ML - Cranbury

Browning Ferris v. Cranbury

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1984

Plaintiff's
Trial Brief on Transfer Development Credits

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BROWNING FERRIS INDUSTRIES OF SOUTH JERSEY, INC., A Corporation of the State of New Jersey, RICHCRETE CONCRETE CO., A Corporation of the State of New Jersey, and MID-STATE FILIGREE SYSTEMS, INC., A Corporation of the State of New Jersey,

Plaintiffs

vs.

CRANBURY TOWNSHIP PLANNING BOARD AND THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CRANBURY,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 058046-83

TRIAL BRIEF ON TRANSFER DEVELOPMENT CREDITS

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On the Brief:

Lawrence B. Litwin, Esq.

URBAN LEAGUE OF GREATER NEW BRUNSWICK,
Plaintiff

vs.

CARTERET, ETC., et al
Defendants

SUPERIOR COtiRT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. C 4122-73

GARFIELD & COMPANY, A New Jersey Partnership,
Plaintiff

vs.

MAYOR OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CRANBURY, a municipal corporation, and the members thereof; PLANNING BOARD OF THE TOWNSHIP OF CRANBURY,
Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 055956-83

CRANBURY DEVELOPMENT CORPORATION,
Plaintiff

vs.

CRANBURY TOWNSHIP PLANNING BOARD AND TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CRANBURY,
Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 59643-83

SCERBO, KOBIN, LITWIN & WOLFF
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10 PARK PLACE
MORRJSTOWN, N. J. O796O

JOSEPH MORRIS AND ROBERT MORRIS,

Plaintiff

vs.

TOWNSHIP OF CRANBURY IN THE COUNTY OF MIDDLESEX, a municipal corporation of the State of New Jersey

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 054117-83

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PROCEDURAL HISTORY

This is a trial brief on Count II of the Complaint of plaintiffs, Browning-Ferris Industries of South Jersey, Inc., a corporation of the State of New Jersey (hereinafter "BFI"), Richcrete Concrete Co. a corporation of the State of New Jersey (hereinafter "Richcrete"), and Mid-State Filigree Systems, a corporation of the State of New Jersey (hereinafter "Mid-State"); Count II challenges the validity of the Cranbury Township Zoning Ordinance in toto because it contains provisions for transfer Development Credits. Plaintiffs filed the Complaint on September 14, 1983 against the Cranbury Township Planning Board (hereinafter "Planning Board") and the Township Committee of the Township of Cranbury (hereinafter "Township Committee"). The summons and complaint were served upon said defendants on September 27, 1983. On October 17, 1983 the Township Committee filed an answer; on November 7, 1983, the Planning Board filed an answer.

The Township Committee filed a Motion to Consolidate the within action together with other actions challenging the Cranbury Zoning Ordinance adopted July 25, 1983 and Urban League of Greater New Brunswick v. Carteret, et at. Docl^et No. C 4122-73. On December 15, 1983 an order of consolidation was entered.

STATEMENT OF FACTS

The plaintiffs' lands and premises are located in the remote southeast corner of the Township of Cranbury, near the New Jersey Turnpike. See Affidavit of Lawrence B. Litwin sworn to December 9, 1983 (hereinafter "Litwin Affidavit") para. 8 and Exhibit A annexed thereto.

Based upon municipal records of the Township of Cranbury, Richerete is the owner of land and premises known as Lot 13, Block 16 as shown on the tax map of the Township of Cranbury, Middlesex County. See Demand for Admissions dated January 4, 1984 (hereinafter Demand I,)para. 4(annexed hereto as Exhibit A). Said lands and premises are located on Hightstown Cranbury Station Road; See Demand for Admissions dated December 5, 1983 (hereinafter Demand 2) para. 6 Annexed hereto as Exhibit B). Said lands and premises contain 3.4 acres. Richerete has used those land and premises since February, 1965 for the construction and operation of a transmit mix concrete plant pursuant to a use permit. See Litwin Affidavit, para. 2-3. See Demand 1, para. 5-6, Exhibit A.

Based upon municipal records Mid-State is the owner of lands and premises known as Lot 5, Block 16 as shown on the tax map of the Township of Cranbury, Middlesex County. See Demand 1, para. 7, Exhibit A. Said lands and premises are located on Hightstown Cranbury Station Road; See Demand 2, para, 10, Exhibit B. Said lands and premises contain 16.18 acres. Mid-State and its predecessors have used those lands and premises since 1972 for the manufacturing of cement forms as a permitted use or pursuant to a use variance. See

Litwin Affidavit para. 4-5. See Demand 1, para. 7-8, Exhibit A. See Answers to Interrogatories, para 21, Exhibit C annexed hereto.

BFI is the owner of lands and premises known as Lot 6, Block 16 as shown on the tax map of the Township of Cranbury, Middlesex County. See Demand 1, para. 1, Exhibit A. Said lands and premises are located on Heightstown Cranbury Station Road; See Demand 2, para 2, Exhibit B. Said lands and premises contain 4.7 acres. BFI has used those land and premises since approximately July 1, 1976 for the parking, storage and repair of trucks pursuant to a site plan approval and related use variance. See Litwin Affidavit para. 6-7. See Admissions 1, para. 1-3, Exhibit A.

BFI is located next to Richcrete. Richcrete is separated from Mid-State by one lot which is owned by Plant Food Chemical, an agricultural industrial user. BFI is separated from Mid-State by two lots (Richcrete and one other lot). See Litwin Affidavit para. 8 and Exhibit A annexed thereto.

Prior to July 25, 1983 plaintiffs' lands and premises were zoned industrial.

The lands and premises behind the plaintiffs' lands and premises are owned by Johns Mansville, Inc. and known as Lot 4, Block 16 on the tax map of the Township of Cranbury. These land and premises are 5.38 acres and are used presently for agricultural purposes. The land is vacant. Prior to July 25, 1983 the Johns Manville land and premises was zoned industrial. See Litwin Affidavit para. 7. See Demand 1, para. 9-10, Exhibit A.

Cranbury Development Corporation (hereinafter "Cranbury Development") (a plaintiff in a companion case) is the owner of Lot 10, Block 10 and Lot 1, Block 12 as shown on the tax map of the Township of Cranbury. Said lands and

premises are located on Brick Yard Road across from Mid-State. Said lands and premises contain 395 acres and are vacant. Prior to July 25, 1983 Cranbury Developement's land and premises were zoned industrial. See Litwin Affidavit para.8 and Exhibit A annexed thereto.

IBM Biomedieal (hereinafter "IBM") is the owner of Lot 4, Block 16 as shown on the Tax Map of the Township of Cranbury. Said land and premises are located on Brick Yard Road and Cranbury Station Road, across the street from plaintiffs. Said lands and premises contain 16.738 acres and is used for engineering, assembling and testing biomedieal products. Prior to July, 1983 the IBM land was zoned industrial. See Litwin Affidavit para. 8 and Exhibit A> &rtfie#ed thereto.

On September 5, 1982 the Planning Board adopted the Cranbury Township Land Use Plan (hereinafter "Land Use Plan"). Pursuant to the Land Use Plan, the Planning Board determined (a) that the plaintiffs' lands and premises and the IBM lands and premises were to be located in the light impact industrial zone and (b) the Johns Manville lands and premsies and the Cranbury Development lands and premises were to be located in the low density residential use zone - 3 acre residential. Prior thereto, plaintiffs' lands and premises, the IBM lands and premises, the Johns Manville lands and premises and the Cranbury Development lands and premises were in the industrial zone.

Subsequent to the adoption of the Land Use Plan, the Planning Board prepared a Zoning Ordinance which it recommended to the Township Committee. With respect to the plaintiffs' land and premises and the adjoining land and premises, the proposed Zoning Ordinance was a mirror image of the Land Use Plan. The new Zoning Ordinance was enacated on July 25, 1983 and placed: (1) plaintiffs' land and premises and the 1MB lands and premises in the light impact

industrial zone; and (2) the Johns Manville land and premises and the Cranbury Development land and premises in a light impact residential zone. As a result Richcrete and Mid-State's land and premises became preexisting nonconforming uses, and the zoning of the adjoining land and premises was Converted from industrial to 3 acre residential zoning. Plaintiffs contend in Count I of the Complaint, that such zoning is arbitrary, capricious, unreasonable and clearly erroneous.

In addition, the Land Use Plan suggested the utilization of Transfer Development Credits" as a means of preserving farmland; the Zoning Ordinance, as adopted, provided for Transfer Development Credits. Section 150-7 of the Zoning Ordinance defines Transfer Development C redits as follows:

> "Development Credit - An interest in land which represents a right to exchange land for residential purposes in accordance with the provisions of this ordinance.
>
> Transfer of Development Credits - Where permitted by this ordinance, the act of using a development credit in order that permission for development may be granted.

Section 150-16 of the Zoning Ordinance provides:

> "Transfer of Development Credits. The owner of any land in the A-100 agricultural zone, in lieu of developing such land, may transfer its development potential or credit to the owner of any land in the PD-MD and PD-HD zones, for development in accordance with the regulations applicable in such zones 1 such transfer or development credit shall be subject to the following requirements:

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[1] The regulations for PD-MD and PD-HD zones are attached hereto as Exhibit D.

"A. To determine the numbers of development credits to which the owner is entitled, such owner shall submit a hypothetical subdivision Sketch Plat which shall include the following information:

(1) Name and address of owner or owners of record and lot and block number of the affected land;

(2) Scale and north arrow;

(3) Date of original preparation and of each subsequent revision;

(4) Tract boundary line, clearly delineated;

(5) Area of the entire tract and of each proposed lot, to the nearest tenth of an acre;

(6) Provision for approved signatures of the Chairman and secretary of the Planning Board and the Township Engineer, specifying the number of credits;

(7) Delineation of existing floodways, flood hazard and flood fringe areas of all water courses within or abutting the tract;

(8) Delineation of soil types on the tract as determined by the U.S. Soil conservation services or as otherwise approved by the Township Engineer;

(9) Existing contours, referred to a known datum, with intervals of five (5) feet;

(10) A hypothetical circulation plan showing all streets as having a uniform right-of-way of fitey (50) feet;

(11) Hypothetical lot layout, with lots having an area of not less than two (2) acres, in accordance with the subdivision design criteria contained in Article XVI and the requirements of the R-LD zone where neither sewer or water is available. The hypothetical layout shall provide sufficient information for a determination by the Board of Health and the Township Engineer that all lots

shown would be capable of being supplied with the necessary on-site septic system, and that all lots would be useable if developed as shown, In addition to information, supplied by the National Cooperative Soil Survey which was prepared by the, U.S. Department of Agriculture, the Township may request additional percolation tests or soil logs in order to reach the required determination.

Upon approval of the Sketch Plat, the owner shall be entitled to a number of development credits certificate equal to the number of approved hypothetical lots.

B. The transfer of the approved number of development credits shall be authorized only upon the filing by the owner of a deed restriciton, in a form acceptable to the Planning Board attorney, running with the land from which the development credits are proposed to be transferred and restricting such land to agricultural use and trom building in perpetuity. Such deed restrictions, which shall be specifically enforceable by the Township, shall be recorded with the Clerk of Middlesex County and proof of such recording shall be presented to the Planning Board as part of the final subdivision or site plan for the development which is proposed to utilize such credits.

C. A copy of the approval of the transfer, together with a copy of the approved Sketch Plat, shall be filed with the Township Clerk who shall keep a map showing all lands from which development credits have been transferred, in whole or in part. In the case of a transfer of less than all the development credits approved for a given parcel, the deed restriction shall cover a corresponding portion of the parcel from which the credits are transferred including a percent from which the credits are transferred including a percent of the road frontage equivalent to the percent of the total land retired through deed restriction. The Township Clerk shall keep a record of the total approved number of credits and the number authorized to be transferred." (Emphasis added)

The Zoning Ordinance is fatally defective because Transfer Development Credits are not authorized as a matter of law. The enactment of a zoning ordinance containing provisions for Transfer Development Credits is an ultra vires act. Ultra vires acts are null and void.

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POINT I

THE UTILIZATION OF TRANSFER DEVELOPMENT CREDITS IN THE CRANBURY ZONING ORDINANCE IS CONTRARY TO LAW

A. What are Transfer Development Credits?

Transfer Development ^Credits are a means of restricting development at one location(&e. a historic landmark or environmentally sensitive area) and the development rights taken away from that location are transferred to another location. The owner of the land at the transfer site pays the owner of the land at the restricted site. See Planning and Control of Land Development, Daniel R. Mandelher and Roger Cunningham (1979) P. 947-955.

The purpose of Transfer Development Credits, or Transferable Development Bights is described as:

> "[A] technique which is used to compensate a property owner for a land use restriction (usually of a permanent nature) placed on his property rights. Under the TDR system, a landowner who is permanently prohibited from using the excess development potential of his land is compensated in the form of freely transferable development rights, approximately equal in amount to the development potential which he is prohibited from using. These rights may be either kept or sold by the property owner.
>
> "The principal use of transfer development rights in recent years has been in the area of landmark preservation. Since landmark buildings are usually low structures that do not make use of the permitted floor space authorized under the zoning ordinance, the owners are unable to realize a reasonable return on their properties.

> Thus, the allowance of these rights are a means of providing just compensation to landowners.[11] Rohn, Zoning and Land Use Controls, at Section 6.02.

In two jurisdictions, New York[2] and Illinois[3] there is statutory authority for the use of (Transfer Development Credits to preserve landmarks.

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[2] 16 NYC Administrative Code, Ch 8-AS, §205-10, 207-10 (Spp 1976), NY Zoning Resolution 74-79 et seq (1960); NY Gen. Mun. Law, §96(a) McKinney which provides:

> "In addition to any power or authority of a municipal corporation to regulate by planning or zoning laws and regulations or local laws and regulations, the governing board or local legislative body of any county, city, town or village is empowered to provide by regulations, special conditions and restrictions for the protection, enhancement, perpetuation and use of places, districts, sites, buildings, structures, works of art, and other objects having a special character or special historical or aesthetic interest or value. Such regulations, special conditions and restrictions may include appropriate and reasonable control of the use or appearance of neighboring private property within public view or both. In any such instance such measures, if adopted by the exercise of the police power, shall be reasonable and appropriate to the purpose, or if constituting a taking of private property shall provide for due compensation, which may include limitation or remission of taxes."

[3] 24 1111-48,2-lA of Illinois statutes provides:

> "(1) the development rights of a landmark site are the rights granted under applicable local law respecting the permissible bulk and size of improvements erected thereon. Development rights may be calculated in accordance with such

[3] Footnote continued

factors as lot area, floor area, floor area ratios, height limitations or any othr criteria set forth under local law for this purpose.

"(2) A preservation restriction is a right, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land or in any order of taking appropriate to the preservation of areas, places, buildings or structures to forbid or limit acts of demolition, alteration, use or other acts detrimental to the preservation of the areas, places, buildings or structures in accordance with the purposes of the Division. Preservation restrictions shall not be unenforceable on account of lack of privity of estate or contract, or of lack of benefit to particular land or on account of the benefit being assignable or being assigned.

"(3) A transfer of development rights is the transfer from a landmark site of all or a portion of the development rights applicable thereto, subject to such controls as are necessary to secure the purposes of this Division. The transfer of development rights pursuant to sound community planning standards and other requirements of this Division is hereby declared to be, in accordance with municipal health, safety and welfare because it furthers the more efficient utilization of urban space at a time when this objective is made urgent by the shrinking land base of urban areas, the increasing incidence of large-scale, comprehensive development of such areas, the evolution of building technology and similar factors.

"(4) A development rights bank is a reserve into which may be deposited development rights associated with publicly and privately owned landmark sites. Corporate authorities, or their designees shall be authorized to accept for deposit within the bank gifts, donations, bequests or other transfers of development rights from the owners of said sites, and shall be authorized to deposit therein development rights associated with (i) the sites of municipally-owned landmarks and (ii) the sites of privately-owned

[3] Footnote continued

landmarks in respect of which the municipality has acquired a preservation restriction through eminent domain or purchase. All transfers of development rights from the development rights bank shall be subject to the requirements of Sections 11-76-1 through 11-76-6 of the Municipal Code of Illinois, and all receipts arising from the transfers shall be deposited in a special municipal account to be applied against expenditures necessitated by the municipal landmarks program.

"(5) The term, public easement, shall have the same meaning and effects herein as it has in Article IX, Section 3 of the Illinois Constitutuion of 1870 and Article IX, Section 4(c) of the Illinois Constitution of 1970. This amendatory Act of 1971 does not apply to any municipality which is a home rule unit."

In New Jersey, however, there is no such legislation. In 1973 and 1974 legislation was proposed which was to assist in the preservation of open space and environmentally sensitive areas; the proposed legislation was not enacted. One commentator has summarized the proposed legislation:

> **"TDR Proposals for New Jersey. The TDR plans that have created the most exicitement are aimed at general land use management goals. A plan proposed in New Jersey illustrates the hopes of some TDR advocates. A law proposed in 1973 would have enabled municipalities to adopt limited TDR plans aimed at the preservation of open space, environmentally sensitive areas or other community land resources. This legislation failed, but helped to spawn a more elaborate scheme in 1974, the Chavooshian- Neiswan-Norman proposal, in whch the TDR concept played a central role. The authors of this program proposed that localities use TDR as part of a Growth Management Program (GMP) which would take into account the capacities of the ecosystem and of existing public services to safely "absorb" new urban development in a given area. Each community would establish growth management regulations, such as zoning, to set maximum levels of development intensity.**
>
> **"The TDR program would help localities achieve the objectives of the GMP. The first step in the plan is the allocation of development rights to property owners throughout the community. Rights are to be distributed to each property owner in proportion to the assessed value of the property. Rights wold also be issued to owners of developed land. These latter rights could not be transferred unless their owners first demolished the buildings to which the rights were originally assigned.**
>
> **"The GMP would prohibit development in some areas and permit intensive development in others. The number of development rights issued in a**

community would be commensurate with the amount of development permitted by the plan. Under the TDR plan, owners of development rights would buy and sell the rights among themselves. As with all TDR proposals, it is hoped that property owners permitted to undertake developments will purchase development rights from owners who may not develop their own property or from owners of properties that would be less profitable to develop. These development rights transactions would tend to channel development into areas of the community where the profit incentives for development were greatest, and at the same time, enable the community to design development plans to meet public goals. Thus, TDR should encourage development patterns that are efficient from both private and public points of view.

"In this New Jersey proposal, once a parcel is developed, its development rights will merge with the property and be nonnegotiable until the development is demolished, redeveloped or altered to a different intensity or type of use. In order to give some flexibility in planning for community growth, the plan provides a way of adjusting the total number of unused development rights if GMP development regulations change. For instance, if permissible total density were increased, more rights would be issued on a proportional basis to all eligible owners. Development rights would be taxes like real property until "consumed" by a building project."

F. JAMES & D. GALE, ZONING FOR SALE: A CRITICAL ANALYSIS OF TRANSFERABLE DEVELOPMENT RIGHTS PROGRAMS 12-19. See also 14 Urban Law Annual 81, 90-91. (Urban Institute, 1977)

More recently, in 1982, a bill (A 1259) (annexed hereto as Exhibit E) was introduced in the Assembly of the State of New Jersey to authorizeT ransfer Development Credits on a regional basis in the Pinelands District. That proposed legislation has not been enacted.

In 1983, another bill was introduced in the Assembly (A 3664) (annexed hereto as Exhibit F). This proposed legislation would amend N.J.S.A. 40:55D-65 to permit zoning ordinances to employ techniques, including the Transfer of Development Rights, designed to govern the intensity of land use. This proposed legislation has not been enacted.

Although New Jersey laws contain no statutory authority for the use of Transfer Development Credits or Transfer Development Rights, the defendant Planning Board recommended and the defendant Township Committee enacted a Zoning Ordinance which contained provision for Transfer Development Credits. Although Transfer Development Credits have been utilized in other jurisdictions to preserve landmarks and environmentally sensitive areas, Cranbury's Land Use Plan (See H-42 et seq) indicates that Transfer Development Credits were utilized in Cranbury to assist in the preservation of farmland. Thus, Transfer Development Credits as utilized in the Zoning Ordinance are unprecedented and without statutory authority.

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B. Transfer Development Credits Are Not Authorized By the Municipal Land Use Act. A Municipality Must Act Within Its Statutorily Authorized Powers. The Failure To Do So Renders Such Action Null and Void

Municipalities have no inherent zoning authority; the power they do have is derived from legislation authorized by the New Jersey Constitution (1947) Article IV, Section VI, par. 2. The enabling legislation enacted pursuant to that constitutional authority isiN.#.SLA. 40:55D-l et. seq. A municipal government is a government of enumerated powers acting by delegated authority. A municipality has no inherent jurisdiction to adopt ordinances. Any exercise of a delegated power by a municipality not within the ambit of a governing statute, is capricious; said actions are ultra vires. Ultra vires acts are null and void. See Giannone v. Carlan, 20 N,J511 (1956); Grogan v. DeSapio, 11 NJ 308 (1953); Pop Realty Corp. v. Springfield Township Board of Adjustment, 176 N.J. Super 441 (Law Div. 1980); Midtown Properties vs. Madison Twp., 68 NJ Super 197 (Law Div. 1961), affirmed ob 78 NJ Super 471 (App. Div. 1963).

The ordinance adopted by the Township Committee authorizes[1] transfer B evelopment Credits. However, the use of Transfer Development credits is not expressly authorized by the Municipal JLand Use Act. N.J.S.A. 40:55D-65 enumerates the contents of a zoning ordinance. The statute provides:

> "A zoning ordinance may:
>
> a. Limit and restrict buildings nnd structures to specified districts and regulate buildings and struct tures according to their type and the nature and extent of their use, and regulate the nature and extent of the use of land for trade, industry, residence, open space or other purposes.

b. Regulate the bulk, height, number of stories,s orientation and size of buildings and the other structures, and require that buildings and structures use renewable energy sources, within the limits of practicability and feasibility, in certain places; the percentage of lot or development area that may be occupied by structures; lot sizes and dimensions; and for these purposes may specify floor area ratios and other ratios and regulatory techniques governing the intensity of land use and the provision of adequate light and air.

c. Provide districts for planned developments; provided that an ordinance providing for approval of subdivisions and site plans by the planning board has been adopted and incorporates therein the provisions for such planned developments in a manner consistent with article 6 of this act. The zoning ordinance shall establish standards governing the type and density, or intensity of land use, in a planned development. Said standards shall take into account that the density or intensity of land use, otherwise allowable may not be appropriate for a planned development. The standards may vary the type and density, or intensity of land use, otherwise applicable to the land within a planned development in consideration of the amount, location and proposed use of common open space; the location and physical characteristics of the site of the proposed planned development; and the location, design and type of dwelling units and other uses. Such standards may, in order to encourage the flexibility of housing density, design and type, authorize a deviation in various residential clusters from the density, or intensity of use, established for an entire planned development. The standards and criteria by which the design, bulk and location of buildings are to be evaluated, shall be set forth in the zoning ordinance and all standards and criteria for any feature of a planned development The standards and criteria by which the design, bulk and location of buildings are to be evaluated, shall be set forth in the zoning ordinance and all standards and criteria for any feature of a planned development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for a planned development can be evaluated.

d. Establish, for particular uses or classes of uses, reasonable standards of performance and standards for the provision of adequate physical improvements including, but not limited to, off-street parking and loading areas, marginal access roads and roadways, other circulation facilities and water, sewerage and drainage facilities; provided that section 41 of this act shall apply to such improvements.

e. Designate and regulate areas subject to flooding (1) pursuant to P.L. 1972, 1972, c. 185 (C.58:16A-55 et seq) or (2) as otherwise necessary in the absence of appropriate flood hazard area designations pursuant to P.L.1962, c. 19 (C.58:16A-50 et seq or floodway regulations pursuant to P.L. 1972, c. 185 or munimum standards for local flood fringe area regulation pursuant to P.L. 1972, c. 185.

f. Provided for conditional uses pursuant to section 54 of this act.

g. Provide for senior citizen community housing.

h. Require that as a condition for any approval which is required pursuant to such ordinance and the provisions of this chapter, that no taxes or assessments for the local improvements are due or delinquent on the property for which any application is made."

N.J.S.A. 40:550-65 makes no provision for Transfer Development Credits to be included within a zoning ordinance. [4] Thus a zoning ordinance containing Transfer Development Credits is not duly authorized; such a provision is ultra vires and void.

Further, municipalities have no statutory authority to create a new type of

[4] A pending bill (A3664), annexed hereto as Exhibit F, introduced in 1983 if adopted would amend N.J.S.A*40:55D-65 to permit Transfer of Development Rights.

interest in real property (i.e. one of the bundle of rights with which a fee title owner is vested). A transfer Development Credit if authorized by law, would clearly be one of the bundle of orights with which a fee title owner is vested. Municipalities should not be vested with authority to create concepts akin to easements, restrictions of record, leases, mortgages, and the like. Interests in real property (i.e. easements, restrictions of record, leases mortgages, etc.) are creatures of statute or the common law. See N.J.S.A. 46:3-1 to 46:11-1 et seq. Transfer development Rights or Transfer Development Credits are not authorized by the real property statutes in New Jersey.

Additionally, there is no statutory authority for the recording by a County Clerk of Transfer Development Rights or Transfer Development Credits. See N.J.S.A. 46:15-1 et seq; N.J.S.A. 46:16-1 et seq. In addition, there is no statutory authority for the mapping of Transfer Development Rights and Transfer Etevelopment ^Credits. N.J.S.A. 46:23-1 et seq. The Zoning Ordinance provides for recordation of Transfer Development Credits. See § 150-16B Zoning Ordinance, see p. 7 of this brief. The Zoning Ordinance provides for the mapping of the Transfer Development Credits. See § 150-16C, Zoning Ordinance, see p. 7 of this brief. These features of the ordinance are also not statutorily authorized.

Since there is no statutory authority creating Transfer Development Credits and there is no statutory authority for the recordation and mapping of Transfer Development Credits a zoning ordinance which contains such provision is not statutorily authorized and is an ultra vires act and thus void. 5

5 In G^"d Land Company v. Township of Bethleham Docket No. L 7}.9-76 P.W. Law Division Hunterdon County (Unreported Opinion). The court stated in dicta

SFootnote continued:

that a 25 acre Agricultural zone could be justified based upon N.J.S.A. 40:55D-2 a,g., and j; nevertheless the Court concluded that such agricultural zoning was arbitrary, capricious and unreasonable.

However, in the case at hand, if the court were to find that N.J.S.A. 40:55D-2 authorized Transfer Development Credits to preserve farmland the court could still determine that the ordinance was defective because of the mapping and recording provisions.

C. The Transfer Development Credits Of the Cranbury Zoning Ordinance Constitute a Taking Which Requires Compensation

The Transfer Development Credits of the Zoning Ordinance constitutes a taking of property which requires compensation. A governmental taking of property without just compensation is prohibited. U.S. Const. Amend V; N.J. Const. (1947) Art. 1, par 20. A physical invasion of property by government usually constitutes a taking which requires compensation. When an alleged taking is accomplished by governmental regulation, without a physical invasion, the governmental regulation of property must be so all encompassing so that a property owner is prevented from exercising any worthwhile rights with respect thereto.

> "A restraint against all use is confiscatory and beyond the police power and statutory authorization is too apparent to require discussion. The same result follows where the ordinance so restricts the use that the land cannot be practically utilized for any reasonable purpose.and when the only permitted uses are those to which the property is not adapted or which are economically infeasiable. Property need not be zoned to permit any use to which it is adopted. To so require would frustrate the zoning objective of a well balanced community according to a comprehensive plan. It is sufficient if the regulations permit some reasonable use of the property in light of the statutory purpose. See Morris County Land v. Parsippany Troy Hills, 40 NJ 539 (1963) at 555, 57 citing Kozesnik v. Montgomery Tp., 24 NJ 154, 182 (1957)."

A use which is economically infeasMe is not a reasonable use* A

governmental regulation which leads to such a result is a taking for which compensation is required.

The highest court of the State of New York, the Court of Appeals, has held that Transfer development Bights constitute such a taking. In Fred F. French Investing Co v. City of New York, 39 NY 2nd 587, (1976), appeal dismissed 429 U.S. 990 (1976), the plaintiff's vacant land was used as a park but was zoned so that it could be built upon; however, the land was rezoned so that the land could only be used as a park for passive recreational use. The zoning thus precluded development.

Simultaneously, the plaintiff's land was zoned so that the development rights of the land could be transferred to receiving lots within a large area of New York City subject to obtaining municipal approvals. The court in French concluded [a] taking had taken place:

> "In the instant case, the city has, despite the severance of above-surface development rights, by rezoning private parks exclusively as parks open to the public, deprived the owners of the reasonable income productive of other private use of their property. The attempted severance of the development rights with uncertain and contingent market value did not adequately preserve those rights. Hence, the zoning amendment is violative of constitutional limitations." 39 NY 2d at 591.

The Court described the value of that which has been taken. The Zoning Amendment:

"renders the park property unsuitable for any reasonable income productive or other private use for which it is adopted and thus destroys its economic value and deprives plaintiff of its security for its mortgages.

It is recognized that the "value" of property is not a concrete or tangible attribute but any abstraction derived from the economic uses to which the property may be put Thus, the development rights are an essential component of the value of the underlying property because they constitute some of the economic Uses to which the property may be put. As such, they are a potentially valuable and even a transferable commodity and may not be disregarded in determining whether the ordinance has destroyed the economic value of the underlying property. (Citations omitted)

"Of course, the development rights of the parks were not nullified by the city's action. In an attempt to preserve the rights they were severed from the real property and made transferable to another section of mid-Manhattan in the city, but not to any particular parcel or place. There was thus created floating development rights, utterly unusable until they could be attached to some accommodating real property, available by happenstance of prior ownership, or by grant, purchase or devise, and subject to the contingent approvals of administrative agencies. In such case, the development rights, disembodied abstractions of man's ingenuity, float in a limbo until restored to reality by reattachment to tangible real property. Put another way, it is a tolerable abstraction to consider development rights apart from the solid land from which as a matter of zoning law they derive. But severed, the development rights are a double abstraction until they are actually attached to a receiving parcel, yet to be identified, acquired and subject to the contingent future approvals of administrative agencies, events which may never happen bocou.se of the exigencies of the market ond the contingencies and exigencies of administrative action. The acceptance of this contingency-ridden arrangement, however, was mandatory under the amendment.

> "By compelling the owner to enter an unpredictable real estate market to find a suitable receiving lot for the rights, or a purchaser who would then share the same interest in using additional development rights, the amendment renders uncertain and thus severely impairs the value of the development rights before they were severed. Hence, when viewed in relation to both the value of the private parks after the amendment, and the value of the development rights detached from the private parks, the amendment destroyed the economic value of the property. It thus constituted a deprivation of property without due process of law." French at 39 NY 2d 597-598 (Emphasis added)

So too in the instant case, the Cranbury Transfer Development Credit ordinance is tantamount to a taking. The Transfer Development Credits have been severed from the land. The Transfer Development Credits are not reattached until (a) the owner of a receiving parcel acquires the Transfer Development Credits or the owner of the Transfer Development Credits acquires the receiving parcel; and (b) contingent municipal approvals of § 150-16 of the Zoning Ordinance are obtained. See pages 5-7 of this brief.

In Cranbury /Transfer Development Credits are transferable from lands in the A-100 zone to PD-MD and PD-HD zones, the receiver zones. The receiver zones comprise a large area containing approximately 1500 acres. See Land Use Plan p. 111-10. As in French there is no particular piece of property to which the Transfer Development Credits attach. Thus, market contingencies may preclude the credits from having value. Additionally, the Cranbury ordinance requires subdivision and sketch plat approval to be obtained from the Planning Board. The exingencies of the administrative process may never result in an approval. As a result, the value of the development rights is uncertain, but certainly

impaired.

An argument could be made that the provisions of the Cranbury Transfer Development ordinance are not mandatory thus no taking has occurred. However, such argument is not factually correct. The Cranbury Land Use Plan states that the Transfer Darelopment Credits ordinance will provide 1500 credits in the community, which will in turn stimulate additional density bonuses for low and moderate housing. Thus, without Transfer Development Credits Cranbury cannot comply with the obligations of South Burlington • County NAACP v. Mt. Laurel Twp. 92 N.J. 158 (1983), to provide a realistic opportunity for its fair share of low and moderate income housing. Thus, the Transfer Development Credit ordinance must compel the owner of the Transfer Development Credit to enter into the market to sell to the owner of a receiving lot,subjeet to municipal approvals. If the ordinance does not so compel the owner, the ordinance would not provide a realistic opportunity for Cranbury to meet its Mt. Laurel II obligation. Thus, Cranbury has not used an appropriate vehicle to fulfill its obligation to provide realistic opportunities for low and moderate income housing.

French does demonstrate, however, that if the owner of the Transfer Development Credits is paid instantly for development rights, no taking occurs; if the development rights are placed in a bank from which they may be purchased and the Constitutional infirmity disappears. See 39 N.Y. 2d at 598-99. In New Jersey such a procedure would also require statutory authority (see e.g. A 1259; annexed hereto as Exhibit E) * See also Matlack v. Burlington County Freeholder Board, 191 NJ Super 236, 257 (Law Div. 1983).

In its present posture Cranbury Transfer Development Credit Ordinance is fatally defective. It constitutes a taking for which compensation is required

because the ordinance must compel' the owner of a Transfer Development Credit to enter into an uncertain market subject to the contingencies of obtaining municipal approvals.

D. Transfer Development Credits Are An Unreasonable Exercise Of the Zoning Power

A zoning ordinance that is arbitrary or unreasonable cannot stand. In evaluating the reasonableness of a zoning ordinance a court must apply the following tests:

> **"The purpose sought to be accomplished must justify the restrictions; the means must be reasonably related to the ends; the detrimental effects of an ordinance must be weighed though the ordinance promotes a legitimate zoning goal; and if a detrimental effect outweighs the value of the legitimate goal the ordinance cannot stand." Home Builders League of So. Jersey v. Tp. of Berlin 81 N.J. 127 (1979) Kozensnick v. Montgomery Tp. 24 N.J. 154 (1957); Grand Land Company v. Township of Bethlehem, Superior Court of New Jersey Hunterdon County, Law Division Docket No. L 719-76 P.W. unreported Slip Opin. p. 29 and cases cited therein.**

Transfer Development Credits do not meet the test of reasonableness. Transfer Development Credits were devised to preserve the farmland in Cranbury. See Land Use Plan, 11-42 et seq. Nevertheless, the detrimental effects of the Cranbury Transfer Development Credits are so problematical that they outweigh the legitimate goals; thus the ordinance cannot stand. In fact, Transfer Development Credits may not preserve farm land; but Transfer Development Credits may eliminate farm land.

First, the Transfer of Development lights by a farmer may result in the farmer being required to repay his mortgage in full prior to its due date;

alternatively the farmer may have to renegotiate the mortgage interest rate. The farmer will thus be faced with greater expenses and less profit.

The typical mortgage note provides:

> "if there shall be any change in the ownership of the mortgaged premises or any part thereof ... without the written consent of the mortgagee, then and in such event the principal sum with accrued interest shall, at the option of the mortgagee, become due and payable immediately, although the period above limited for the payment thereof may not have expired, together with a prepayment penalty, if any, required, anything contained herein to the contrary notwithstanding."

In New Jersey, the Supreme Court has acknowledged that there is a question as to the validity of calling a mortgage for the violation of a due on sale clause. See Barry M. Dechtman, Inc. v. Sidpaul Corp, 89N.J. 542 (1982). There is a split of authority on the issue of whether or not such a clause is triggered per se by a transfer or whether acceleration can only occur on proof of impairment of security upon transfer. See Fidelity Land Development Corp. v. Rieder and Sons 151 N.J. Super 502 (App. Div. L 977) and Poydan, Inc. v. Kiriaki, 130 NJ. Super 141, (Ch. Div. 1974) affirmed o.b. 139NJi Super 365 (ADD. Div. 1976).

Clearly, under either test, a farmer who transfers his development rights or development credits is subject to having his mortgage called or be faced with an increased rate of interest on his mortgage. The impairment of security test would be satisfied inasmuch as the potential for the farmer transferor's land has

decreased. Upon the sale of development credits, the farmer's land cannot be used except for farming; prior thereto the land could be developed or farmed. Thus, the lender's security has been reduced in value because the potential>. uses have been reduced. Clearly, a transfer of Efevelopment Rights is a partial transfer of the property which also triggers the acceleration clause of a mortgage.

If the farmer is faced with a higher interest rate on his mortgage or the costs of refinancing his mortgage, the farmer's cost of operating are higher; profits decline. Declining profits may stimulate a reduction in farming. See Grand Land Company, supra at 35.

Secondly, in New Jersey the preservation of farmland is encouraged by the special tax treatment of Farmland Assessment Act,NJ.S.A. 50:4-23.1 et seq. When use of farmland is changed, the property is subject to roll back taxes for the year in question and two prior years. NJ.S.A. 54:4-23.8. In Paz v. DeSimone, 139 N.J. Super 102 (Ch. Div. 1976) the court concluded that, in absence of a written agreement between the purchaser and seller of farmland, a person who changed the use of the land is responsible for payment of the roll back taxes. Thus, if a farmer sells his Transfer Development Credit, he is, in fact, changing the use of a portion of his property. A portion of his property previously qualifing for farmland assessment will be used for development. The farmer thereby subject himself to roll back taxes. See Paz 139 N.J. Super, at 106. Proceeds from the sale of development rights by a farmer will have to be

utilized to pay roll back taxes. As a result, the potential proceeds received from a Transfer of Development Credits may not encourage the farmer to continue to farm. Rather, Transfer Development Credits may result in less farming; the farmer may be faced with greater costs of operation as well as having capital gains eaten up by roll back taxes. See Grand Land Company, supra at 35.

The detrimental affects of Transfer Development Credits outweigh its legitimate zoning goals. Thus the ordinance is clearly unreasonable and cannot stand.

E. The Transfer Development Credit Provisions Are Not Severable; the Entire Zoning Ordinance Is Null and Void

The Zoning Ordinance contains a severability provision. Article XXI provides:

> ARTICLE XXI
>
> VALIDITY OF ORDINANCE
>
> If any section, paragraph, subsection, clause or provision of this ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and the remainder of this ordinance shall be deemed valid and effective.

In Inganamort v. Borough of Fort Lee, 72 NJ 412, 422-23 (1977), the Supreme Court of New Jersey described the relevant considerations in determining whether or not an entire ordinance must fall despite a severability provision:

> "The appropriate rule was stated in State v. Lanza, 27 NJ 516 (1958):
>
> "'The principal of severability is in aid of the intention' of the lawgiver. The essential inquiry is whether the lawmaking body designed that the enactment should stand or fall as a unitary whole. It is not enough that the act be severable in fact; its severability in the event of partial invalidity must also have been within the legislative intention. It is a question of inter-

pretation and of legislative intent whether the particular provision is so interwoven with the invlaid clauses as that it cannot stand alone. A severability clause 'provides a rule of construction which may sometimes aid in determining that intent. But is an aid merely; not an inexorable comand'. Dorchy v. State of Kansas, 264 U.S. 286, 44 S. Ct. 323, 68 L. Ed. 686 (1924). Even where a severability clause has reversed the presumption of an intent that unless the act operate as an entirety it shall be wholly ineffective, the void provisions may 'so affect the dominant aim of the whole statute as to carry it down with them.' Railroad Retirement Board v. Alton R. Co, 295 U.S. 330, 55 S. Ct. 758, 768, 79 L.Ed. 1468 (1934). [27 NJ at 527-528]

"As we stated in Affiliated Distillers Brands Corp v. Sills, 60 NJ 60 (1972), referring to an analogous aspect of statutory construction, the legislative intention 'must be determined on the basis of whether the objectionable feature of the statute can be excised without substantial impairment of the principal object of the statute.' 60 NJ at 345. See NJ Chapt., Am. I.P. v. NJ State Bd. of Prof. Planners, 48 NJ 581, 593 (1967), appeal dismissed and cert. den. 389 U.S. 8, 88 St. Ct. 70, 19 L. Ed. 2nd 8 (1967); Angermeier v. Borough of Sea Girt, 27 NJ 298, 311 (1958). Sutherland, supra §44.07 at 347 - 348. Courts will enforce severability where the invalid portion is independent and the remaining portion forms a complete act within itself. See Affiliated Distillers Brands Corp v. Sills, supra, 60 NJ at 345-346; Yanow v. Seven Oaks Park, Inc;, 11 NJ 341, 361 (1953); Washington National Ins. Co. v. Bd. of Review, 1 NJ 545, 556 (1949); Gross v. Allan, 37 NJ Super 262, 269 (App. Div. 1955); Sutherland, supra §44.04 at 341-342." (Emphasis supplied).

In the instant case, the Transfer Development Credit provisions in the Zoning Ordinance were of paramount import; the main goals of the ordinance, as set forth in the Land Use plan, was preservation of farmland and compliance with Mt. Laurel II. Thus, if the Transfer Development Credit provisions fall, the entire ordinance must fall.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the Zoning Ordinance is null and void.

SCERBO, KOBIN, LITWIN & WOLFF
Attorneys for Plaintiffs, Browning Ferris Industries, Richcrete Concrete Co., and Mid-State filigree Systems

BY: _____
LAWRENCE B. LITWIN, ESQ.

SCERBO, KOBIN. LITWIN *8t* WOLFF
1O PARK PLACE
MORR1STOWN. N. J. O796O
(2O1) 538-A22O
ATTORNEYS FOR Plaintiffs

BROWNING FERRIS INDUSTRIES OF SOUTH JERSEY, INC., a Corporation of the State of New Jersey, RICHCRETE CONCRETE CO., a Corporation of the State of New Jersey, and MID-STATE FILIGREE SYSTEMS, INC., a Corporation of the State of New Jersey,
Plaintiffs

vs.

CRANBURY TOWNSHIP PLANNING BOARD AND THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CRANBURY,
Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. 058046-83

Civil Action

DEMAND FOR ADMISSIONS

TO: WILUAM MORAN, ESQ.
S. River Road
Cranbury, NJ 08512

STONAKER AND STONAKER
41 Leigh Ave.
Princeton, NJ

SIRS:

PLEASE TAKE NOTICE that the plaintiffs make requests for admissions pursuant to R. 22-1.

1. Based upon the municipal tax records of the Township of Cranbury (hereinafter Municipal Tax Records) Browning Ferris Industries ("BFI") is the owner of lands and premises known as Lot 6, Block 16 as shown on the tax map of the Township of Cranbury, Middlesex County, New Jersey.

Admit.

EXHIBIT A

2. Based upon the municipal tax records, BFI's lands and premises is 4.7 acres.

Admit.

3. Attached hereto as Exhibit 1 is a copy of a Resolution of the Cranbury Township Planning Board and related documents with respect to the BFI lands and premises. Is this an accurate record of the Township of Cranbury?

Admit.

4. Based upon the municipal tax records of the Township of Cranbury, Richcrete Concrete Co., ("Richcrete") is the owner of lands and premises known as Lot 13, Block 16, as shown on the tax map of the Township of Cranbury, Middlesex County, New Jersey.

Admit.

5. Based upon the information contained in the municipal tax records Richcretes lands and premises is 3.7 acres.

Admit.

6. Attached hereto as Exhibit 2 is a copy of Richcrete's use permit. Is the same an accurate record of the Township of Cranbury?

Admit.

7. Based upon the municipal tax records of the Township of Cranbury, Mid-State Filigree ("Mid-State") is the owner of lands and premises known as Lot 5, Block 16 as shown on the tax map of the Township of Cranbury, Middlesex County, New Jersey.

Admit.

8. Based upon the municipal tax records Mid-State's lands and premises is 16.1 acres.

Admit.

9. Based upon the municipal tax records the lands and premises adjoining the plaintiff's lands and premises to the west is owned by John Mansville or a subsidiary thereof.

Admit.

10. Based upon the municipal tax records, John Mansville lands and premises is 65.38 acres.

Admit.

SCERBO, KOBIN, LITWIN & WOLFF
Attorney for Plaintiffs

BY: _____
UAWRENCE 3. LITWIN, ESQ.

Dated: January 4, 1984

Exhibit 1

TOWNSHIP OF CRANBURY

USE PERMIT

Date ..F#b# 12, 1965

Pursuant to the provisions of the Zoning Ordinance of Cranbury Township, Middlesex County, New Jersey, the Cranbury Township Zoning Board of Adjustment doe* hereby grant a use permit tot

Richorete Concrete Co.

covering premises known as Hightstown-Cranbury Station Road

Tax Block No. 16 Lot No. 19 (in accordance with

thatch plat attached, where required) for the purpose of: Construction and operation

of a transit mix ©DUOrtte plant.

The said use permit has been granted upon the following conditions and/or requirements which the sc^ [applicant accepts as governing the issuance"bf the same. In the event any of the said conditions and/or Irwio^ments are at any me hereafter violated the same shall be immediate cavserfor *Ker revocation of sa?d u»e permits

The conditions established her«wjlfh. jwnder which said use permit has been granted by action of the Zoning[Board of Adjustment, are asfollows:

1. Prohibit moTeaent of delirery trooka of rair'liaterialB through £^]-reaideritlai; «>eaa of township aa agreed to by apDliejitot Hlohoret# through Mr. Theodore Toblsn.
2. »took pilea or materials to be 'ilnited'''te'^r|reavbiiabi« operational"jaiOTafetliot to exceed 10 feet high"aboVe^grade or lot aa agreed to by applicant, Riehorete, through Mr. Theodore Toblab •
3. HaturaX^eTergreen aereening atookpilea froalot fr^ntai^e aa agreed to by applloant, Richorete, through Mr. Theodore Tob1ah.

I certify that the above use permit has been duly granted by the Zoning Board of Adjustment at o m.etin0 held on Feb. 10.1965 in accordance with the terms and conditions hereof.

Eva F. Wright

S*C. of tfc* Zoning ftoard «f Adjustment

Bra. F. Wright

BFI

RESOLUTION OF CRAH3URY TOWNSHIP PLANNING BOARD

WHEREAS, D&M Pollera has made application for Site Plan Approval as provided for in Section 1250 of the Zoning Ordinance of the Township of Cranbury and in accordance with the provision of that ordinance the applicant has submitted to the Planning Board of the Township of Cranbury the application, fees, survey and all other data required therein, and

WHEREAS, in accordance with the provisions of the Site Plan Approval Section of the Zoning Ordinance, the Planning Board of the Township of Cranbury has held a review and hearing on the application on August 19, 1976, and

WHEREAS, the Planning Board, at its meeting on August 19, 1976, did review the Site Plan Application of D&M Pollera, as said site plan applied to the construction of concrete block building, 14,480 square feet in area, on the premises known as Block 16, Lot 6 on the Tax Map of the Township of Cranbury.

Q NOW, THEREFORE, BE JT RESOLVED, that the Planning Boar finds jthjit the, proppiSed Operation is in, accordance with the provisions pf the Si|e Plan Appro^al^Sectibn of the Zoning Ordinance and hereby grants its ^pproival' to';t#ie pilans presented and in accordance with the provisions of the ordinance authorizes the Building Inspector tb issue a Building Permit ti the applicants, subject to the fo$jlawipg condit&ons:

11. All construction to be ;'putsid& of designated flood plain.

2. riraat: Lurn to-be; r*rjj:ved by applicant.

3. Approval by County Planning Board and Soil Erosion and [illegible] Board of Health (sewerage).

It is specifically set forth herein that the approval granted is subject to the applicants satisfying all the requirements of the Statutes, regulations and codes of the State of New Jersey and its political subdivisions and that nothing herein

EXHIBIT C

shall obviate the applicant from adhering to all other requirements and codes of the Township of Cranbury other than those set forth in the Site Plan Approval Section of the Zoning Ordinance.

I certify the within to be a true copy of a Resolution adopted by the Cranbury Township Planning Board at a regular meeting, held on August 19, 1991.

DAPHNE A. O'BRIEN
Planning Board Secretary

litlife-Ji

C. ROBERT JONES, JR.
N.J. PE & LS-11367 CIVIL ENGINEER PHONE (609) 737-0457
322 SKED STREET - P. O. BOX 233
PENNINGTON, N. J. 08534

July 14, 1976

To: Cranbiay ToKashio Planning Board
& Hal Pollera

Re: Sito Flan Application Doii

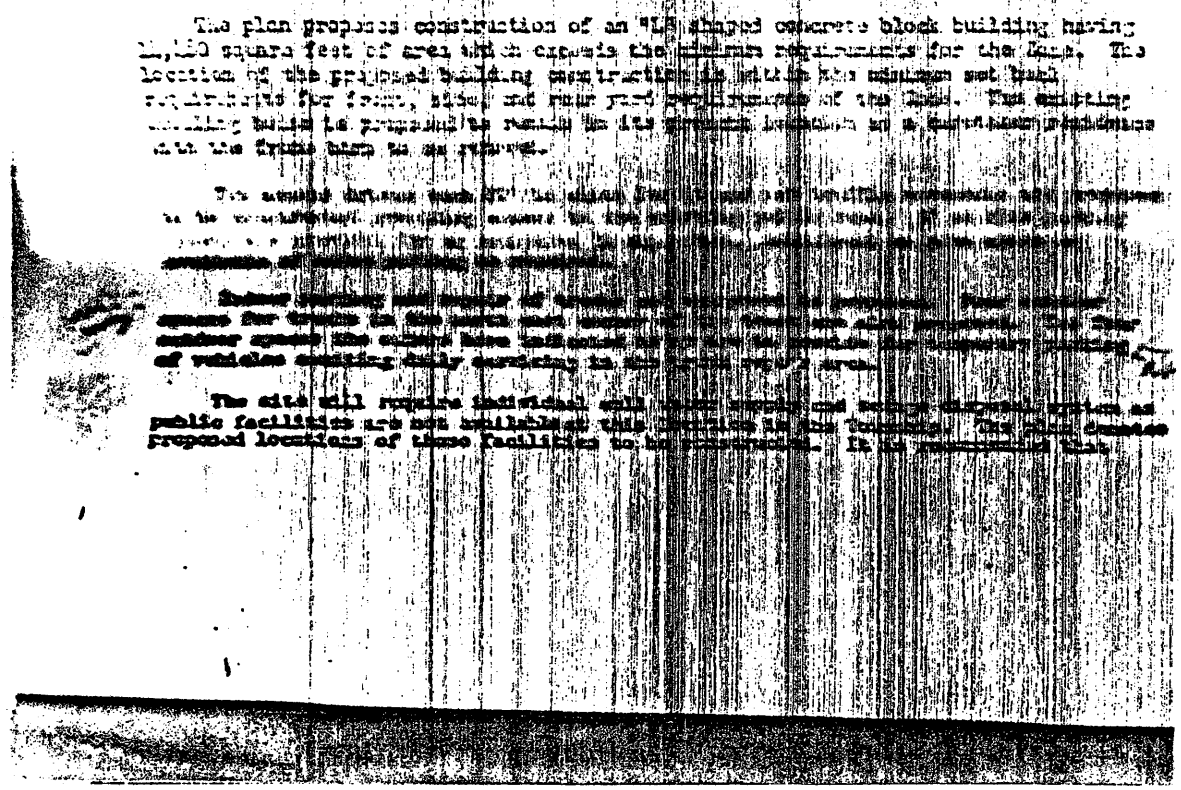
Qentlenen:

Tho sito plan and application of Don and llsl Pollera for the proposed construction on lot 6 in block 16 includes a survey of ths entire property shoving existing buildings, topography and proposed construction. Tho key map shows all properties and owners vithin 200 feet, area zoning, and the existing roadways providing access in proxinity to tha development site. The entire sito is located within the Industrial Zone of the Township.

The site provides *7* fact of frontage alo=c the Hichtstown Cranbury Station Road and U.67 acres of land area vhich meet tharfniiaum lot oizo requirements for the Zono. Tho plaa provides for fill construction ostsldo tho flooduay Unit and flood hacard area. Unit as outlined in P.oport ^12 *o£* tho H. J. Dcpartaent of Co&3crration and Economic Dovdcpscat Dolinoation of tiia ULllctono River Flood Plain.

Tho present use of tho propsrty i3 residential with an existing one fcsily tOT story stusco dualling and framo barn.

Th3 proposed usa of th3 property providesi ,fpr office facilities, paricLns, storage and rcrjair of trusl:s in connection with the Prlncston Disposal Inc.'5 solid wasto eperatiena, as vsll..a3 continuation of tha etcis.ftiac rwidojitial use for a caretaker facility. The pas^x^, storaj;'* end repair ^i^rud'.s iiuo v^5 th? aubj set: 0? hearing tnd a U30 variaaca recff^aeadiija by ths ZoaUvji'^a^rd.of ildjustuj^t and crcatea- bj tho Township Committee in April of this year.



the proposed septic system bo relocated southeasterly ^*roa* its present proposed location to move tho system out from under th^ r0ad«V &»d parkinjj!; areas. Tho system design should be subraittac and approvrpjj. |/j tho Baard of Kqalth.

On site diesel and gasoline storage facilities are proposed,viJhich are assumed tdll be underground storage facilities. The £uMtitiQ3 of the storage tanks are denoted c;i xJie plan at 2500 gapjo^s. '-^lil^' ; '$. ' " '

The outdoor storage of garbage containers! :|s-'proposed. The ^location to ba insids the cydon9 fencad aroa,. and behind the propoael.?buildings, vhichjj should provide a screening of these containers frcsa the road. 5v:. bj.

Overhead utilities of electric and telephone servico are proposed fron tl:e existing pole and overhead lines along the property fronta-s. Security lighting utilizing 500 vatt shielded norcury vapor lamps, arc indicated at,flva corners of the proposed building. N 't#-

In tho absence of any dotoils of 6igns, it: is asaicnec? that no signs aro proposed to be installed at the site. j|,] {•$

Natural drainage at tho site is fron tho north toward the Millstone iiiver on the south. The plan denotes an intecoptor ditch to bo constructed on site to pick up surfaco \.-ater draining touard the proposed building and to convey the satna aiay from, end around the buildings, discharging on alto in tha rear. ; The plan also denotes building floor drains to be piped to an existing eper. ditch under and acrcss the Eightstoun Craibury Station *?stzd*. This proposal is not rscocsended for approval* It is suggested that any building drains bo located on tho sits, as adequate elevation of tho sito mill permit discharge on the site. . Connection to tho ditch along the road ie not recocaended as the ditch may become closed causing a backup into the buildings, or the ditch could be eliminated in future road ccrctruction.

The plan denotes a proposal for sediment end errosion control during construction which vill require submission aad approval by tho Local Soil Conservation District.

Aa a final concent for tha Planning Eoard'i itnforr.ation, this is tho final sito to be developed on this portion of ths Hightsijoji>ni Craiibury Station Road. All sites along this road embrace heaving trucking usQS,nkrk with the present road surfaco of only built up: bituriinous surface treatjncntqj^i a-, pavement tidt^jpf only ,16 - 18 feet and open ditches'for drainage, Vthb repairs and.|f|Rp|nt3nan<» aad .i|fcraands for a more adequate roadvay can be expected to increa3O.|iit|4is r4<Jo=esdea;that ccjnsideration bo given providiiig for a iK>rs adequate and 3^f|lrftpad-..'2^i for thstfji,st.retcb, of ithc Township's public road system,; .) . • •; . , • •Ultjl' *'b.* i-ill :i"i. *h]*

The submitted plan is recorrierded for di J©ji|&jlon. ak^. 'eorsii|rati|o'n ôy !th'o;' Planning Board. -"Any approval shouLd be condi|djo^|^,anilS^^octljiilo" r^ioc|tiion <of' the floor drainage proposal as! shc;cijj approval" of the ... s|M|aa;|jjsr't^e' Board of Health, a?proval of the site *p^ss* by the CouSty Planning |f^ard;'J,i'flind; itoprovajl ,of tho Sodiment and jirrpsion Control |*ls£ by the Soil Conservati...

Respectfully submitted,

C. Robert Jones, Jr.
Cranbury Township Engineer

FREEHOLD SOIL CONSERVATION DISTRICT
(Serving Middloiex and Monnwuth Countin)

j 20 COURT STMtpjri'.'
FREEHOLD, NEW JERSEY 07728
Ttl: (201)462-1079

August i0, if?6

Messers. Don and Mel Pollera
P.O. Box:li8A il
Craribury, New Jersey 08512

. Dear Sirs;

This is to inform you that thetiscjrii erosion and sediment control plan for Block 16, Lot 6, in Cranbur^|jas been ;'c,ertified by the Freehold Soil Conservation District as meeting 3,|,^he :M|q\jireme|rt.s.:Of Chapter-':: 251* P.L. 1975.

k.u \ . Ill "!*" *Ml •J$$Ki'-i iM •*

One copy of the certified plan is enclos#/S • . 'iill-te[1] •;-..: -t';rv:[v],

Sinc

Robert Ostergaard

Robert Ostergaard
Chairman

Enclosure

cc: CrapbOry Townshlp| Planriing Board

MtK

MIDDLESEX $OUNTY PLANNING BOAKD

: '40Mw:iNGSTON AVENUE
NEW' BRUNSWICK, NEW JERSEY 08901
(201) 246-2600

August 24, 1976

Ms. Daphne O'Brien, Secretary;
Cranbury Planning Board
IS Bunker Hill
Cranbury, New Jersey 08512

Re: D & M Pollera
Lot 6, Block 16
Our File # CR-NA-1176

Dear Ms. O'Brien:

The staff of the Middlesex County Planning Board has reviewed the site plan entitled, "Property Survey - Planting Plan and Site Plan For Proposed Construction Lot 6, Block 16 on The Township of Cranbury, N.J. Tax Map" and dated May 18/ 197$, and («hey have determined that approval by the Subdivision and Site; Plan Copali ttee will not be required since the site in question does not^abut a County road.

However, the Office |f tlie Cpunty Engineer notes that a port on of this application lies within the Special Flood Hazard Area Delineation from F.I.A. Flood Hazard Boundary Maps and recommend that these plans be reviewed and approved by the i.f JD.E.P., Division of Water Resources.

Sincerely yours,

David M. Dischner
Assistant Planner

DMD:iws
cc: C. Robert Jones, Jr., Engineer
Williaa Roach, Consultant
Jocua Christiansen, Building Inspector
D 6 M Pollera, Owners and Applicants
Seiler and O'Brien, Engineers

SITE PLAN APPLICATION

.U1BURY TOWNSHIP PLANNING BOARD

APPLICATION # 24

Property Survey, Planting Plan & Site Plan for Proposed construction 7-1-76

Date

Applicant D & K Pollera Tel. No. (609) 395-1389

Address P.O. Box 118-A, Cranbury, N.J. Zip 08512

Owner of Premises Don & Mel Pollera Tel. No. (609) 395-1389

Address P.O. Box 118-A, Cranbury, N.J. Zip 08512

Lessee None Tel. No. ( )

Address Zip

Location of Property in Question (Street Address) Station Road

Block 16 Lot (s) 6 Zone R-1 Area 4.6 (Acre

Nature of Applicant's Interest in Property Owner

Date interest acquired 8-7-72

Present Use of Property One Family Dwelling & Garage

Description of present Structures 2 Story Block & Stucco House & Frame Garage

Disposition of Structures One Family House to remain as caretakers

Proposed Use of Property Parking Storage & Repair of Trucks

Property Part of (MINOR) (MAJOR) Subdivision Granted 4-26 19

The Board of Adjustment Granted a (Bulk) (D-Use) Variance on 6-14 19

permitting Parking Storage & Repair of Trucks

Address all correspondence concerning this application to: (check one)

(X) Applicant ( ) Name Don & Mel Pollera (Title) Owner
( ) owner or Street P.O.Box 118-A
( ) Lessee City, State Cranbury, N.J. Zip 08512

NOTE: FAILURE TO ANSWER ANY OF THE ABOVE QUESTIONS SHALL VOID THIS APPLICATION

I swear that the above application is true and correct to the best of my knowledge

Sworn to and subscribed before me this 2 day of July 1976

Notary Public

My Com. Expires 10-1-78

Signature of Applicant

Mel Pollera Owner

(Type or Print Name and Title)

ENCLOSURES A. Property Survey TITLE Property survery, Planting Plan & Site plan for proposed construction (Date) 5-18-7

B. Site Plan TITLE Same (Date) 5-18-7

C. Landscape Plan TITLE Same (Date) 5-18-7

D. TITLE (Date)

FOR PLANNING BOARD USE ONLY:

$25.00 Filing Fee Received on

Hearing Date

SCERBO. KOBIN, LITWIN & WOLFF
IO PARK PLACE
MORRISTOWN. N. J. O796O
(2O1) 538-4220
ATTORNEYS FOR Plaintiffs, Browning Ferris, Industries, et al

BROWNING FERRIS INDUSTRIES OF SOUTH JERSEY, INC.,A Corporation of the State of New Jersey, RICHCRETE CONCRETE CO., A Corporation of the State of New Jersey, and MID-STATE FILIGREE SYSTEMS, INC., A corporation of the State of New Jersey, Plaintiff vs. CRANBURY TOWNSHIP PLANNING BOARD AND THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CRANBURY, Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY Docket No. 058046-83
URBAN LEAGUE OF GREATER NEW BRUNSWICK, Plaintiff vs. CARTERET, ETC., et al Defenant	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY Docket No. C 4122-73

EXHIBIT B

JOSEPH MORRIS AND ROBERT MORRIS, Plaintiff vs. TOWNSHIP OF CRANBURY IN THE COUNTY OF MIDDLESEX, a municipal corporation of the State of New Jersey, Defendant	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY Docket No. L 054117-83
GARFIELD AND COMPANY, a New Jersey Partnership, Plaintiff vs. MAYOR AND THE TOWNSHIP COMMITTEE OF THE' TOWNSHIP OF CRANBURY, a municipal corporation and the members thereof; PLANNING BOARD OF THE TOWNSHIP OF CRANBURY and the members thereof, Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY Docket No. L 055956-83
CRANBURY DEVELOPMENT CORP. Plaintiff vs. CRANBURY TOWNSHIP PLANNING BOARD AND TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CRANBURY, Defendnats	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY Docket No. L 59643-83

REQUEST FOR ADMISSIONS

TO: WILLIAM MORAN, ESQ.,
Attorney for Township of Cranbury

JOSEPH STONAKER, ESQ.
Attorney for Cranbury Township Planning Board

PLEASE TAKE NOTICE that plaintiffs make Request for Admissions pursuant to Rule 4:22-1.

1. Browing Ferris Industries (BFI) is the owner of lands and premises known as Lot 6, Block 16 as shown on the tax map of the Township of Cranbury, Middlesex County, New Jersey.
To admit or deny this statement would require the obtaining of a current title search, which cannot reasonably be obtained by the defendant.

2. BFI's lands and premises are located on Hightstown Cranbury Station Road. Admitted

3. BFI's lands and premises is 4.7 acres. To admit or deny this statement would require a current certified land survey, which is not reasonably obtainable by the defendant.

4. BFITs land has been used since approximately July 1, 1976 foi parking, storage and repair of trucks pursuant to a site plan and related use variance.

Denied

5. Richcrete Concrete Co., (Richcrete) is the owner of lands and premises known as Lot 13, Block 16, as shown on the tax map of the Township of Cranbury, Middlesex County, New Jersey
To admit or deny this statement would require theobtaining of a current title search of the property which is not reasonably obtainable by the defendant.

6. Richcrete's lands an dpremises are located on Hightstown Cranbury Station Road.

Admitted

7. Richcrete's lands and premises is 3.7 acres, TO admit or deny this statement would require the obtaining of a current certified land survey which is not reasonably obtainable by the defendant.

8. Richcrete's land has been used since approximately February 1965 for the constructipn and operation of a transit mix concrete plant pursuant to a use permit.

Denied

9. Mid-State Filigree (Mid-State) is the owner of lands and premises known as Lot 5, Block .16, as shown on the tax map of the Township of Cranbury, Middlesex County, New Jersey. To admit or deny this statement would require the obtaining of a current title search, which cannot reasonably be obtained by the defendant.

10. Mid-State's land and premises are located"on Hightstown Çranbury Station Road.

Admitted

11. Mid-State's lands and premises is 16.1 acres. To admit or deny this statement would require a current certified land survey, which is not reasonably obtainable by the defendant.

12. Mid-State's land has been used since 1972 for the manufacturing of cement forms as a permitted use.

Denied

13. The land and premises adjoining the plaintiffs land and premises has been owned by John Mansville, Inc. To admit or deny mis statement would require the obtaining of a current title search, which cannot reasonably be obtained by the defendant.

14. John Mansville, Inc.'s land and premises are known as Lot 4, Block 16 on the tax map of the Township of Cranbury, Middlesex County, New Jersey.

Admitted

15. John Mansville, Inc., lands and premises are located on Brickyard Road. Admitted

16. John Mansville, Inc., lands and premises is 65.38 acres. To admit or deny this statement would require a current certified land survey, which is not reasonably obtainable by the defendant.

17. John Mansville, Inc., land is vacant.

Admitted

18. The Planning Board recommended to the Township Committee a zoning ordinance in which plaintiffs' land and premises were located in the light impact industrial zone.

Admitted

19. The Planning Board recommended to the Township Committee a zoning ordinance in which the Johns Mansville land and premises be located in the light impact residential zone.

Admitted

20. The Planning Bord adopted a master plan in which plaintiffs' lands and premises were reconmended to be zoned light impact industrial. Admitted

21. The Planning Board adopted a master plan which recommended that *the John Mansville land and premises be located in the light impact residential zone.

Admitted

22. If the Cranbury zoning ordinance did not contain provision for transfer development credits, Cranbury would not be able to meet its obligations to provide low and moderate income housing in accordance with Mt. -Laurel II. Denied

SCERBO, KOBIN, LITWIN & WOLFF

LAWRENCETB. LITWIN, ESQ.

Dated: 12/15/83

SCERBO. KOBIN, LITWIN & WOLFF
1O PARK PLACE
MORRISTOWN. IM. J. O796O
(2O1) 538-4220
ATTORNEYS FOR Plaintiffs

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 058046-83 P.W.

BROWNING-FERRIS INDUSTRIES OF SOUTH JERSEY, INC., A Corporation of the State of New Jersey, RICHCRETE CONCRETE COMPANY-, A corporation of the State of New Jersey and MID_ STATE FILIGREE SYSTEMS, INC., a Corporation of the State of New Jersey
Plaintiffs

vs.

CRANBURY TOWNSHIP PLANNING BOARD AND THE TOWNSHIP OF CRANBURY,
Defendants

CIVIL ACTION

INTERROGATORIES

TO*.
William Moran, Esq.
South River Road
Cranbury, NJ 08512

Demand is hereby made that the defendants provide ceritifed Answers to the following Interrogatories in accordance with Rules of Court.

SC&RBO, KOBIN, LITHJ.N & WOLFF
At-qorney^for Plaintiffs

BY: **'LAWRENCE ¥. LITWIN, ESQ.**

Dated: October 26, 1983

EXHIBIT C

PRELIMINARY DEFINITIONS AND INSTRUCTIONS

1. As used herein, the terms ."you" or "defendant" shall mean the defendants in this action.

2.. When used herein, the terms "Planning Board" shall mean the defendant Cranbury Township Planning Board and all agents, servants and other acting on its behalf.

3. When used herein the term "Township Committee" shall mean the defendant Township Committee of the Township of Cranbury.

4. When used herein, the terms "document" and "writing" includes the original or copy of correspondence, records, charts, contracts, agreements, calendars, diaries, memoranda, notes, letters, telegrams, studies,instructions, pamphlets, brochures, inter and intra-office communications, transcripts, tapes, recordings of any kind, checks, checkbooks, requisitions, vouchers, bill invoices, journals, ledgers, bankbooks, bank statements, time sheets or any other writing of any kind or description whatsoever, including original documents and copies where applicable (and any non-identical copy, whether different from the original because of handwritten notes or underlining on the copy or otherwise), relating to the subject matter of this litigation, in the possession or control of defendant, its agent, servants, employees and all other persons acting or purporting to act in their behalf.

5. The terms "identify" or "identity" when used in reference to an individual person means to state his full name, age, and present address. "Identify" or "identity" when used in reference to a document means to state the date and author, type of document (e.g. letter, memoranda, telegram, etc.) or some other means of identifying it, and its present location or custodian. If any such document was, but is no longer in your possession or subject to your control, state what disposition was made of it.

6. Whenever an interrogatory asks for the description of a document, it is the intention that the answer shall state the date of such document; the general nature or description and the subject matter of such document; the name of each person to whom such document was addressed; and the name of the person having possession, custody or control of such document.

7. The term "person" as used herein shall include natural persons, firms, associations and corporation, and whenever a request is made herein for the name of a person, it is the intention that the answer shall also state his or its address.

8. The term "representative" as used herein shall mean and include any and all officers, directors, agents, employees, partners, attorneys and consultants.

9. With respect to any of the following interrogatories or parts thereof, as to which you, after answering, acquire additional knowledge or information, the undersigned requests that you serve supplemental answers (containing said additional knowledge or information) on the undersigned within thirty days after acquiring such additional knowledge or information.

1. Identify all persons whom you believe have knowledge of facts relating to this case and briefly summarize the area of knowledge you believe each such person possesses.

All members of the Cranbury Township Planning Board, All menbers of the Cranbury Township Committee, Georgea von Lutcken, Secretary Cranbury Township Planning Board, all with knowledge of procedures and reasons for the adoption of the Land Use Plan and Zoning Ordinance.

Experts indicated below: Thomas March and Gerald Lenaz - Planning information concerning adoption of Land Use Ordinance and Master Plan.
Various officers of the various plaintiffs.

2. Identify each person whom you expect to call as an expert witness at trial and set forth the following with respect to each such person: A) his precise undertaking with respect to this case and the subject matter on which he is expected to testify; B) the substance of the facts and opinions on which the expert is expected to testify; C) a summary of the grounds for each opinion to which he is expected to testify; D) the precise manner and amount of compensation to be paid to said expert; E) the date when said expert was first consulted; F) the date when said expert was first retained; G) attach copies of any written reports rendered by each expert witness; if no written report has been rendered to you, please provide a complete summary of any oral reports given to you by said expert witnesses; H) attach all correspondence between you and said expert respecting this case.

George Raymond:

A. To provide planning testimony concerning the validity of the Cranbury Township Zoning Ordinance as it applies to plaintiff's lands.

B. He will testify that the zoning ordinance is a reasonable exercise of the police power applied to plaintiff's lands and that plaintiff's land is zones as part of a reasonable comprehensive scheme.

C. See Cranbury Township Land Use Plan.

D. Based upon annual retainer agreement as Cranbury Township Planning Consultants.

E. 1981
F. 1981
G. See the Cranbury Township Master Plan and Land Use Ordinance
H. Work Product

Ranald A. Curini:

A. To provide testimony concerning the value of transfer of development credits and real estate in the preservation and receptor zones.
B. He will testify that the value of the land will not be adversely affected by TDC.
C. His knowledge of real estate in the area.
D. Hourly rate
E. January 1984
F. January 1984
G. See B above
H. Work Product

3. With respect to each expert listed in answer to interrogatory #2 above, state whether he has had a formal education or training in his field of expertise.
If so, state: A) the name and address of each institution where he received such special education or training; B) the dates when he attended each institution; C) the name or description of each degree he received, including the date when each was awarded and the name of the institution awarding it; D) did he have other specialized training in his field? If so state (i) the type of training; (ii) the name and address of the institution or source of such training; and (iii) the dates when he received this training.

Resume of George Raymond attached hereto. Others to be provided.

4. For each expert listed in answer to interrogatory #2 above, state whether he is a member of a professional organization or trade association. If so, state A) the name of each professional organization or trade association; B) the requirements for membership; C) the dates of membership; and D) a description of each office he has held in each such organization or association.

See answer to No. 3 above

5. For each expert listed in answer to interrogatory #2 above, state whether he has written any books, papers or articles on any subject related to his alleged area of expertise in this case. If so, for each book, paper or article, state: A) the title and subject matter; B) the name and address of the publisher; C) the proper citation, including the date of the publication.

See No. 3 above

6. For each expert listed in answer to interrogatory #2 above, state whether he has practices or worked in his field during the past five (5) years. If so, state: A) whether he was self-employed; employed by someone else or associated as a partner; B) each address where he practiced or where he ws employed; C) the dates he was with each employer; D) the type of duties he performed with each employer.

George Raymond:

A. Partner, Raymond, Parish, Pine & Weiner
B. Princeton, NJ, Tarrytown, New York
C. Last five years
D. Planner

Ronald A. Curini:

A. Self employed
B. Trenton, N.J.
C. Last five years
D. Real estate appraisal

7. For each expert listed in answer to interrogatory #2 above, who has not practiced or worked in his field during the past five years, set forth the nature and description of his employment during this period.

N/A

8. For each expert listed in answer to interrogatory #2 above, set forth precisely all other facts upon which you will rely to qualify this person as an expert in this case.

See # 3

9. State whether each expert listed in answer to interrogatory #2 above has testified in any court within the last 10 year as an expert witness on a subject in any way related to the subject matter of the within action. If so, identify the following: A) the court in which he testified; B) the name and docket number of the case in which he testified; C) a brief description of the underlying facts as to each case in which he Testified; D) the sum and substance of the testimony which he offered.

See #3

additional material to voluminous to provide

10. With respect to each expert listed in answer to interrogatory #2 above, state whether he has failed to qualify as an expert witness in any court proceeding in the last two years. If so, identify the following: A) the court in which he attempted to testify; B) the name and docket number of the case in which he attempted to testify; C) a brief description of the underlying facts of the case; D) an explanation of why he failed to qualify as an expert.

No.

11. State the name of any expert witness consulted by defendant who will not be used at trial.

N/A

12. Has any admission been made by any of the parties to this action concerning the subject matter hereof?

No.

13. If the answer to the above is affirmative, set forth A) the date and place of each admission; B) the substance of each admission; C) the name and address of each person making an admission; D) the name and address of the person to whom each admission was made; E) the names and addresses of all persons present when each admission was made or having knowledge thereof; F) identify all writings evidencing same.

N/A

14. If you intend to rely upon any written documents to establish your defenses to this action, append hereto a copy of the same.

We intend to rely on all reports prepared by all experts for all parites to the case as applicable; and copies of the New Jersey State Department Guide Plan, proposed amendment thereto, Cranbury Township Master Plan and Zoning Ordinance. See attached.

15. Set forth, in detail, all facts which you contend form the basis of the defenses to this action.

The facts set fortti in the Township Master Plan, which demonstrate that plaintiff's property is zoned as part of a reasonable comprehensive scheme.

15. Identify any persons who have given any written statement relating to this case. Annex a copy of each hereto.

All experts of all parties - copies already provided directly or will be.

16. Set forth the date upon which the defendant answers these interrogatories

Various dates in January and February 1984

17. Identify all persons supplying information for the answers to these interrogatories.

Thomas March, Gerald Lenaz, George Raymond, Ronald Curini, and counsel for defendant.

18. State the names and addresses of all persons who have any knowledge of any relevant facts relating to this case.

See answer to No. 1. Addresses of specific individuals will be provided on request.

19. Set forth, in detail, all conversations between the parties to this action, their agents, servants, employees and representatives concerning the subject matter thereof, indicating A) the date and place of each conversation; B) the parties to each conversation; C) substance of each conversation; D) the purpose of the conversation.

Iitpossible to set forth in the detail requested. The *TDC* schema was discussed at literally hundreds of conversations between 1978 and 1983.

20. Please set forth in detail the basis upon which the Cranbury Township Land Use Plan ("Land Use Plan") and the Cranbury Township Zoning Ordinance ("Zoning Ordinance") concluded that plaintiffs' property should be zoned light impact industrial?

The plaintiff's land is presently developed as an industrial use. The present land use plan and zoning for light inpact industrial provide for a variety of industrial uses. Ihe Township's policy is to encourage industrial uses only near N.J. Turnpike Exit 8A and East of the railroad and New Jersey Turnpike. Exceptions were irade only v*iere industrial use already existed.

21. Please set forth in detail the reasons why the Zoning Ordinance and the Land Use Plan did not conclude that plaintiffs' properties (which have been used for a substantial period of time as heavy industrial uses) should not be zoned as conforming uses or conditional uses?

Richcrete and Mid State Filigree have been granted use variances. Browning Ferris was a nan conforminguse under the previous Industrial Zone. The properties were not classified as heavy industrial use, because it would be a spot zone. Ihe Light Industrial Zone does not have provision for heavy industrial because of the Township's continuing policy of discouraging such uses in this location.

22. Please set forth in detail the basis upon which the Land Use Plan, and the Zoning Ordinance concluded that the Johns Mansville Property which adjoins plaintiff's property be zoned light impact industrial.

Ihe Johns Mansville property is zoned Li<^it Impact Residential.

23. Aren't industrial users and residential users in close proximity in consistent land uses? If not, why not?

The plaintiff's properties are separated from the adjoining residential zone by a wooded buffer. The residential use is low density. The three acre minimum lot requirement provides ample opportunity for additional buffers on the adjoining residential lots. The juxtaposition of such uses is not necessarily inconsistent.

24. Please set forth, in detail, the Township Committee's total housing obligation pursuant to South Brulington County NAACP v. Mt. Laurel Twp., 92 NJ 158.

Presently under review.

25. Can the Township Committee meet its Mt. Laurel housing obligations without transfer development credits? If so, please detail the reasons therefor.

The Township's housing obligation is presently under review.

26. Attach hereto copies of all notices of Master Plan hearings held by the defendant Planning Board.

N/A

27. Please set forth the basis in detail upon which the Land Use Plan and the Zoning ordinance concluded that the lands west and north of the plaintiff's property be zoned light impact industrial?

North and west property is zoned Light Inpact Residential.

28. Identify by date all meetings, hearings, discussions or conversations, whether public or non-public at which the matter of land use designation for lands in the Brick Yard Road area was discussed.

Iirpossihle to answer. See answer to No. 19.

29. Please identify and provide all written documents evidencing or touching upon land use/zoning district classifications for the Brick Yard Road area.

Refer to the Land Use Plan.

30. Please set forth and provided any studies that support the feasibility of development of single-family homes on three-acre lots in the Brick Yard Road/U.S. Route 130 area.

Befer to Land Use Plan.

31. Please provide what price of such homes would be in 1983 dollars.

No attempt was made to determine such price.

32. Please indicate the sound planning principals which were considered in the decision to provide for the construction of single-family homes on 3-acre lots adjacent to plaintiff's properties.

The Township reduced the excessive amount of industrial land zoned within the Township, including the adjacent area.

The three acre zone adjacent to the plaintiff's properties has a wooded buffer along the Li^it Impact Industrial Zone boundary. Almost all the land south of Brickyard Road is within the 100-year flood plain. The Township considers this to be an environmentally sensitive area and its policy is to minimize the intensity of development in such areas.

33. Please indicate the minimum distance that a single family home can be placed in the light impact residence zone from the plaintiff's property. Please set forth the section of the Zoning O rdinance which so indicates.

Section 150-19,A.

1. Lot area - 3 acres
2. Frontage - 250 feet
3. Lot depth - 250 feet
4. Front yard - 50 feet
5. Side yard - 50 feet
6. Rear yard - 50 feet

34. Please state whether any buffering, transition areas or similar controls exist in the Light Impact Residential zoning regulations applying to the development of single family homes on 3 acre lots. If so, set forth the sections from the Zoning Ordinance.

There are none since with 3-acre lots, the Planning Board has ample opportunity to achieve a subdivision layout which makes possible sufficient buffering on the residential side of the district boundary.

35. Please state the reasons that 3 acre lot size was established as the minimum lot requirement in the LI-R zone.

See the Land Use Plan, Page III-ll and .111-12.-

36. State whether the defendants contend that housing construction has not been effectively precluded in the Li-R zone in the Brick Yard Road/Route 130 area by enactment of the Zoning Ordinance. Please set forth the basis for the answer to this question.

Other adjoining communities have large lot zoning. For example, Plainsboro at 6 acres, South Brunswick at 3 acres and East Windsor at 2 acres. Further, the zoning along Brick Yard Road permits cluster residential development. Residential development as zoned is therefore deemed to be possible.

37. Please describe the nature of plaintiffs industrial activities and relate to the compatibility of the activities to single-family residential development.

Plaintiffs are involved with the production of concrete products and storage of vehicles.

A buffer between the single family residential and industrial zones exists.

38. State why the flood plain area along Indian Run Creek was not considered as the boundary line between LI-R and LI-I zoning districts in the Brick Yard Road area.

The Township sought to minimize industrial land in order to balance the relationship between residential and industrial land use. Also, much of the land between Brickyard Road and the stream is in the flood plain. Finally, some of that land is now in residential use.

39. Please indicate and identify the names of any owners of property in the Brick Yard/U.S. Route 130/Hightstown-Cranbury Station Road area that were consulte< with or expressed opinions to the Planning Board during the Master Plan preparation about land use designations for the area.

None

40. Please indicate why development in the LI-R Zone in the Brick Yard area should not be restricted to a form of planned development only.

Cluster development, vhich is a form of planned development, is permitted in the Ll-R Zone

41. Please indicate the areas of the Towjiship whose soil is identified as "Woodstown, Falkington, Humaquepts" or similar soil types and indicate their zone classification. Provide acreage figures for the amounts of the above soil found in each zone district.

Refer to the Land Use Plan, page 11-16 for the soil classifications of lands throu^iout the Township. Hie Township has not performed a classification using the above types.

42. Please indicate the zoning of lands located east of the New Jersey Turnpike in both Cranbury and Monroe Townshp in proximity to the Brick Yard Road area.

Light Impact Industrial in Cranbury and li<^it Industrial in MDnroe.

43. Please indicate if the development of these lands and related impacts was considered when establishing LI-R zoning for the Brick Yard Road area.

Yes.

44. Please indicate why the public sewer system cannot be extended to serve the LI-R zoned area along Rt. 130 and Brick Yard Road .

The designed capacity of the present sewer system is only capable of serving the area surrounding 3rainerd Lake. Ihe area in question is tiro ridge lines removed from the existing service area (see Plate II-3 following page II-21 in the'Land Use Plan.)

45. Inasmuch as the Master Plan indicates that at full development Cranbury cannot provide housing to serve anticipated employment in the Township and indicates that this housing will be provided within other communities within the region, please indicate the communities expected to provide the needed housing and the number of units to be provided.

The Land Use Plan does make provision for housing sufficient to accommodate a number of household?, equalto the anticipated enployment in the Township at the lowest intensity of development likely to occur. (pp. 111-21, 22). The Plan also indicates that, "should the statutorily required future reviews...show the emergency of any serious imbalance between jobs and housing", the Township should adjust land allocations and densities as needed (p. 111-22.)

46. Please indicate the maximum number of low and moderate cost units that can be developed in Cranbury under the provisions of the Zoning Ordinance.

Approximately 400 units.

47. Please indicate the number of low and moderate units that would be considered as Cranbury's "fair-share" under Mt. Laurell analysis.

This is presently under review

48. Please indicate the function of Brick Yard Road as it relates to Cranbury's roadway circulation system.

Arterial road.

49. Please indicate the classification of the Route 130/Brick Yard Road area in the New Jersey State Development Guide Plan.

Growth area

50. Please indicate the nature and intensity of use of the Brick Yard Road/Route 130 area as classified in the State Development Guide Plan.

In general, the SDAP recommends residential densities of not less than t&ro dwellings per acre in growth areas. For the area south of Brick Yard Road, see answer to questions Nos. 32 and 34. The area north of Brick Yard Road is also characterized by flood plains and a high water table. Due to absence of sewers and piklic water, cluster development is permitted at a density of only one unit per acre.

51. State whether the defendants have, by establishing the 3-acre residential zone in the Brick yard Road - U.S. Route 130 area, attempted to either:

A. Preclude growth; or

B. Time or phase growth in Cranbury Township

A. No

B. No

52. If the defendants are seeking to time or phase growth:

A. Set forth in exact detail the guidelines and provisions of any such timed or phased growth plan;

B. The authority upon which the right to time or phase growth is premised;

C. The length of time that such a time or phased growth is intended to be in effect; if such a plan has been reduced to writing or any writing exist which are related to such a plan, provided copies of same.

N/A

53. State whether the Zoning Ordinance provides for a well balanced community and, if so described in detail the factual basis for the conclusion.

Refer to the Land Use Plan, especia-ly pp. 111-19 ff

54. Set forth the demographic breakdown of Cranbury Township, including specifically but not limited to:

A. The number and percentage of households with annual income levels of:

	Nunfaer of Households	Percent (rounded)
1. less than $10,000	105	15
2. between $10,000 and $15,000	62	9
3. between $15,000 and $20,000	75	11
4. between $20,000 and $25,000	98	14
5. between $25,000 and $35,000	128	18
6. between $35,000 and $50,000	130	19
7. between $50,000 and $100,000	103	15
8. over $100,000		

B. The number and percentage of the Township's population that are minorities, broken down by specific minority group.

	Nunfoer	Percent
Total population	1,927	100
Black	168	8.7
Asian and Pacific Islander	5	0.3
Other	11	0.6
Spanish	19	1.0

CERTIFICATION

I hereby certify that the copies of the reports annexed hereto rendered by proposed witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of said experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated:

MIDDLESFX COUNTY PLANNING BOARD

40 LIVINGSTON AVENUE
NEW BRUNSWICK. NEW JERSEY 08901
(201)745-3062

August U, 1981

Mayor Thomas P. Weidner
Township of Cranbury
28 North Main Street
Cranbury, N.J. 08512

Dear Tom:

Enclosed is the latest revision of the N.3. State Development Guide Plan map for Middlesex County. Note that it includes that portion of Cranbury west of the village, and is in complete accord with our request to NJDCA earlier this year. I believe it also is in accord with your thinking.

Note that this map is not "official" since the Guide Plan still has not been adopted, endorsed or anything else by the Governor. However, it's the best evidence we have right now of possible eventual State policy support to preserve that area now under so much discussion in Cranbury.

I had a nice chat with Tom March the other day re: Cranbury's progress. Let me know if there's anthing we can do.

Sincerely yours,

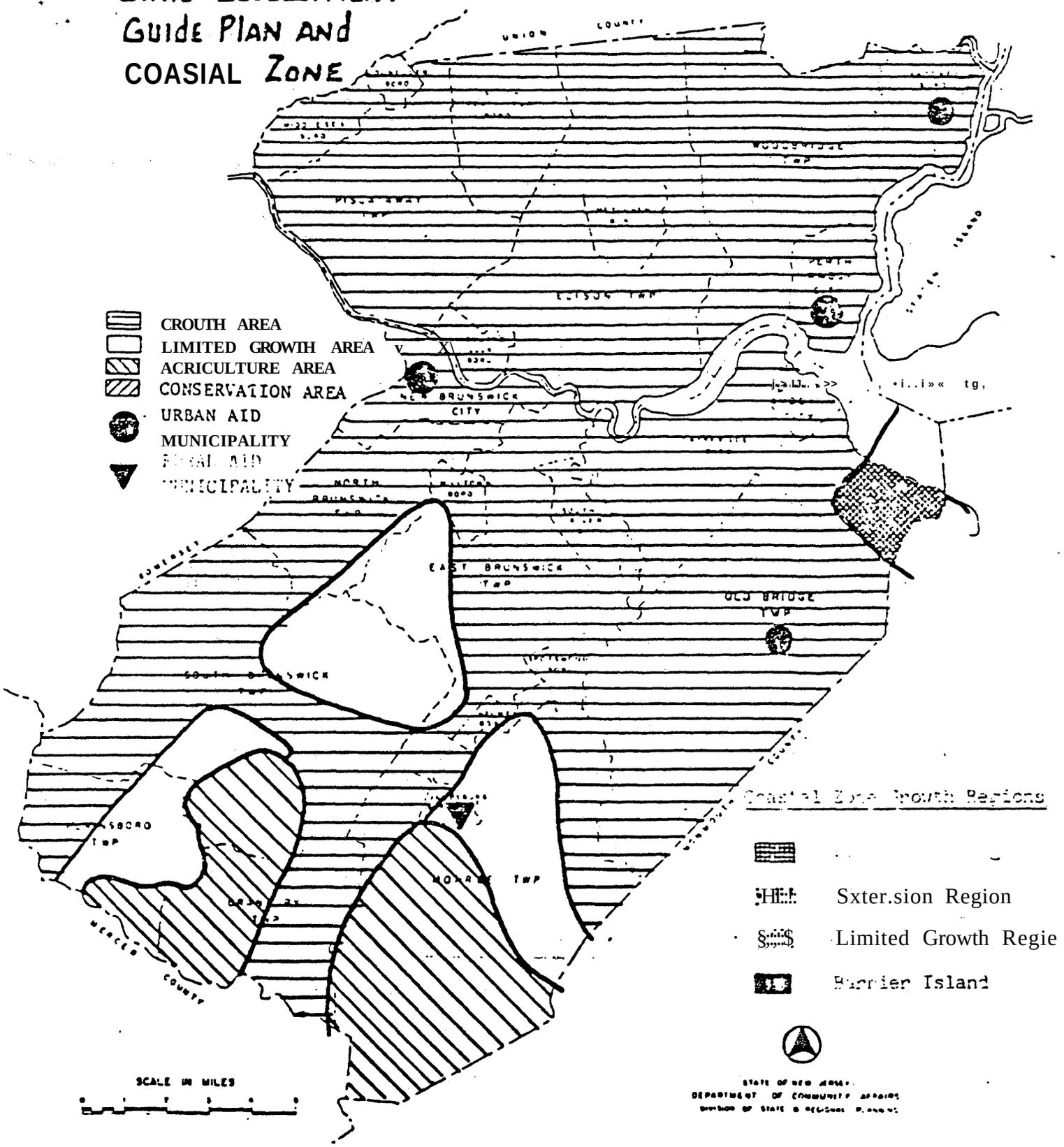
John A. Sully

Comprehensive Planning

JAS:tn
Enclosures
cc: Tom March, Raymond, Parish, Pine, & Weiner

MlODUba ilQUN 11

State DeveLopMent Guide Plan and COASIAL Zone



Coastal Zone Growth Regions

Sxter.sion Region

Limited Growth Regie

Barrier Island

STATE OF NEW JERSEY
DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF STATE & REGIONAL PLANNING

Staff

GEORGE M. RAYMOND
President

Since founding the firm in 1954 Mr. Raymond has supervised hundreds of projects, including comprehensive community plans, land use analyses, zoning ordinances, urban renewal and community development projects, research studies, policy analyses, housing studies, and environmental assessments. He-was principal in charge of such major studies as the community renewal program for New York City; The Role of Local Government in New Community Development, for the U.S. Department of Housing and Urban Development; a study for the New York State Department of Environmental Conservation of measures to safeguard the Hudson River Valley; a Coastal Management Program for the City of New Rochelle; and development planning for the South Bronx Revitalization Program.

Mr. Raymond was professor of planning and Chairman of the Department of City and Regional Planning in the School of Architecture at Pratt Institute from 1958 to 1975. During that time he founded and directed the-Pratt Canter for Community and Environmental Development and was founding editor of Pratt Planning Papers. He was also co-editor of the Pratt Guide to Housing, Planning and Urban Renewal.

He has been an expert witness in numerous zoning adjudications. As court-appointed master in the 10-year-long Township of Bedminster v. Allan-Deane Corporation exclusionary zoning case in New Jersey, he helped implement a complex court order to the expressed satisfaction of the town, the developer and the court.

Mr. Raymond earned his architectural degree at Columbia University, where he was awarded the Sherman Prize and the medal of the American Institute of Architects.

He has contributed articles *tj* Encyclocedia Americana, The New York Times, Commentary, Journal of the American Institute of Planners, Zoning and Planning Law Report, Journal of Housing, Practicing Planner, Traffic Quarterly, American City, Urban Lawyer, Urban Land, Amicus Journal, and other journals. 'He is a contributor to Urban Planning in Transition, Ernest Erber, Ed.,; Planning Theory in the '80's, Burchell & Sternlieb, Eds.; The Land Use Awakening; Zoning Law in the Seventies, Freilich & Stuhler, *eds*$_m$; etc.

Staff

George Raymond (continued)

Mr. Raymond's current offices include

... President, New York Metropolitan Chapter, American Planning Association;
... Member, Mayor's Commission on Developer Commitments in Mew York City?
... Vice president, Citizens' Housing and Planning Council of New York;
... Director and past vice president, Federated Conservationists of Westchester County, Inc.;
... Director and past vice president, Council for the Arts in Westchester;
... Director, Phipps Houses;
... Director, Wave Hill Environmental Education Center;
... Member, editorial advisory board. Journal of the American Planning Association;
... Member, editorial board, Socio-Economic Planning Sciences; and
... Member, Citizens Advisory Committee to the commissioner of New York City's Department of Housing Preservation and Development.

He is a past, president of the American Society of Consulting Planners, Association of Collegiate Schools of Planning, the Metropolitan Committee for Planning, Westchester Citizens Housing Council, Inc., and Westchester Residential Opportunities, Inc. He has also served as

... Member, Advisory Committee on Higher Education to the U.S. Department of Housing and Urban Development;
... Director, National Committee Against Discrimination in Housing;
... Director, Settlement Housing Fund; and
... Chairman, legislative committee, New York Metropolitan Chapter, American Institute of Planners.

Mr. Raymond is a member of the American Institute of Certified Planners of the American Planning Association, American Institute of Architects, National Association of Housing and Redevelopment Officials, Urban Land Institute, Municipal Art Society, National Society of Environmental Professionals, New Jersey Society of Professional Planners, Sierra Club, and the Catskill Center.

A licensed professional planner in New Jersey, he is listed in Who's Who in America and in Outstanding American Educators.

ARTICLE VIII

PD-MD, PLANNED DEVELOPMENT-MEDIUM DENSITY ZONE

150-26 Permitted Uses: In -die PD-MD, Planned Development-Medium Density Zone, no lot shall be used and no structure shall be erected, altered or occupied for any purpose except the following:

A. Detached single-family dwellings.

B. Agriculture and other farm buildings but excluding* agricultural stands.

C. Public parks and playgrounds.

D. Necessary public utilities and services."

E. Buildings, structures and uses owned^and--eperatedE!by/ the-Xcsail-ship .. of Cranbury.

F. Accessory uses and accessory buildings customarily incidental to the above uses and located on the same lot.

150-27 Conditional Uses. In the PD-MD Zone the following may be permitted as *I* a conditional use:

A. Home occupations, subject to the requirements of Section" 150-51. "'

B. fr plaixaed developiseat, including'air or" any of *ASm tolIcwinfT* single-family detached/ or single-family zero-lot 'line detached^ dwellings, semi-detached and attached-dwellingsr'-^two-family^ dwellings, townhouse dwellings, and multi-family and garden apartment dwellings, subject to the following requirements:

(1) Infrastructures All units shall be served by eooanoh-water and sewer systems.

(2) Development area: The miniaum area of a planned development shall be twenty-five (25) contiguous acres.

(3) Gross density and transfer of development credits: The permitted-base density shall/be'U.'S' dwelling units per" acre. Additional density increases at the rate of one (1) dwelling unit per acre for each development credit trar.sferred from the agricultural zone shall be permitted. However, the maximum gross density of the development shall not exceed three (3) dwelling units per acre.

(4) Net density: Except as specified hereinafter, the maximum permitted net density of particular types of dwelling units shall be in accordance with the schedule below.

(a) Detached single-family dwellings - four (4) units per acre.

(b) Seal-detached single-family dwellings, zero lot line dwellings and two-family dwellings - five (5) units per acre.

(c) Townhouses - eight (8) units per acre.

(d) Multl-family dwellings and garden apartments - ten (10) unitsperacre.

The frontage along Station Roadshall be ^strlctad tb "th* development of detached single-family dwilings onv^s with a minimum area of dn«aci».

(5) Housing types:^ ^ re shall be a range of housing types in accordance with the requirements set forth below:

Required Housing Type Mix Schedule: PD-MD

Housing Types	Housing Mix (%)
Detached Single Family dwellings	20-30
Semi-detached, zero lot line and two-family dwellings	0-30
Townhouses	0-30
Multi-family dwellings and garden apartments	20-30

Notes: Housing mix describes a minimum maximum range of a particular housing type that may be permitted expressed as a percent of the total dwelling units in a development.

(6) Impervious Coverage: Impervious surfaces in the aggregate shall not cover more than forty (40%) percent of the area of the development tract.

J7?\^ " ^ J ^ ^ ^ l ^ num building height shalifbe thirty-rive (35) feet.

(8) Setback: No portion of any dwelling shall be nearer than thirty (30) feet to any internal local road right-of-way, or fifty (50) feet to a collector road right-of-way, or one hundred (100) feet from any state road right-of-way. All other building setback and yard requirements are set forth in Article XVI.

(9) Frontage: A planned development shall have a minimum street frontage of three hundred (300) feet except that the lots along Station Road shall have a minimum frontage of one hundred seventy (170) feet.

(10) Coimon open space: Not less than thirty percent (30%) of the total development shall be in common open space which shall be provided in accordance with the reqaixeg&Btsi.of.--.- Article XVI. " ..">-- ul T.r-"

150-28 Area and Bui*"Regulations

A. Detached single-family dwelling:

(1) Lot area: Minimum lot area for a detached single-family dwelling which is not part of a planned development"'shalli to*'••'=-~-. two (2) acres. "

(2) Frontage: Minimum street frontage shall be two_fcundxed (200) feet.

(3> Lot depth: Minimum lot depth shall be two hundred~and fifty (250) feet.

(4^ Front yard: Minimum front yard depth shall be fifty (50) feet.

(5) Side yards: Minimum side yard width shall be thirty C30) eet.

(6) Rear yard: - Miftisum reax yard _depth" shatr/bg. *HtpfiSSB* feet.

(7) Building height: Maximum building height shall be"thirty-five (35) feet.

B. Agriculture:

^) tot area: Minimua lot area shall be two (2) acres provided that, if any livestock is maintained on the lot,the miniaium lot area shall be five (5) acres; and provided further that either lot area shall be increased to six (6) acres if a single family dwelling is located on the lot.

(2) Setback: Any farm building or other animal shelter housing livestock, whether principal or accessory, shall be located farther than two hundred (200) feet from any zone boundary or property line.

ARTICLE IX

PD-HD PLANNED DEVELOPMENT-HIGH DENSITY

156-29 - Permitted Cses. In the PD-HD, Planned Envelopment-High Density Zone, no lot shall be used and no structure shall be erected, altered or occupied for any purpose except, the^following:

A. Detached single-family dwellings.

B. Agriculture, including farm dwellings and other farm buildings but excluding agricultural stands.

C. Public jjarks and playgrounds.

D. Necessary public utilities and services.

E. Buyldijjgs>. sjtructures aijjjises" owned and operated by the Township of Cranbury.

F. Accessorijpiaggjarra^ accessory buildings customarily incidental to the above uses and located on the same lot.

S^BgJ]!E^^»^£!^j Uses. In the PD-HD Zone the following may be permitted as a conditional use:

A. Home occupations, s requirements of Section 150-51.

B. A pl all or any of the following: single-family detached or single family zero-lot line detached dwellings, semi-detached dwellings, two-family dwellings, townhouse dwellings and multi-family and garden apartment dwellings, subject to the following requirements:

(1) Infrastructure. All units shall be served by common water and sewer systems.

(2) Development area. Minimum development area shall be twenty-five (25) contiguous acres.

lopment credits. The permitted base density shall be 0.5 dwelling units per acre. Additional density increases at the rate of one (1) dwelling CJij; JwttL-.pi^-va^j.fori«i«^tSflS|^^ment credit transferred from the agricultural zone shall be permitted. However, the maximua gross density of the developxaent shall not exceed four (4) dwelling units per acre.

(4) Net density: Except as specified hereinafter, the maximum permitted net density of particular types of dwelling units shall be in accordance with the schedule below.

(a) Detached single-family and zero lot line dwellings - four (4) units per acre.

(b) Semi-detached single-fanily dwellings, zero lot line dwellings and two-family dwellings - five (5) units per acre.

(c) Tovnhouses - eight (8) units per acra.':, - M ^ - ^ S f f i

(d) Multi-family dwellings and garden'apartments - ten (10) ^ ^ui U s ? ^ acre.

(5) Housing types: There shall be a range of housing types in accordance with the requirements set forth below:

Required Housing Trpe Mix Schedule Options:~" FD-MT:

Housing Types :	Option A Housing Mix (\)
Detached single family .dwellings	0-30
Semi-deeached, zero lot line and -^U-L-^ciio-faaily dwellings	0-30
Tflwnhouaes	"20-30
dwellings and garden apartments	30-40

Note: Housing alx describes « niniiaua-*axinua range of a pmrcicaiar hoosinf type that may be permitted expressed a* 4 percenc of the total dwelling units in a developaenc.

(6) tzl*y*j.yiou^-coverager: "Trnpervious surfaces in ^hel"a^gre^ate" faa^not:cover more"than forty (40J)".ptregJrir?f tW area of the lot.

(7) Building height: Maxinum building height shall be thirty-five (3S) feet.

(8) Building setback: No portion of any dwelling shall be closer than thirty (30) feet to any internal local road right-of-way, or fifty (50) feet to a collector road right-of-way, or one hundred (IOC) feet frcn any state road right-of-way. All other building setback and yard requirements are set forth in Article XVI.

(9) Frontage: A planned development shall have a ainiaum street frontage of three hundred (300) feet.

(10) Common open space: Not less than thirty (30%) percent of the total development shall be in common open space which shall be provided in accordance with the requirements of Article XVI.

(11) Low and moderate income housing: The housing provisions and options set forth herein are directed^-tcwar^i'iuicleasing. - .the: supply of" low and moderate income housing^^&-'fCranbury'-•'"""' TowhsnTby". AjsplicantS may r^CB^rve a density bonus increase for providing low and moderate income housing equal to one (1) additional dwelling unit per acre above the maximum otherwise allowed in the PD-HD district, provided that in an *f* deveXopaent where the gross density exceeds four (4) dwelling units per acre/ at leastJfifteen.J15) percent of all maite shall consist of low and moderate income housing. Where low and moderate income ^housing is - provided, ^agnlicants f&a£fc cqnsiMct- sui?h.. housing in phases^, - ' proportionUfl^Si^jHMfcBcam^r^ti^ phasing of the entire development project.

These low and moderate J«ç^Be^bqusing^ rec^lxessents may be complied with the assistance of of stasf^isf^federal'[1]"' programs, either directly or cHanneled through public non-profit or liatied prof it" "sponsorship, or through public", private or internal subsidies as :.further rset^fortii; -:beibw^;-^

(a) Applicants may use federal or state rental purchase subsidy programs or other legal mechanisms, to bring on to the market the required low and moderate income housing. Guaranteed rental or purchase subsidies for twenty (20) years or more or a contract with a non-profit, limited profit or government sponsor who has obtained such guarantees or subsidies shall be deemed to have shown that such housing will remain affordable to persons within the low or moderate income range specified in the subsidy upon resale or re-rental.

(b) Applicants may also enter into disposition «cxeeaents^ in the form of covenants running '^xh^.'.thk.-;land-r- -or - •• creat:r :a'' %ec3ianisa through[1] ;*a HoaeoWners~;ASsociation instrumen^" a '".planned.; developiBeat>::or-. create any *3feiP~ :'~^f2*Z:'!?•^r^otiiet[legal mechanism acceptable to the Planning Board plfi**1^^"^-its opinion».will insure that such housing £*_.-4t* remain affordable for- a- tera.-of- twenty (20) years or more for persons within the low and moderate income cost housing range upon resale or re-rental upon resale or re-rental.

150-31

Area and Bulk Requirements

A. Single-family dwellings:

(1) Lot area: Minimum lot area for a single-family dwelling which is not part of a planned development shall be two (2) acres.

(2) Frontage: Minimum street frontage shall be two hundred (200) feet.

(3) Lot depth: Minimum lot depth shall be two hundred and fifty (250) feet.

(4) Front yard: Minimum front yard depth shall be fifty (50) feet.

(5) Side yards: Minimum side yard width shall be thirty (30) feet.

(6) Rear yard: Minimum rear yard depth shall be fifty (50) feet.

(7) Building height: Maximum building height shall be thirty-five (35) feet.

B. Agriculture:

(1) Lot area: Minimum lot area shall be two (2) acres provided that, if any livestock is maintained on the lot, the minimum lot area shall be five (5) acres; and provided further that either lot area shall be increased to six (6) acres if a single-family dwelling is located on the lot.

(2) Building setback: Any farm building or other animal shelter, whether principal or accessory, shall be located farther than two hundred (200) feet from any zone boundary or property line.

doo

192-8630

ASSEMBLY, No. 1259

STATE OF NEW JERSEY

INTRODUCED MAY l.'J, 1982

By Assemblyman UKSNTAK, Assembly woman ICALIK, Assemblyman PANKOK, Assemblywoman COSTA, Assemblymen MARSELLA and HEBMAN

A SUPPUKMBNT to the "Pinelands Protection Act," approved June 28,1979 (P. L. 1979, c. Ill; C. 13:18A-1 et seq.), and making an appropriation.

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

I. This act shall be known and may be cited as the "Pinelands Development Credit Bank Act." [

2. The Legislature finds and declares that, pursuant to the provisions of P. L. 1979, c. Ill (C. 13:18A-1 et seq.), the comprehensive management plan for the pinelands area has been adopted and is now being implemented; that this plan quite properly ineludes a program for the allocation and transfer of pinolands development credits; and that the pinelands development credit program will provide a mechanism to facilitate both the preservation of the resources of this area and the accommodation of regional growth influences in an orderly fashion.

The Legislature further finds and declares that the concept of transferable development credits is innovative and, as yot, unpreeedented on a regional scale; that in order to realize the full measure of the benefits of such a program, steps must be taken to~assure the marketability of these credits; and that the best means of providing this assurance is through the establishment of a Pinelands Development Credit Bank empowered to purchase and sell pinelands development credits and to guarantee loans secured thereby, all as hereinafter provided.

EXHIBIT E

3. As used in this act:

a. "Applicant" means a person applying for, or in receipt of, a loan secured pursuant to the provisions of this act;

b. "Bank" means the Pinelands Development Credit Bank established pursuant to section 4 of this act;

e. "Board" means the Board of Directors of the Pinelands Development Credit Bank;

d. "County bank" means a county development credit bank established pursuant to section 14 of this act;

e. "County board" means the board of directors of the county development credit bank;

f. "Lender" means any bank or trust company, savings bank, national banking association, savings and loan association, or building and loan association maintaining an oilice in the State, or any insurance company authorized to transact business in the State;

g. "Pinelands development credit guarantee" moans a guarantee e'xtended pursuant to section 9 of this act;

h. "Pinelands development credit" means a transferable development right created pursuant to the comprehensive management plan.

4, a. There is established in the Executive Branch of the State Government a public body corporate and politic, with corporate succession, to be known as the Pinelands Development Credit Bank. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the bank is allocated with the Department of Banking, but notwithstanding that allocation, the bank shall be independent of any supervision or control by the department or by an officer or employee thereof, except as otherwise expressly provided in this act. The bank is constituted as an instrumentality Of the State exercising public and essential governniental functions, and the exercise by the bank of the powers conferred by this act shall be deemed and held to be an essential governmental function of the State.

b. The bank shall be governed by a board of directors consisting of five ex officio members, or the designees thereof, as follows: the Commissioner of Banking, who shall serve as chairman; the Secretary of Agriculture; the Attorney General; the Commissioner of Environmental Protection; and the Chairman of the Pinelands Commission. Designees of members shall have the power to vote' in the absence of members.

5. The board shall have the following powers:

a. To adopt and, from time to time, amend and repeal suitable bylaws for the management of its affairs;

b. To adopt and use an official seal and alter the same at its pleasure;

c. To apply for, receive, and accept, from any federal, State, or other public or private source, guants or loans for, or in aid of, the board's authorized purposes;

d. To enter into any agreement or contract, execute any instrument, and perform any act or thing necessary, convenient, or desirable for the purposes of the board or to carry out any power expressly given in this act;

e. To adopt, pursuant to the "Administrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations necessary to implement the provisions of this act;

f. To call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, commission or agency as may be required and made available for these purposes;

g. To purchase pinelands development credits when necessary to alleviate hardship, as determined pursuant to rules and regulations adopted by the board. The purchase price in these cases shall be $10,000.00 percredit, or a fraction of that amount which reflects that portion of a pinelands development credit allocated to the applicant pursuant to the provisions of the comprehensive management plan.

fi. The board shall, upon application of the appropriate landowner, and certification by the commission, issue Pinelands Development Credit Certificates for all pinelands development credits allocated pursuant to the comprehensive management plan. These certificates shall be issued to the current owner of record of the land, as indicated in the index of deeds recorded in the office of the recording officer of the appropriate county, subsequent to the recording of restrictions imposed on the use of that land pursuant to the comprehensive management plan.

7. a. The board shall establish and maintain a Registry of Pinelands Development Credits, which shall include:

(1) The name and address of every owner to whom a pinelands development credit certificate is issued pursuant to section 6 of this act, and the date of its issuance;

(2) The name and address of every person to whom a pinelands development credit is sold or otherwise conveyed, the date of the conveyance, and the consideration, if any, received therefor;

(3) The name and address of any person who has pledged **a** pinelands development credit as security on any loan or other obhgation, the name and address of the lender, and **the date, amount** and term of the loan or obligation;

(4) The name and address of any person who has redeemed u pinelands development credit, the location of the land to which the credit was transferred, and the date this redemption was made.

b. No person shall purchase or otherwise acquire, encumber, or redeem any pinelauds development credit without recording that fact, within 10 business days thereof, with the bank.

c. The board shall make available the information included in the registry to each county and municipality located in whole or in part in the pinelands area, and, upon request, pertinent information to **any** other person.

8. Any person desiring to secure a loan using a pinelands development credit as collateral may apply to the board for determination of eligibility for a pinelands development credit guarantee. The board shall notify the applicant of its decision within 30 days of its receipt of the application.

9. a. The board may extend a piuelands development credit guarantee with respect to any loan secured pursuant to the provisions of this act if:

(1) Adequate funds are available in reserve to fulfill the guarantee in the event of a default; and

(2) The applicant can demonstrate that he holds marketable title to the property and that the property has been certified by **the** commission as eligible for issuance of pinelauds development credit certificates pursuant to the provisions of this act, that this credit has not been otherwise encumbered, transferred or redeemed, and that the credit shall be pledged as security for the guarantee.

b. If the applicant is denied, the board shall return it to the applicant with a written statement of the reasons for denial.

c. If the application is approved, the board shall retain the original and transmit copies of the application to the applicant and the lender. The applicant and the lender may then complete the transaction for the loan. Nothing herein contained shall be construed to require a lender to approve or deny any loan applied for pursuant to this act, regardless of the approval or disapproval by the board of any application for a piuelands development credit guarantee.

10. The bank is authorized to guarantee the value of a pinelands development credit in the amount of $10,000.00, or a fraction of that amount which reflects that portion of a pinelands development credit allocated to the applicant pursuant to the provisions of this act. Nothing herein contained shall be construed to establish or limit fair market value of any pinelands development credit or to preclude the extension of a pinelands development credit guarantee for any loan of less than $10,000.00.

11. a. following tlie thirty-first day of a default on any loan secured, in whole or in part, by a pinelands development credit guarantee, the lender shall send notice by certified mail to the applicant and the board, stating the consequences of this default. The applicant and the lender may, within 90 days of the initial default, agrne to take any reasonable steps to assure the fulfillment of the loan obligation.

b. In the event thn applicant and/ the lender have not made arrangements for the continuation of the loan obligation within 90 days of the initial default, the lender shall file a claim with the board, identifying the loan and the nature of the default and shall: (1) assign the security interest in the pinelands development credit to th« board in exchange for payment according to the terms of pinelands development credit guarantee; or, (2) retain the security interest in the pinelands development credit and waive any claim to payment pursuant to the terms of the pinelands development credit guarantee.

12. In the event a default occurs on any loan secured, in whole or in part, by a pinelands development credit guarantee and the lender has assigned th« security interest in the pinelands development credit to the board, the board shall authorize payment to the lender up to the limits of the pinelands development credit guarantee, and shall notify the defaulting party. The board shall, in these cases, commence foreclosure proceedings in the manner provided by law.

13. The board may soil, exchange, or otherwise convey any pinelands development credit which is purchased or otherwise acquired pursuant to the provisions of this act. All sales or conveyances shall be made prior to the expiration of this act The provisions of any other law to the contrary notwithstanding, no such sale, exchange or conveyance shall be subject to approval of the State Mouse Commission.

14. a. The governing body of any county located in. whole or in part, within the pinelands nrea may, by resolution duly adopted, create a public body under the name and style of "The . . . . . County Development Credit Bank," with all or any significant part of the name of the county inserted. The county bank shall be governed by a board of directors consisting of five members, appointed by the board of chosen freeholders, or, in the counties operating under the county executive plan or county supervisor plan pursuant to the provisions of the "Optional County Charter La-w^R L. 1972, c. 154 (C.40:41A-l etseq.), by the county executive, or the county supervisor as the case may be, with the advice and consent of the board of chosen freeholders.

b. The members pi' the county board shall be appointed from among residents of the county with substantive experience in agriculture, banking and finance, land u^e regulation, and the law.

15. The board may delegate any authority granted it by this act to any county which creates a county hoard pursuant to* the provisions of this act if:

a. The commission has approved-the muster plan for the county;

b. The governing body of the county hits requested that this delegation be made; and

c The governing body of the county can demonstrate that it has the financial resources necessary to meet the obligations of this delegation.

16. If the board has delegated its authority pursuant to the provisions of section 15 of this act, it shall provide, upon application therefor and approval thereof, matching grunts to the county bank for the purpose of meeting the obligation of this delegation.

17. The county board shall exercise the authority delegated to it by the board in a manner prescribed by rules and regulations adopted by the board.

18. a. There is appropriated to the bank, from the State Eecreation and Conservation Land Acquisition and Development Fund created pursuant to the "New Jersey Green Acres and Iiecreation Opportunities Bond Act of 1974" (P. L. 1974, e. 102), the sum of $3,000,000.00. This sum shall be used for the purchase of pinelands development credits, as herein provided.

b. There is appropriated to the bank, from the General State Fund, the sum of $2,000,000.00. This sum shall be used to extend pinelands development credit guarantees, as herein provided.

c. The appropriations made pursuant to this section shall be repaid by the bunk, in whole or in part, as soon as may be praeticable, from the proceeds of the sale of pinelands development credits pursuant to section 13 of this act.

19. Notwithstanding any other provisions of this act:

a. No pinelands development credit guarantee shall be extended for a period of time in excess of 5 years;

b. No pinelands development credit guarantee shall be extended after Deeember 31 in the fifth year next following enactment of this act;

e. No pinelands development credit shall be purchased by the bank after December 3! in the fifth year next following enactment of this act;

20. This -act shall take effect immediately and shall expire on December 31 in the tenth year next following enactment.

STATEMENT

The purpose of this bill is to guarantee the value of development credits allocated by the Pinelands Commission pursuant *to* the comprehensive management plan. To this end, the bill establishes the Pinelands Development Credit Bank, governed by a board of directors consisting of the following members: the Commissioner of-Banking, who shall serve as chairman; the Secretary of Agriculture; the State Attorney General; the Commissioner of Environmental Protection; and, the chairman of the Pinelands Commission. The board is authorized to guarantee $10,000.00 of the value of a pinelands development credit used to secure a loan for any purpose. The board is further authorized to act as a buyer of last resort in the event of economic hardship, as determined by rules and regulations to be adopted by the board.

If there is a default on a loan guaranteed pursuant to this act arid the lender and the applicant do not make arrangements for the continuation of the loan within the prescribed time, the bank may either assign security interest in the credit to the-board in exchange for payment, or retain security interest and waive claim to payment pursuant to the terms of the guarantee. If the bank makes this assignment, the board would then foreclose on the credit.

The bill provides for the establishment of County Development Credit Banks and for the delegation by the Pinelands Development Credit Bank of its authority to the county bank under certain conditions. The bill appropriates $5,000,000.00 to the Pinelands Development Credit Bank, which sum shall be repaid, in whole or in part, from the proceeds of the sale of credits.

The act expires 10 years after its effective date.

ASSEMBLY, No. 3664

STATE OF NEW JERSEY

INTRODUCED JUNE 23, 1983

By Assemblymen BOCCHINI and PATERO

Aw ACT concerning transfer of development provisions in municipal zoning ordinances, and amending P. L. 1975, c 291.

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

1. Section 3.4 of P. *U* 1975, c 2!)1 (C. 40:f)5D-7) is amended to read as follows:

3.4. "Sedimentation" means the deposition of soil that has been transported from its site of origin by water, ice, wind, gravity or other natural means as a product of erosion.

"Site plan" means a development plan of one or more lots on which is shown (1) the existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, flood plains, marshes and waterways, (2) the location of all existing and proposed buildings, drives, parking spaces, walkways, means *ot* ingress and egress, drainage facilities, utility services, landscaping, structures and sigus, lighting, screening devices, and (3) any other information that may be reasonably required in order to make an informed determination pursuant to an ordinance requiring review and approval of site plans by the planning board adopted pursuant to article 6 of this act.

"Standards of performance" means standards (1) adopted by ordinance pursuant to subsection 52 d. regulating noise levels, glare, earthborne or sonic vibrations, heat, electronic or atomic radiation, noxious odors, toxic matters, explosive and inflammable matters, smoke and airborne particles, waste discharge, screening

EXPLANATION—Matter enclosed In bold-faced bracket* Ethos] in the abort) bill ia not enacted and la intended la be omitted in UM law.
Mailer printed in italic* *thus* b new matter.

EXBBIT F

IS*;;;

of unsightly objects or conditions and such'other similar matters as may be reasonably required by the municipality or (2) required by applicable federal of State laws or municipal ordinances.

"Street" means any street, avenue, boulevard, road, parkway, viaduct, drive or other way (1) which is an existing State, county or municipal roadway, or (2) which is shown upon a plat heretofore approved pursuant to law, or (3) which is approved by official action as provided by this act, or (4) which is shown on a plat duly filed and recorded in the office of the county recording officer prior to the appointment of a planning board and the grant to such board of the power to review plats; and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs? sidewalks, parking areas and other areas within the street lines.

"Structure" means a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.

"Subdivision" means the division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development The following shall not be considered subdivisions within the meaning of this act, if no new streets are created: (1) divisions of land found by the planning board or subdivision committee thereof appointed by the chairman to be for agricultural purposes where all resulting parcels are five acres or larger in size, (2) divisions of property by testamentary or intestate provisions, (3) divisions of property upon court order, including but not limited to judgments of foreclosure, (4) consolidation of existing lots by deed or other recorded instrument and (5) the conveyance of one or more adjoining lots, tracts or parcels of land, owned by the same person or persons and all of which are found and certified by the administrative officer to conform to the requirements of the municipal development regulations and are shown and designated as separate lots, tracts or parcels on the tax map or atlas of the municipality. The term "subdivision" shall also include the term "resubdivision."

"Transcript" means a typed or printed verbatim record of the proceedings or reproduction thereof.

Transferof development" means the assigning of the permitted development, or- a portion thereof, of any use specified for traditional onsite development in the zoning provisions of an ordinance from one or more lots to a permitted use on one or more other lots, by means of appropriate deed restrictions, covenants, dedications, or other legal devices designed to retain the sending lot at the intensity of development established at the time of transfer.

"Variance" means permission to depart from the literal requirements of a zoning ordinance pursuant to section 47 and subsections 29. 2b., 57 c. and 57 d. of this act.

'*Zoning permit'' means a document signed by the administrative officer (1) which is required by ordinance as a condition precedent to the commencement of a use or the erection, construction, reconstruction, alteration, conversion or installation of a structure or building and <2) which acknowledges that such use, structure or building complies with the provisions of the municipal zoning ordinance or variance therefrom duly authorized by a municipal agency pursuant to sections 47 and 57 of this act.

2. Section 52 of P. L. 1975, c. 291 (C. 40:55D-fi5) is amended to read as follows:

52. Contents of zoning ordinance. A zoning ordinance may:

a. Limit and restrict buildings and structures to specified districts and regulate buildings and structures according to their type and the nature and extent of their use, and regulate the nature and extent of the use of land for trade, industry, residence, open space or other purposes.

b. Regulate the bulk, height, number of stories, orientation, and size of buildings and the other structures, and require that buildings and structures use renewable energy sources, within the limits of practicability and feasibility, in certain places; the percentage of lot or development area thajt may be occupied by structures; lot sizes and dimensions; and for these purposes may specify floor area ratios and other ratios and *may employ* regulatory techniques [governing], *including but not limited to transfer of development, designed to govern* the intensity of land use and the provision of adequate light and air.

c. Provide districts for planned developments ^provided that an ordinance providing for approval of subdivisions and site plans by the planning board has i>ccn adopted and incorporates therein the provisions for such planned developments in a manner consistent with.article 0 of this acijThe zoning ordinance shall establish standards governing the type and density, or intensity of land use, in a planned development. Said standards shall take into account that the density, or intensity of land use, otherwise allowable may not he appropriate for a planned development. The standards may vary the type and density, or intensity of land use, otherwise applicable to the land within a planned development in consideration of the amount, location and proposed use of common open space; the location and physical characteristics of the site of the proposed planned development; and the location, design and type

of dwelling units and other uses. Such standards may, in order to encourage the flexibility of housing density, design and type, authorize a deviation in various residential clusters from the density, or intensity of use, established for an entire planned development. The standards and criteria by which the design, bulk and location of buildings are to be evaluated, shall be set forth in the zoning ordinance and all standards and criteria for any feature of a planned development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for a planned development can be evaluated.

d. Establish, for particular uses or classes of uses, reasonable standards of performance and standards for the provision of adequate physical improvements including, but not limited to, off-street parking and loading areas, marginal access roads and roadways, other circulation facilities and water, sewerage and drainage facilities; provided that section 41 of this act shall apply to such improvements.

e. Designate and regulate areas subject to flooding (1) pursuant to P. L. 1972, c. 185 (C. 58:16A-55 et seq.) or {2) as otherwise necessary in the absence of appropriate flood hazard area designations pursuant to P. L. 19fi2, c. 1!) (C. 58:16A-50 et seq.) or floodway regulations pursuant to P. L. 1972, c 185 or minimum standards for local flood fringe area regulation pursuant to P. L. 1972, c. 185.

f. Provide for conditional uses pursuant to section 54 of this act

g. Provide for senior citizen community housing.

h. Require that as a condition for any approval which is required pursuant to such ordinnnce and the provisions of this chapter, that no taxes or assessments for local improvements are due or delinquent on the property for which any application is made.

3. This act shall take effect immediately.

STATEMENT

This bill would clarify the power of municipalities to include in their zoning ordinances adopted under the "Municipal Land Use Law," P. L. 1975, c. 291 (C. 40:55D-1 et seq.) provisions relating to the transfer of development from one area of the municipality to another. The bill would provide specific reference to the concept in the law, while describing the concept in terms sufficiently general to accommodate all of the municipalities currently practicing this land use regulatory technique.