetic problem is both embarrassing and unacceptable.

In previous comment submissions I have proposed a calculation approach and am attaching that submission here. If there is another way to do the arithmetic that is fair and equitable then by all means figure it out and adopt it. It is simply not that complex or complicated. Just do it!

For several years I have recommended that a landowner advocate be included in the process of determining the fair and honest 'just compensation in connection with property losses suffered by Highlands landowners. It is only correct and appropriate that a landowner advocate be included in the process. I again encourage the Bank Board to consider appointing a landowner advocate to work with staff in finalizing the Municipal Average approach.

Susan Payne, the executive director of the SADC has advised the Morris County local board executive director Catherine Coyle that the SADC will not consider an easement sale application under the Municipal Average until the Highlands Council and its TDR Bank has defined for the SADC and the local boards how the Municipal Average is to be applied. Consequently time is of the essence in this matter. The ball is in the court of the Highlands HDC Bank. Please act.

In closing, I note that I, Deborah Post, have a pending easement sale application before the Morris County local board at this time. Last April 2019 I wrote to the local board and asked them to consider my application using the Municipal Average and I supplied them with extensive supporting documentation. I note my pending application to the Board today because it might serve as a useful current green lighted application to work through the details of closing a Highlands easement sale transaction using the Municipal Average approach. The supporting documentation includes a letter from Eileen Swann, executive director of the Highlands Council that specifies in detail the municipal average values associated with my property and the number of lost lots. All the necessary data is well documented and confirmed by signature of Ms. Swann. My request to the local Morris County board along with all the supporting documentation is attached hereto.

I would further like to emphasize that there is no need to create any new wheels or data. All of the data required for the application of the Municipal average exists. The appendices to the TDR Technical Report contain the municipal average data by municipality and zoning. The Highlands Council's data base developed for the purpose of allocating HDCs includes all lost lot potential data. Do not allow staff to tell you this data base does not exist. In fact, I operated this data base and have provided copies of that operation's response to staff on several occasions. Having spent much time assisting other landowners in understanding their property losses and options, it is my personal opinion that the data base and the municipal average data represents quality work products. Again, there is no need to recreate wheels...the work products exist. The Board must just demand that staff utilize the work products of past administrations, work products that have been formally adopted by the Highlands Council in connection with the Regional Master Plan.

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*Roadmap draft for brain-storming..*

**Process for An Easement Sale Application Using the “Municipal Average”**

1. The Farmland Owner requests of the Highlands TDR Bank the property specific data associated with the property on which he or she (“he”) wishes to sell an easement. This might be done either informally or via an Open Public Records request.
2. The Highlands TDR Bank provides the requested property specific data to the Farmland Owner including<sup>1</sup>, but not limited to,:
  - The average lot value for the specified municipality and zoning,
  - The constrained and unconstrained acreage for the specific property, and
  - The number of lost buildable lots, i.e. lost development potential, of the specific property.
3. The Farmland Owner considers whether he agrees or disagrees with the data regarding the number of lost lots and the constrained acreage. A request may be made to the Highlands TDR Bank to revise or refine these two estimated data points. (The average lot value for the appropriate zoning, adopted with the Highlands Regional Master Plan, may not be challenged.)
4. The Farmland Owner considers the data items and decides what would “in his opinion...represent a fair value” per acre. The Farmland Owner must appreciate that the Municipal Average “cap” of Section 31h may not always represent a reasonable offer pursuant to Section 31.
5. The Farmland Owner submits an easement sale application to his county agricultural development board (the “local board”) requesting that it be considered using the Municipal Average as the “cap” and including the Highlands TDR Bank’s data with the application.

(Data disagreements might be noted but the idea is to work out data point disagreements with the Highlands TDR Bank before the application is submitted to the local board whose role is not to mediate data point disagreements.)

6. The local board determines what the per acre “cap” is under the Municipal Average.
  - a. Local board or county staff might do the valuation arithmetic applying a formula that the SADC has determined represents an accepted valuation practice for the Municipal Average.

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<sup>1</sup> Data exists and was previously established pursuant to the Bank’s statutory duty. The lot values are in the appendix to the TDR Technical Report adopted with the Highlands Regional Master Plan, a public document. The acreage constraints and “lost development opp” or number of lost lots may be found in the TDR Bank’s data base.

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- b. The County might choose to hire a professional to do the arithmetic and so “certify” the Municipal Average “cap” appropriate for the application.
- c. Local board staff or the retained professional must verify with the Highlands TDR Bank the accuracy/appropriateness of the data points submitted by the Farmland Owner. The Highlands TDR Bank must either approve or disapprove the data, not negotiate it.

(Whether or not to involve itself in data disputes would be a local board choice, but not requirement.)

- 7. The local board decides whether the landowner offer is reasonable and either approves or disapproves the application pursuant to Section 31d.
- 8. The county board requests the SADC’s similar approval and, if given, requests cost sharing for the easement purchase.

**The Cap Calculation:**

Average lot value for the town and zoning	\$xxx,xxx
Times Number of Lost Buildable Lost	xx
Equals Value of Lost Development Potential, Unadjusted	\$xxx,xxx
Minus 10% to 15% adjustment for soft costs, etc	-15%
Equals Value of Lost Development Potential, Adjusted	\$xxx,xxx
Divided by Number of Unconstrained Acres	xx
Equals Municipal Average “Cap” Per Buildable Acre	\$xx,xxx / acre
<i>Compare to Farmland Owner Offer</i>	<i>\$xx,xxx / acre</i>

Optional:

Minus “After” Deed Restricted Value Per Acre <sup>2</sup>	\$xx,xxx / acre
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<sup>2</sup> The statutory definitions do not contemplate subtracting an after value and the Highlands TDR Bank writes “the only aftermarket consideration is the parcel’s existing home” with the number of buildable lots reduced by one to so reflect.



*Roadmap draft for brain-storming..*

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Riamede Farm, 122 Oakdale Road  
Chester, N.J. 07930

April 11, 2019

Morris County Agricultural Development Board  
P.O. Box 900  
Morristown, N.J.

Re Request for Inclusion in the Municipal Average Pilot Program

Dear MCADB Members:

This letter requests that my preservation application be considered using the Municipal Average approach for determining the value of the development potential pursuant to N.J.S.A. 4:1C-31c.

The farming community adopted Resolution #28 at the 2019 New Jersey Agriculture Convention requesting that a Municipal Average Pilot Program be established for valuation of development easements in the Highlands. I ask that my application be submitted for consideration in the Pilot Program.

As we all know, fifteen years after the Highlands Act, there are no development sale transactions in the unbuildable Highlands. There is no development and no marketplace for development properties. Therefore, valid and useful comparable sales in the Highlands is a null set. Simply, there are none. Appraisal methodology is impeded, indeed made impossible, by the absence of bona fide development comparable sales in the Highlands.

The Municipal Average Pilot Program presents a fair and just alternative to the dilemma of Highlands easement valuation. I ask the board to embrace the program.

My offer to sell an easement is \$44,000 per acre as reflected in my application dated April 27, 2014. This offer is below the maximum allowed pursuant to N.J.S.A. 4:1C-31h when considering the development potential of the property using the Municipal Average.

Attached is a calculation of the development potential per acre of my farm using the Municipal Average. This calculation draws on Highlands Council determined average lot values in Highlands municipalities and estimates of the lost development potential, i.e. lost lots, for all Highlands properties by lot and block.



By letter, the executive director of the Highlands Council advised me that Block 33 Lot 4 represented 59 unconstrained acres with 18 buildable lots.<sup>1</sup> She also noted that the rural residential average lot value in Chester Township is \$253,376.<sup>2</sup>

Please note the *unconstrained* character of my farm, highly unusual in the Highlands where properties are typically more environmentally sensitive. Unconstrained properties have greater development potential which is reflected in a higher *average* price per acre because there are no steep slopes or wetlands included in the calculation.

The statutory language gives the local county boards *sole discretion* in the choice to use the Municipal Average for the easement valuation “cap” in lieu of appraisals. The decision is entirely up to you. The MCADB does not need the SADC’s “approval” in this choice.

ARDA, RTF and the courts look to the counties as the first voice in all farming issues, the law recognizes the primacy of local control in agriculture. Whether or not to participate in the Municipal Average Pilot Program is entirely a local county choice.

Please send my application for cost-sharing to the SADC noting that the offer is reasonable and well below the maximum allowed under the Municipal Average option. Only the county board has this authority.

Respectfully requested,



Deborah A. Post

cc: Lisa Plevin, Highlands Council  
Morris Board of Freeholders  
Kevin Coakley, Esq

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<sup>1</sup> The Highlands Council’s tdr data base confirms that the lost development opportunity for Block 33 Lot 4 is 18.5 lots.  
<sup>2</sup> The Highlands Council’s TDR Technical Report lists \$253,376 as the rural residential average lot value for the municipality of Chester Township.

## Application of the Municipal Average to Block 33 Lot 4 Chester

Rural residential lot value for Chester Twshp	\$253,376	Per HC executive
Times number of lost lots	X 18	Per HC executive
Total value of Development Potential Unadjusted	\$4,560,768	
“Improvement” adjustment (approvals, etc)	- 20%	Typical appraiser
Total Value of Development Potential Adjusted	\$3,648,614	
Divided by number of unconstrained acres	59	Per HC executive
<b>Municipal Average of Development Potential</b>	<b>\$ 61,841</b>	<b>Statutory “Ca</b>
<b>Landowner Offer to Sell per to NJSA 4:1C-31a</b>	<b>\$ 44,000</b>	Per landowner a
*****		
Minus After Value	\$ 5,000	Per data of Morris fe
Adjusted Net Value	\$ 56,841	Per traditional appro

\*\* Data corroborated and verified by Highlands Council tdr data base and technical report.

## Case History of Block 33 Lot 4 Appraisal Conclusions

Appraiser / Date	Development Potential / "Before"
Appraiser Hostenstein MAI dated 2009	\$70,000 per acre
Appraiser DiSanto MAI dated 2009	\$70,000 per acre
Appraiser Cooper dated 2009	\$63,000 per acre
Appraiser Mackoff dated 2018	\$25,000 per acre
Appraiser Carlin, SCRP dated 2018	\$21,000 per acre
The "Municipal Average" <sup>1</sup>	\$62,000 per acre

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<sup>1</sup> Rural residential lot value (Category C) unimproved divided by 3.5 acre average is \$72,000

**Thanks for all your help.... Sincerely  
appreciated!!!!**

**Supporting Documentation for  
Chester Township Block 33 Lot 4 Landowner's  
Request to Participate in the  
Municipal Average Pilot Program**

For Consideration by the Morris County Agricultural Development Board  
April 11, 2019

## **Ag Convention Resolution**

Resolution #28 adopted by the 2019 Agriculture Convention urges that the Municipal Average be used in the Highlands and requests the establishment of a Municipal Average Pilot Program.

The SADC would be unwise to ignore the farming community's direction.

**RESOLUTION # 28**  
**FARMLAND PRESERVATION**

1           **WHEREAS**, the purpose of the Farmland Preservation Program is to preserve the  
2 state's agricultural land base, helping to ensure the continued viability of New Jersey's  
3 agricultural industry; and

4           **WHEREAS**, as of June 30, 2018, 2,591 farms covering 232,500 acres had been  
5 permanently preserved statewide, including 156 farms covering 18,311 acres in the  
6 Pinelands and 544 farms covering 43,739 acres in the Highlands, which contribute not only  
7 to a secure land base for agricultural operations, but also to a host of other quality-of-life  
8 benefits, such as an increase in the total number of acres of open space in New Jersey, at  
9 both the local and statewide level; and

10           **WHEREAS**, preserved farmland remains privately managed and continues to  
11 contribute tax revenue to municipal budgets while demanding very little in public services;  
12 and

13           **WHEREAS**, legislation was signed in June 2016 that allocates preservation funding  
14 from the Constitutional dedication of a portion of the Corporate Business Tax (CBT) that was  
15 approved by voters and provides a stable funding source through the Corporate Business  
16 Tax (CBT) that does not rely upon repeatedly asking voters to approve bond referenda; and

17           **WHEREAS**, of the total funding annually available for preservation programs through  
18 FY2019, the Farmland Preservation Program receives 31 percent; and

19           **WHEREAS**, new legislation will be necessary to maintain or establish new  
20 allocations among all the conservation programs from FY2020 forward; and

21           **WHEREAS**, the State Agriculture Development Committee (SADC) in July 2018  
22 approved a \$23.8 million appropriation request for FY2019, including \$15 million for the  
23 Municipal Planning Incentive Grant (PIG) Program, \$3.3 million for the State Acquisition  
24 Program, and \$1.59 million for the Nonprofit Program; and

181           **BE IT FURTHER RESOLVED**, that we support the SADC's Farmland Stewardship  
182 Deer Fencing Program, which in the first funding round of the pilot program, approved  
183 \$465,122 in grants on 32 farms to install 35 miles of fencing on approximately 1,776 acres of  
184 high-value crops in order to protect them from damage caused by white-tailed deer, whose  
185 densities can exceed more than ten times the land's carrying capacity.

186           **BE IT FURTHER RESOLVED**, that we support the concepts embodied in pending  
187 legislation (A1052/S256) to create farmer alternate voting members on County Agriculture  
188 Development Boards.

189           **BE IT FURTHER RESOLVED**, that we urge the Highlands Council to develop and  
190 adopt a formal methodology to create and define Municipal Averages and their values to be  
191 used for the Farmland Preservation Program.

192           **BE IT FURTHER RESOLVED**, that we urge the SADC to use the municipal average  
193 of the value of the development potential as determined by the Highlands Council in lieu of  
194 appraisals when a Highlands easement sale applicant so requests.

195           **BE IT FURTHER RESOLVED**, that we request that the Highlands Council and the  
196 SADC establish a "Municipal Average Pilot Program" in the Highlands region so that the  
197 utilization of Municipal Averages in lieu of appraisals for farmland preservation applicants  
198 may be fully evaluated.



## **The Statute**

Statutory Step 1: The landowner makes an offer to sell that he/she believes is reasonable.

Statutory Step 2: A “check” on value is undertaken.

The statutory language gives the Board *sole discretion* to use the Municipal Average in lieu of the two appraisals.

Statutory Step 3: The landowners offer is considered by both the CADB and the SADC and either accepted or rejected.

Statutory Caveat: The appraisals or the municipal average are not the “final offer price” according to the statute. They are only a “cap” on the price that can be paid for an easement.

Note: The SADC may decline cost-sharing by “disapproving” a landowner’s offer, but the SADC does not have discretion to refuse to consider the Municipal Average as the “cap”.

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.

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

Step 1: Landowner Offer

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.

Step 2: Value Check

Solely a city board decision.

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

# Step 3: 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.

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

Note SADC involvement after Value Check only

\* Its a "cap" not the price

Cite as: 586 U. S. \_\_\_\_ (2018)

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Syllabus

"may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of" designation. The word "may" certainly confers discretion on the Secretary, but it does not segregate his discretionary decision not to exclude from the mandated procedure to consider the economic and other impacts of designation when making his exclusion decisions. The statute is, therefore, not "drawn so that a court would have no meaningful standard against which to judge the [Secretary's] exercise of [his] discretion" not to exclude. *Lincoln*, 508 U. S., at 191. *Weyerhaeuser's* claim—that the agency did not appropriately consider all the relevant statutory factors meant to guide the agency in the exercise of its discretion—is the sort of claim that federal courts routinely assess when determining whether to set aside an agency decision as an abuse of discretion. The Court of Appeals should consider in the first instance the question whether the Service's assessment of the costs and benefits of designation and resulting decision not to exclude Unit 1 was arbitrary, capricious, or an abuse of discretion. Pp. 10–15.

827 F. 3d 452, vacated and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which all other Members joined, except KAVANAUGH, J., who took no part in the consideration or decision of the case.

"Weyerhaeuser v US Fish & Wildlife

11/27/2018

unanimous

"may"

## **Municipal Average Mechanics**

What is the Municipal Average approach?

It's simple:

$$\# \text{ Lots } \times \text{ Lot Value } = \text{ Easement Value}$$

Note: The statutory wording and the Highlands Council's application define the municipal average approach as determining the easement value net of aftermarket values.

## Lot Value x Lost Lots = Development Easement Value

### Supporting Statutory Language

#### 4:1C-50 Definitions. 2.As used in this act:

**"Development potential" means the maximum number of dwelling units or square feet of nonresidential floor area that may be constructed on a specified lot or in a specified zone under the master plan and land use regulations in effect on the date of the adoption of the development transfer ordinance, and in accordance with recognized environmental constraints;**

*Note: For SF residential, the number of dwelling units is the number of buildable lots.*

#### 40:55D-159 Purchase by development transfer bank.

23b. The development transfer 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 of a municipality within its jurisdiction, which value shall generally reflect market value prior to the effective date of the development transfer ordinance.** The establishment of this municipal average shall not prohibit the purchase of development potential for any price by private sale or transfer, but shall be used only when the development transfer bank itself is purchasing the development potential of property in the sending zone. Several average values in any sending zone may be established for greater accuracy of valuation.

#### Notes:

- (i) *Municipal average references the development potential, i.e. the number of lots if residential. See development potential definition.*
- (ii) *Municipal average value is to be prior to the effective date of the tdr ordinance, here that would be the date of the Highlands Act. The Act directs the Highlands tdr program to be set up within 18 months. The municipal averages in the appendix of the TDR Technical Report represent data of this general time period, i.e. 2005-2006.*
- (iii) *The Highlands Council did choose to do several values for greater accuracy, i.e. six zoning categories per municipality.*

#### 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. ...**

## **Municipal Average Data Source**

The data for application of the Municipal Average exists.  
*There is no need to recreate a wheel or spin.*

**# of Lots:** The lost development opportunity, or number of lost buildable lots, is found by lot for every single Highlands property in the Highlands Council's property data base.

The data base was developed in connection with the Highlands Bank's transfer of development rights program, which was mandated in the Highlands Act. The data base column heading for the number of lost lots is "lost development opps after property class considered".\*

Importantly, the data base includes a GPS analysis of environmental constraints limiting buildability pre-Highlands, a key variable in determining bona fide development potential, a variable typically missing in the appraisers' work.

**Lot Value:** The appropriate lot value is found in the Highlands Council's TDR Technical Report,\*\* a supporting document to the adopted Highlands Regional Master Plan.

For every town in the Highlands, Appendix C lists the Average Lot Value per Municipality by zoning category, aka the Municipal Average.

Note that the statute requires the Municipal Average to reflect the market value at the time of the lost development potential, here around date of the Highlands Act. Appendix C reflects data of the 2005-2006 time period considering pre-Highlands regulations and mirrors the dual appraisal approach.

\* An OPRA request for the data base in 2010 produced an unprintable 61 page pdf document. The document must be viewed at 500% to read the data.

\*\* The TDR Technical Report is a dense, arcane, highly technical, public document designed to be inaccessible to most. However, a close reading reflects the directions of the statutory language in connection with municipal averages and valuation of lost development potential.  
[https://www.highlands.state.nj.us/njhighlands/master/tr\\_tdr.pdf](https://www.highlands.state.nj.us/njhighlands/master/tr_tdr.pdf)

[The main body of the page contains extremely faint and illegible text, likely a scan of a document with very low contrast or significant noise.]







# Transfer of Development Rights

2008

Prepared by State of New Jersey Highlands Water Protection and Planning Council in Support of the Highlands Regional Master Plan

Technical Report

**MORRIS COUNTY - AVERAGE LOT VALUE PER MUNICIPALITY**

COUNTY	MUNI	High Density Residential	Median Density Residential	Suburban Residential	Low Density Residential	Rural Residential	Resource Residential	Estate Residential
Morris	BOCNTON TOWN	\$148,988.71	\$183,888.11	\$189,737.98				
Morris	BOCNTON TOWNSHIP	\$123,038.48	\$142,594.95	\$192,889.32	\$250,485.29	\$304,299.95	\$389,999.04	
Morris	BUTLER BOROUGH	\$170,933.00	\$225,370.04	\$249,077.16				
Morris	CHESTER BOROUGH	\$178,782.98	\$191,807.19	\$216,845.03	\$232,487.58	\$277,574.65		
Morris	CHESTER TOWNSHIP	\$131,755.84	\$148,701.03	\$165,242.83	\$218,730.76	\$253,378.50	\$350,342.21	\$547,428.15
Morris	DEVILLE TOWNSHIP	\$174,815.01	\$199,000.19	\$240,589.04	\$240,099.20	\$285,209.25		
Morris	DOVER TOWN	\$91,651.24	\$114,080.52	\$92,827.83				
Morris	HANOVER TOWNSHIP	\$103,754.98	\$107,887.88	\$218,788.18	\$233,314.49			
Morris	HARDING TOWNSHIP	\$243,128.50	\$341,277.38	\$352,255.21	\$512,497.99	\$1,058,848.10	\$1,416,258.10	
Morris	JEFFERSON TOWNSHIP	\$111,419.21	\$120,840.89	\$119,901.10	\$132,341.77	\$125,289.88	\$188,740.48	
Morris	KHNELON BOROUGH	\$169,225.73	\$190,355.07	\$225,745.79	\$283,247.20	\$309,031.31		
Morris	MENDHAM BOROUGH	\$182,323.24	\$198,575.24	\$288,379.21	\$294,839.31	\$677,351.43	\$922,193.47	
Morris	MENDHAM TOWNSHIP	\$178,785.05	\$305,805.03	\$383,827.14	\$419,529.44	\$488,909.47	\$608,267.89	\$819,314.37
Morris	MINE HILL TOWNSHIP	\$98,834.60	\$101,157.02	\$109,589.72	\$112,243.68			
Morris	MONTVILLE TOWNSHIP	\$122,089.78	\$232,459.31	\$262,434.57	\$276,898.80	\$351,573.29	\$344,372.89	
Morris	MORRIS PLAINS BOROUGH	\$175,890.93	\$197,089.84	\$205,277.59	\$204,569.24			

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## **Municipal Average Applied to Block 33 Lot 4**

A letter from the executive director of the Highlands Council clearly identifies the average lot value (\$253,376) for R3 zoning in Chester Township and details the number of lost lots (18) for Block 33 Lot 4 determined by the Council's analysis of environmental constraints.

This data is verified in the Highlands Council's data base and TDR Technical Report.

The Municipal Average approach yields a "cap" of \$62,000 per acre, well above the landowner's \$44,000 offer to sell.



CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*I.J. Governor*

**State of New Jersey**  
Highlands Water Protection and Planning Council  
100 North Road (Route 513)  
Chester, New Jersey 07930-2322  
(908) 879-6737  
(908) 879-4205 (fax)  
[www.highlands.state.nj.us](http://www.highlands.state.nj.us)



JACK J. SCHRIER  
*Acting Chairman*

EILEEN SWAN  
*Executive Director*

February 17, 2010

VIA FIRST CLASS MAIL

Ms. Deborah Post  
122 Oakdale Road  
Chester, New Jersey 07930

Re: Response to HDC Estimator Questions

Dear Ms. Post:

On behalf of the Highlands Water Protection and Planning Council (Highlands Council), please accept the following letter in response to your e-mail communication last month wherein you asked questions regarding the Highlands Council's Highlands Development Credit (HDC) Estimator tool.

As you are aware, the process for participating in the TDR Program begins with an allocation of Highlands Development Credits to eligible Preservation Area properties. Allocation is the method of determining how many transferrable development credits should be awarded to a property based on the development potential of the land before the enactment of the Highlands Act in 2004. The Highlands Council has established a method of allocating transferrable development credits, called Highlands Development Credits or HDCs, to residentially zoned property in the Preservation Area. Under this method, HDCs are awarded on the basis of lost development potential and adjusted for relative differences in land value based on property location (by municipality) and the type of development that could have been constructed onsite according to the underlying zoning prior to enactment of the Highlands Act. To assist property owners in estimating the potential for HDC allocation to their properties, the Highlands Council developed a web-based application called the HDC Estimator. This tool is found at <http://maps.njhighlands.us/hgis/hdc>. The HDC Estimator uses the allocation factors mentioned above and provides an estimated range of the number of HDCs the property may be entitled to receive.

It is important to note that an HDC determination will not be made until a formal HDC Allocation Application is submitted to the Highlands Council. Please take notice that the HDC Bank began accepting applications for HDC Certificates from Highlands Preservation Area property owners on February 15, 2010. Submitting an HDC Certificate application is a two step process. The first step is submitting an application for a HDC Allocation from the Highlands Council. The second step is submitting an application for a HDC Certificate to the HDC Bank for the Bank to potentially make

February 17, 2010

Page 2

an offer to purchase allocated HDCs under the Bank's hardship criteria. The period for submission of HDC Certificate applications will run from February 15, 2010 until April 15, 2010. Applications, the HDC Allocation and HDC Certificate process may be found at:

<http://www.highlands.state.nj.us/njhighlands/hdcbank>.

We understand that you have reviewed the information for your property and have a number of questions regarding the tool and the data supporting the HDC Estimator's reporting function. Your questions will be answered in the order they were received.

**1. If the "regional lot value" average for the Highlands is \$64,657.25 (April '09 presentation), what is the specific lot value average for Chester Township that is utilized by the computer model?**

The specific lot value for Chester Township utilized by the Highlands Council in determining the regional lot value is **\$85,267** as reported on Appendix F of the TDR Technical Report. This value represents the predicted value of a lot that is **one-fifth of an acre in size** (i.e. the fifth unit on one acre of land) using four separate mathematical functions. As stated in the TDR Technical Report, the results of each function were evaluated for a municipality based upon mean absolute error and a subjective determination of what functions visually yielded the "best fit." The Highlands Council then applied a thirty percent discount to this figure because the data underlying the calculation is based on lots in an approved and improved condition. The resulting specific "discounted" lot value for Chester Township that the Highlands Council used to determine the average regional lot value for a parcel one-fifth of an acre in size is \$59,686.90. After calculating the regional average lot value of \$64,657.25, the Highlands Council then applied the seventy-five percent discount to determine the regional Highlands Development Credit value in light of a "developers willingness to pay" consideration as discussed in the TDR Technical Report. You are correct that the average equalized assessed value of a rural residential lot in an approved/improved condition in Chester Township is **\$253,376.58** as reported on Appendix C for Morris County. Highlands Council staff developed this information as part of our Zoning Factor analysis to establish the seven regional zoning factors attributable to different types of residential development. The Highlands Council did not apply any discount to this figure.

**2. Was the [specific information for my parcel] on the allocator tool if I could have found it? Or was it necessary for me to request the zoning/location factors specific to my property?**

The net residential lot yield calculation along with the relevant Zoning Factor and Location Factor are not available on the HDC Estimator. This information will be included in an HDC Allocation Letter that a property owner receives after the Council has made an allocation determination for the owner's property. Specifically, the letter will explain the protocol Highlands Council staff used to determine the net residential lot yield for the property, including the any assumptions that staff made for purposes of the determination.

**3. I would like to know what the "aftermarket" or "residual" or "restricted" data (in acres or lots or whatever unit utilized) was/is for my property...or by Chester location more broadly if that is how the computer model is programmed. Again, if this data is available on the website, please point me to the link.**

The starting point for allocating HDCs to eligible parcels begins with a determination of a parcel's lost development potential (Net Yield). Lost development potential is determined by first examining the land use and environmental regulations applicable to the subject parcel in light of the size of the parcel and what development may already exist there (pre-Highlands Act development yield). Then, the determination of lost development potential must also account for what development potential remains after applying the provisions of the Highlands Act, the Department of Environmental Protection's Preservation Area rules, and the standards of the Highlands Regional Master Plan.

The HDC Estimator reports out the both the constrained and unconstrained portion of a parcel based upon pre-Highlands Act environmental constraints. The pre-Highlands Act environmental constraints considered by Highlands Council are as follows:

- State-wide standards regarding water buffers based upon NJDEP's stormwater prevention rules, flood hazard rules, and freshwater wetland protection rules;
- Existing water bodies;
- Steep slopes between 15% and 25%; and
- Steep slopes greater than 25%.

The constraints are reflected in the drop down menu under the On-Site Environmental Constraints Tab on the left of the HDC Estimator webpage. These constraints may be viewed individually or in combination. With respect to your property listed as Block 33, Lot 4, the following pre-Highlands Act environmental constraints are located on the parcel:

- 1.72 acres of slopes between 15% to 25%;
- 1.43 acres of pre-Highlands Act water buffers;

Additionally, in light of Policy 7B3 of the Regional Master Plan, portions of parcels located in the Existing Community Zone (ECZ) are also treated as constrained for purposes of the HDC Estimator reporting on developable acreage. Block 33, Lot 4 has 1.68 acres located in the ECZ. Combining the pre-Highlands Act environmental constraints located on the property with that portion of the parcel located in the ECZ results in a total of 4.48 acres being considered constrained for purposes of determining net yield on the property. This leaves 59.14 acres of the parcel unconstrained and available for calculating the parcel's net yield by dividing the unconstrained acreage by the relevant minimum lot size applicable to the parcel. In the case of Block 33, Lot 4, the applicable minimum lot size is 3 acres. This results in a net yield of 19.5 lots. The only aftermarket consideration for Block 33, Lot 4 made for purpose of the HDC Estimator is the parcel's existing home. Consequently, the HDC Estimator bases its estimated HDC range on the parcel yielding 18.5 lots in the pre-Highlands Act scenario because a lot was subtracted for the existing home.

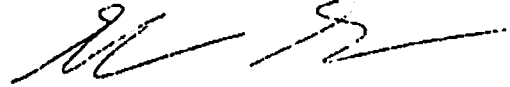
**4. What is the current policy regarding receiving one's HDC allocation and then requesting to have the HDC's issued directly to the property owner? May we formally strip the HDCs from our property and then hold them as a distinct and separate investment from the real property?**

HDCs are allocated to a specific eligible parcel. Once the appropriate deed of easement is recorded against the property and the Highlands Development Credit Bank issues an HDC Certificate, the

HDCs are deemed severed from the property and may be held as a "distinct and separate investment from the property."

Should you have any further questions regarding this process or the Highlands TDR Program generally, please do not hesitate to contact Jeff LeJava, Highlands TDR Program Administrator and Staff Attorney at the Highlands Council office at (908) 879-6737.

Yours sincerely,



Eileen Swan  
Executive Director



## For Additional Consideration

**Point:** Only 46 acres are proposed to be deed restricted of the 57 acre permanently preserved farm excluding the severable excepton. Only the 46 deed restricted acres are included in the compensation calculation, while an additional 11 acres are being, de facto, preserved “for free”.

If 46 acres are deed restricted at \$44,000 an acre, the price per acre of the entire 57 acre farm is only \$35,000 an acre.

**Point:** Block 33 Lot 4 is *100% buildable* with no steep slopes and no wetlands. A completely unconstrained large property is very unusual in the Highlands, an environmentally sensitive region, and most farms preserved in Morris have some constraints.

When being deed restricted, constrained acres are valued and compensated identically to unconstrained acres. Consequently, the average price paid per acre is not the price per acre of the buildable acres.

As examples, the following in Chester:

- Konkus preserved at \$23,000/acre was 64% constrained representing a price per buildable acre of \$61,000.
- Hideaway preserved at \$33,000 per acre was 40% constrained representing a price per buildable acre of \$55,000.
- Olsen preserved at \$25,000/acre was 44% constrained representing a price per buildable acre of \$44,000.
- Aresty preserved at \$36,000/acre was 35% constrained representing a price per buildable acre of \$55,000 per acre.
- Michel preserved for \$5 million was 100% constrained and unbuildable per Highlands Council constraint data.

## Application of the Municipal Average to Block 33 Lot 4 Chester

Rural residential lot value for Chester Twshp	\$253,376	Per HC executive
Times number of lost lots	X 18	Per HC executive
Total value of Development Potential Unadjusted	<u>\$4,560,768</u>	
“Improvement” adjustment (approvals, etc)	- 20%	Typical appraise:
	<hr/>	
Total Value of Development Potential Adjusted	\$3,648,614	
Divided by number of unconstrained acres	59	Per HC executive
	<hr/>	
<b>Municipal Average of Development Potential</b>	<b>\$ 61,841</b>	<b>Statutory “C:</b>
<b>Landowner Offer to Sell per to NJSA 4:1C-31a</b>	<b>\$ 44,000</b>	Per landowner a
*****		
Minus After Value	\$ 5,000	Per data of Morris f
	<hr/>	
Adjusted Net Value	\$ 56,841	Per traditional appro

\*\* Data corroborated and verified by Highlands Council tdr data base and technical report.

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1



Morris County Agriculture Development Board  
Morris County Preservation Trust Fund

## Application to Sell a Development Easement – Open Enrollment

Date: April 27, 2014.

A "development easement" is a recorded land-use agreement that conveys a portion of the rights associated with ownership to a governmental unit or a charitable organization. In this program the rights removed are the owner's right to develop the land for any non-agricultural purpose.

I/We, Deborah A. Post, (name)

landowner(s) of property located in the County of Morris, known and designated as:

Block 33, Lot (s) 4 on the Tax Map of the Chester Township  
Block \_\_\_\_\_, Lot (s) \_\_\_\_\_ on the Tax Map of the \_\_\_\_\_  
Block \_\_\_\_\_, Lot (s) \_\_\_\_\_ on the Tax Map of the \_\_\_\_\_  
Block \_\_\_\_\_, Lot (s) \_\_\_\_\_ on the Tax Map of the \_\_\_\_\_  
Block \_\_\_\_\_, Lot (s) \_\_\_\_\_ on the Tax Map of the \_\_\_\_\_

(Municipality), Morris County, New Jersey, (hereinafter "premises"), apply to the Morris County Agriculture Development Board, (hereinafter "Board"), to sell a development easement pursuant to the Trust Fund.

### 1. OFFER TO SELL A DEVELOPMENT EASEMENT

Pursuant to the Trust Fund, it is required that the applicant(s) submit an offer to sell a development easement to the Board. This is not a binding offer. Please refer to Attachment A while completing this section.

*Note: Landowners hereby acknowledge that they have been fully informed of the provisions related to the sale of a development easement and that a recommendation was made to obtain legal counsel prior to submitting this application and offer.*

As landowner(s) of the premises described above, I am/we are willing to make an offer to sell a development easement to the Board in the amount of: \$ 44,000 per acre.

The final total purchase price shall be based on the acreage of the premises determined by a survey authorized by the Board and any deductions to the total purchase pursuant to State Agriculture Development Committee (SADC) Policy P-3-B ([http://www.nj.gov/agriculture/sadc/rules/P3B-SUPP/property\\_surveys.pdf](http://www.nj.gov/agriculture/sadc/rules/P3B-SUPP/property_surveys.pdf)).

### 2. LANDOWNER PERMISSION TO PROCEED

The landowner(s) hereby gives the Board permission to proceed with the review and evaluation of this application to determine the suitability of the land for development easement purchase pursuant to the Trust Fund. The landowner(s) understands that upon the Board granting preliminary approval, the landowner(s) must submit a \$1,000 application fee. **DO NOT SUBMIT THE APPLICATION FEE WITH THIS APPLICATION.** The landowner(s) further states that to the best of their knowledge, all information provided in this application is accurate and complete.

## **Why Choose to Use the Municipal Average?**

Because the dual appraisal methodology is no longer producing a fair and equitable just compensation to Highlands landowners fifteen years after the Highlands regulatory taking of their property values.

The Municipal Average represents a valid alternative, found in the statute, that delivers a more just valuation.

Key Problem: Per best appraisal practices, an appraiser needs comparable sale transactions in the marketplace of the property being appraised and similar in most characteristics. Such comparable sale transactions simply do not exist in the Highlands today. Appraisal methodology is impeded by the absence of appropriate comparable sales.

The Highlands Act rendered the region undevelopable and, consequently, there have been no sales of Highlands properties for development purpose for the past fifteen years.

While the dual appraisal methodology harks back to 2004 zoning, it must use current pricing, pricing that no longer exists.

Additionally: The appraisals appear chronically flawed, even biased.

## Case History of Block 33 Lot 4 Appraisal Conclusions

Appraiser / Date	Development Potential / "Before"
Appraiser Holenstein MAI dated 2009	\$70,000 per acre
Appraiser DiSanto MAI dated 2009	\$70,000 per acre
Appraiser Cooper dated 2009	\$63,000 per acre
Appraiser Mackoff <sup>1</sup> dated 2018	\$25,000 per acre
Appraiser Carlin, SCRP dated 2018	\$21,000 per acre
The "Municipal Average" <sup>2</sup>	\$62,000 per acre

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<sup>1</sup> Appraiser Mackoff does not hold any professional appraisal designations or accreditations from the Appraisal Institute, the professional organization that certifies appraisal competency.

<sup>2</sup> Rural residential lot value (Category C) unimproved divided by 3.5 acre average is \$72,000

## **Synopsis of Invalid Comparable Sales**

### **Five of the Six Comps Do Not Reflect Development Potential**

#### 216 Pleasant Hill Road, Chester

Zero buildability; doesn't qualify for Highlands Exemption #2; also wetland constrained; sold as estate property with existing residence and hobby equine use.

#### Abbott Road, Montville

Distant semi-urban location; small; adjacent to railroad tracks and Route 287, heavily constrained; highly speculative purchase at a distressed sale price half the tax appeal determined FMV; cluster development application still pending which is unlikely to be approved.

#### Meriden Road, Rockaway

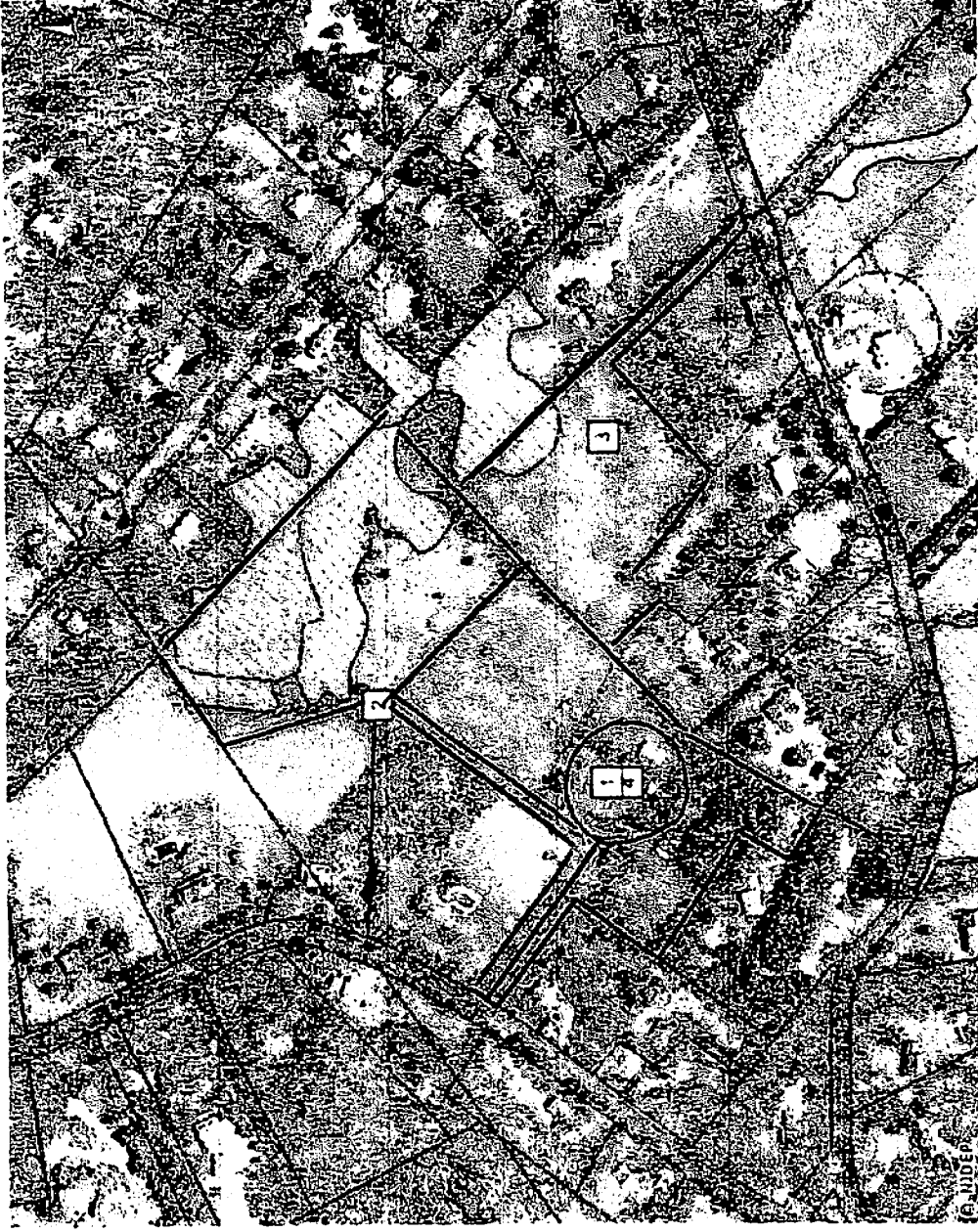
Sold for conservation, not development, using State \$\$ - not an open and competitive marketplace transaction; heavily constrained; qualified as a "bargain sale" in 501c-3 Form 990 filing indicating tax benefits; not a fair market value transaction.

#### Smithtown Road, Mt. Olive

A twelve (12) year old transaction originally negotiated in 2004 and awash in Highlands politics. Heavily constrained.

#### Smith Road, Denville

Distant location; small 5 acre size; clustered suburban development with no comparability to Subject.



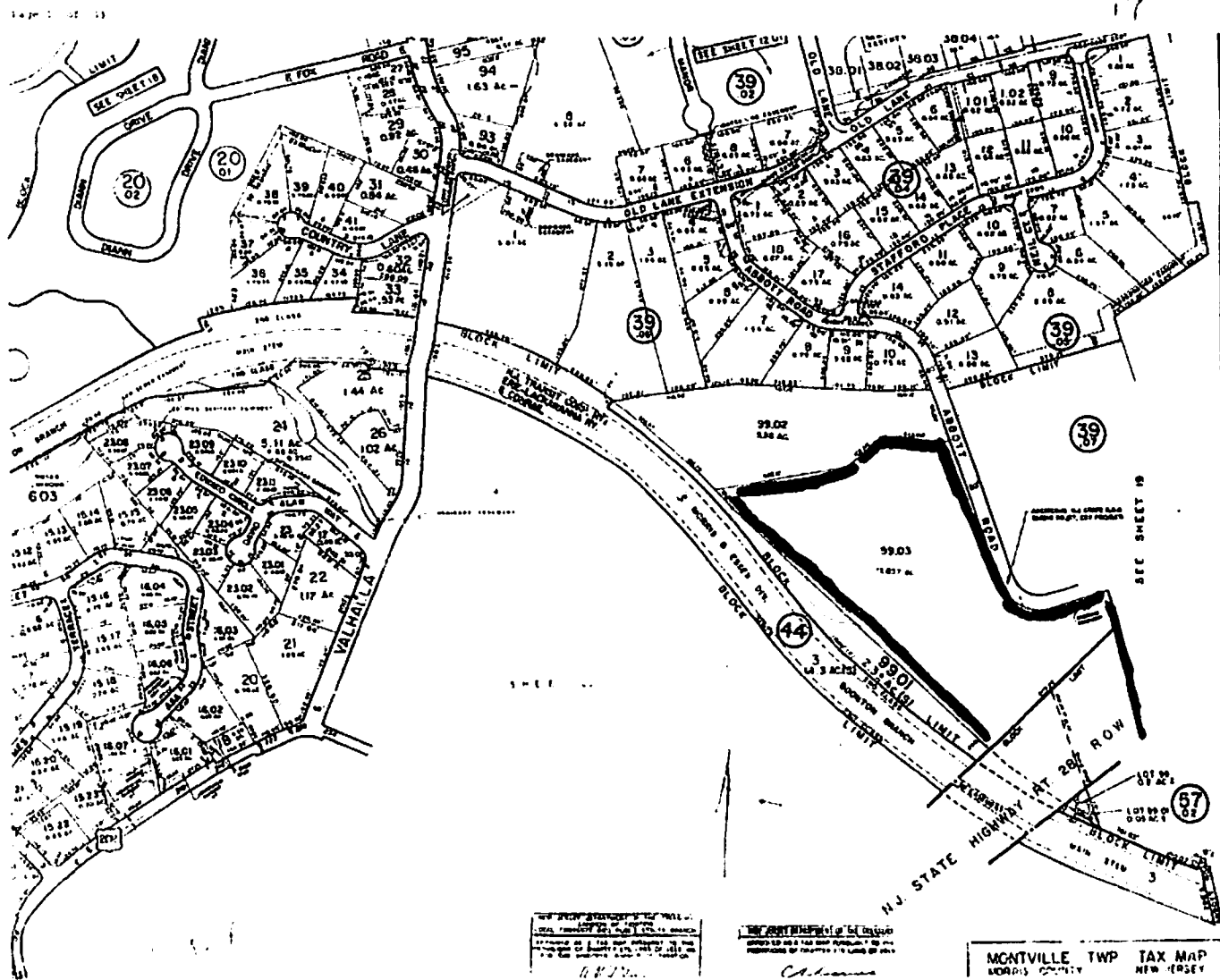
### 216 Pleasant Hill Road, Chester Township

Flag lots eliminate Exemption #2 possibility for Preservation Area properties

Vacant lots are constrained by wetlands and associated buffers.

Large lot has existing residence.

Zero additional buildability



### Abbott Road, Montville

Note railroad track along full length of property.

Note property bisected by Route 287.

Note dense urban/suburban surroundings.

50% of the 13 acres constrained by steep slope.

Tax appeal determined FMV was 200% of purchase price.

Still no development approvals, only speculatively developable.



