

WEST BRADFORD TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

ORDINANCE NO. 05 1986

AN ORDINANCE OF THE TOWNSHIP OF WEST BRADFORD, CHESTER COUNTY, PENNSYLVANIA PROVIDING FOR THE LEVYING, ASSESSMENT AND COLLECTION OF A TRANSFER TAX FOR GENERAL REVENUE PURPOSES IN THE AMOUNT OF ONE (1%) PERCENT UPON ANY TRANSFER OF REAL PROPERTY OR AN INTEREST IN REAL PROPERTY TO THE EXTENT THAT THE TRANSFERS ARE SUBJECT TO THE TAX IMPOSED BY THE COMMONWEALTH OF PENNSYLVANIA PURSUANT TO ACT 77 - 1986, 72 P.S. §8101-C., et seq., AUTHORIZED BY ARTICLE XI-D, "LOCAL REAL ESTATE TRANSFER TAX", 72 P.S. §8101-D., et seq., AND ADMINISTERED, COLLECTED AND ENFORCED UNDER THE "LOCAL TAX ENABLING ACT", 53 P.S. §6901, et seq.; AND ESTABLISHING PENALTIES FOR VIOLATION OF THE ORDINANCE: AND REPEALING THE CURRENT TOWNSHIP "REALTY TRANSFER TAX".

WHEREAS, by Ordinance adopted, the Board of Supervisors of West Bradford Township, pursuant to law, promulgated and adopted an ordinance imposing a tax for the purpose of providing revenue for general township purposes upon sales involving the transfer of title to real property lying within said township or of interest in such real property, at the rate of one (1%) percent of the amount of the value of said real property or interest therein; and

WHEREAS, said tax was promulgated pursuant to "The Local Tax Enabling Act", Act of June 25, 1947, P.L. 1145, as amended (53 P.S. §6901, et seq.); and

WHEREAS, ARTICLE XI-C of the Act of May 5, 1981 P.L. 36 No. 14 (Tax Reform Code) repealed and replaced the "Realty Transfer Tax Act", Act of December 27, 1951, P.L. 1742, as amended and provided for the imposition of a Transfer Tax to be imposed and collected as therein set forth; and

WHEREAS, Act No. 1986-77, duly enacted by the General Assembly of the Commonwealth of Pennsylvania and approved on July 2, 1986, effective immediately, amends the Act of May 5, 1981 P.L. 36 No. 14, as aforesaid; and

WHEREAS, Article XI-D of Act 1986-77 provides that a Township may, by Ordinance, for general revenue purposes, levy, assess and collect or provide for the levying, assessment and collection of a tax upon a transfer of real property or an interest in real property within the limits of the political subdivision, regardless of where the instruments making the transfer are made, executed or delivered or where the actual settlement on the transfer take place, to the extent that the transactions are subject to the tax imposed by said Act; and

WHEREAS, Act 1986-77 further provides that a township may impose a local real estate transfer tax upon additional classes or types of transactions if the tax was imposed by the political subdivision under "The Local Tax Enabling Act" prior to the

effective date of Act 1986-77; and

WHEREAS, Act 1986-77 further provides that the transfer tax imposed under Article XI-D shall be administered, collected and enforced pursuant to the "Local Tax Enabling Act".

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, and it is enacted and ordained by authority of the Board of Supervisors of West Bradford Township, Chester County, Pennsylvania, as follows:

SECTION 1. Tax Levied; Title.

A. Pursuant to the authority contained in the Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, a tax for the purpose of providing revenue for general township purposes is hereby levied, assessed and imposed upon the transfer of real property or an interest in real property within the limits of West Bradford Township, regardless of where the instruments making the transfers are made, executed or delivered or where the actual settlements on the transfer take place, at the rate of one (1%) percent of the amount of the value of said real property or interest therein, as herein defined.

B. This Article shall be known and may be cited as the "West Bradford Township Realty Transfer Tax Ordinance".

SECTION 2. Definitions.

The following words when used in this Ordinance shall have the meanings ascribed to them in this section.

(a) Association - a partnership, limited partnership, or any other form of unincorporated enterprise, owned or conducted by two or more persons other than a private trust or decedent's estate.

(b) Corporation - a corporation, joint stock association, business trust or banking institution which is organized under the laws of the Commonwealth of Pennsylvania, the United States, or any other state, territory, or foreign country, or dependency.

(c) Document - any deed, instrument or writing which conveys, transfers, demises, vests, confirms or evidences any transfer or demise of title to real estate, but does not include wills, mortgages, deeds of trust or other instruments of like character given as security for a debt and deeds of release thereof to the debtor, land contracts whereby the legal title does not pass to the grantee until the total consideration specified in the contract has been paid or any cancellation thereof unless the consideration is payable over a period of time exceeding thirty (30) years or instruments which

solely grant, vest or confirm a public utility easement. A document shall also include a declaration of acquisition required to be presented for recording pursuant to Section 6(b) hereof.

(d) Family Farm Corporation - a corporation of which at least seventy-five percent (75%) of its assets are devoted to the business of agriculture and at least seventy-five percent (75%) of each class of stock of the corporation is continuously owned by members of the same family. The business of agriculture shall not be deemed to include (1) recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing; (2) the raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities; (3) fur farming; (4) stockyard and slaughterhouse operations; (5) manufacturing or processing operations of any kind; (6) with respect to real estate acquired after February 16, 1986, a family farm corporation is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm corporation or when, because of issuance or transfer of stock or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of a family farm corporation under this act.

(e) Members of the Same Family - any individual, such individual's brothers and sisters, the brothers and sisters of such individual's parents and grandparents, the ancestors and lineal decedents of any of the foregoing, a spouse of any of the foregoing and the estate of any of the foregoing. Individuals related by the half blood or legal adoption shall be treated as if they were related by the whole blood.

(f) Person - Every natural person, association, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment or both, the term "person" as applied to associations, shall include the responsible members or general partners thereof, and as applied to corporations, the officers thereof.

(g) Real Estate -

(1) Any lands, tenements or hereditaments within the Commonwealth of Pennsylvania, including, without limitation, buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper or lower boundaries, trees and other improvements, immovables or interests which by custom, usage or law pass with a conveyance of land, but excluding permanently attached machinery and equipment in an industrial plant.

(2) A condominium unit.

(3) A tenant-stockholder's interest in a cooperative housing corporation, trust or association under a proprietary lease or occupancy agreement.

(4) Real property.

(h) Real Estate Company - a corporation or association which is primarily engaged in the business of holding, selling or leasing real estate ninety percent (90%) or more of the ownership interest in which is held by thirty-five (35) or fewer persons and which: (1) derives sixty percent (60%) or more of its annual gross receipts from the ownership or disposition of real estate; or (2) holds real estate, the value of which comprises ninety percent (90%) or more of the value of its entire tangible asset holdings exclusive of tangible assets which are freely transferable and actively traded on an established market.

(i) Title to Real Estate - (1) any interest in real estate which endures for a period of time, the termination of which is not fixed or ascertained by a specific number of years, including, without limitation, an estate in fee simple, life estate or perpetual leasehold; (2) any interest in real estate enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consists of a group of rights approximating those of an estate in fee simple,

life estate or perpetual leasehold, including without limitation, a leasehold interest or possessory interest under a lease or occupancy agreement for a term of thirty (30) years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity; provided, however, in determining the term of a lease, it shall be presumed that a right or option to renew or extend a lease will be exercised if the rental charge to the lessee is fixed or if a method for calculating the rental charge is established.

(j) Transaction - the making, executing, delivering, accepting or presenting for recording of a document.

(k) Value -

(1) in the case of any bona fide sale of real estate at arm's length for actual monetary worth, the amount of the actual consideration therefor, paid or to be paid, including liens or other encumbrances thereon existing before the transfer and not removed thereby, whether or not the underlying indebtedness is assumed, and ground rents, or a commensurate part thereof where such liens or other encumbrances and ground rents also encumber or are charged against other real estate: provided, that where such documents shall set forth a nominal consideration, the "value" thereof shall be determined from the price set forth in or actual consideration for the contract of sale.

(2) in the case of a gift, sale by execution upon a judgment or upon the foreclosure of a mortgage by a judicial officer, transactions without consideration or for consideration less than the actual monetary worth of the real estate, a taxable lease, an occupancy agreement, a leasehold or possessory interest, any exchange of properties, or the real estate of an acquired company, the actual monetary worth of the real estate determined by adjusting the assessed value of the real estate for local real estate tax purposes for the common level ratio of assessed values to market values of the taxing district as established by the State Tax Equalization Board, or a commensurate part of the assessment where the assessment includes other real estate.

(3) in the case of an easement or other interest in real estate, the value of which is not determinable under clause (1) or (2), the actual monetary worth of such interest; or

(4) the actual consideration for or actual monetary worth of any executory agreement for the construction of buildings, structures or other permanent improvements to real estate between the grantor and other persons existing before the transfer and not removed thereby or between

the grantor, the agent or principal of the grantor or a related corporation, association or partnership and the grantee existing before or effective with the transfer.

(1) Acquired Company - real estate company is an acquired company upon a change in the ownership interest in the company, however, effected, if the change: (1) does not affect the continuity of the company; and (2) of itself or together with prior changes has the effect of transferring, directly or indirectly, ninety (90%) percent or more of the total ownership interest in the company within a period of three (3) years.

SECTION 3. Imposition of Tax.

Every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, or for and in respect of the vellum parchment or paper upon which such document is written or printed, a tax payable to the Township of West Bradford, Chester County, Pennsylvania at the rate of one (1%) percent of the value of the real estate represented by such document, which tax shall be payable at the earlier of the time the document is presented for recording or within thirty (30) days of acceptance of such document or within thirty (30) days of becoming an acquired company.

SECTION 4. Exempt Parties. The United States, the Commonwealth of Pennsylvania or any of their instrumentalities, agencies or political subdivisions shall be exempt from payment of the tax imposed by this Ordinance. The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax.

SECTION 5. Excluded Transactions. The tax imposed by this Ordinance shall not be imposed upon the following transactions:

(1) A transfer to the Commonwealth or to any of its instrumentalities, agencies or political subdivisions by gift, dedication or deed in lieu of condemnation or deed of confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation, which reconveyance may include property line adjustments provided said reconveyance is made within one year from the date of condemnation.

(2) A document which the Commonwealth is prohibited from taxing under the Constitution or statutes of the United States.

(3) A conveyance to a municipality, township, school district or county pursuant to acquisition by the municipality, township, school district or county of a tax delinquent property at sheriff sale or tax claim bureau sale.

(4) A transfer for no or nominal actual consideration which corrects or confirms a transfer previously recorded, but which does not extend or limit existing record legal title or interest.

(5) A transfer of division in kind for no or nominal actual consideration of property passed by testate or intestate succession and held by cotenants; however, if any of the parties take shares greater in value than their undivided interest, tax is due on the excess.

(6) A transfer between husband and wife, between persons who were previously husband and wife who have since been divorced, provided the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, between parent and child or the spouse of such child, between brother or sister or spouse of a brother or sister and brother or sister or the spouse of a brother or sister and between a grandparent and grandchild or the spouse of such grandchild,

except that a subsequent transfer by the grantee within one year shall be subject to tax as if the grantor were making such transfer.

(7) A transfer for no or nominal actual consideration of property passing by testate or intestate succession from a personal representative of a decedent to the decedent 's devisee or heir.

(8) A transfer for no or nominal actual consideration to a trustee of an ordinary trust where the transfer of the same property would be exempt if the transfer was made directly from the grantor to all of the possible beneficiaries, whether or not such beneficiaries are contingent or specifically named. No such exemption shall be granted unless the recorder of deeds is represented with a copy of the trust instrument that clearly identifies the grantor and all possible beneficiaries.

(9) A transfer for no or nominal actual consideration from a trustee to a beneficiary of an ordinary trust.

(10) A transfer for no or nominal actual consideration from trustee to successor trustee.

(11) A transfer:

(i) for no or nominal actual consideration between principal and agent or straw party; or

(ii) from or to an agent or straw party where, if the agent or straw party were his principal, no tax would be imposed under this article.

Where the document by which title is acquired by a grantee or statement of value fails to set forth that the property was acquired by the grantee from, or for the benefit of, his principal, there is a rebuttable presumption that the property is the property of the grantee in his individual capacity if the grantee claims an exemption from taxation under this clause.

(12) A transfer made pursuant to the statutory merger or consolidation of a corporation or statutory division of a non-profit corporation, except where the department reasonably determines that the primary intent for such merger, consolidation or division is avoidance of the tax imposed by this article.

(13) A transfer from a corporation or association of real estate held of record in the name of the corporation or association where the grantee owns stock or the corporation or an interest in the association in the same proportion as his interest in or ownership of the real estate being conveyed and where the stock of the corporation or the interest in the association has been held by the grantee for more than two years.

(14) A transfer from a nonprofit industrial development agency or authority to a grantee or property conveyed by the grantee to that agency or authority as security for a debt of the grantee or a transfer to a non-profit industrial development agency or authority.

(15) A transfer from a non-profit industrial development agency or authority to a grantee purchasing directly from it, but only if:

(i) the grantee shall directly use such real estate for the primary purpose of manufacturing, fabricating, compounding, processing, publishing, research and development, transportation, energy conversion, energy production, pollution control, warehousing or agriculture; and

(ii) the agency or authority has the full ownership interest in the real estate transferred.

(16) A transfer by a mortgagor to the holder of a bona fide mortgage in default in lieu of a foreclosure or a transfer pursuant to a judicial sale in which the successful bidder is the bona fide holder of a mortgage, unless the holder assigns the bid to another person.

(17) Any transfer between religious organizations or other bodies or persons holding title for a religious organization if such real estate is not being or has not been used by such transferor for commercial purposes.

(18) A transfer to a conservancy which possesses a tax-exempt status pursuant to §501(c) of the Internal Revenue Code of 19544 (68A Stat. 3, 26 U.S.C. §501(c)(3) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open-space opportunities.

(19) A transfer of real estate devoted to the business of agriculture to a family farm corporation by a member of the same family which directly owns at least seventy-five percent of each class of the stock thereof.

(20) A transfer between members of the same family of an ownership interest in a real estate company or family farm corporation.

(21) A transaction wherein the tax due is one Dollar (\$1.00) or less.

(22) Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof. In order to exercise any exclusion provided in this section, the true, full and complete value of the transfer shall be shown on the statement of value. For leases of coal, oil, natural gas or minerals, the statement of value may be limited to an explanation of the reason such document is not subject to tax under this article.

SECTION 6. Documents Relating to Associations, Corporations and Acquired Companies.

(a) Except as excluded in Section 5 hereof, documents which make, confirm or evidence any transfer or demise of title to real estate between associations or corporations and the members, partners, shareholders or stockholders thereof are fully taxable. For the purposes of this Ordinance, corporations and associations are entities separate from their members, partners, stockholders or shareholders.

(b) Within thirty (30) days after becoming an acquired company, the company shall present for recording a declaration of acquisition with the Recorder of Deeds of Chester County for the purpose of noting thereon or the affixation thereto of such documentary stamps or other evidence of the payment of this tax as required by law. Such declaration shall set forth the value of the real estate holdings of the acquired company in Chester County.

SECTION 7. Credits Against the Transfer Tax.

(a) Where there is a transfer of a residential property by a licensed real estate broker which property was transferred to him within the preceding year as consideration for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to him shall be given to him toward the amount of the tax upon the transfer.

(b) Where there is a transfer by a builder of residential property which was transferred to the builder within the preceding year as consideration for the purchase of new, previously unoccupied residential property, a credit for the amount of the tax paid at the time of the transfer to the builder shall be given to the builder toward the amount of the tax due upon the transfer.

(c) Where there is a transfer of real estate which is demised by the Grantor, a credit for the amount of the tax paid at the time of the demise shall be given the grantor toward the tax due upon the transfer.

(d) Where there is a conveyance by deed of real estate which was previously sold under a land contract by the grantor, a credit for the amount of tax paid at the time of the sale shall be given the grantor toward the tax due upon the deed.

(e) If the tax due upon the transfer is greater than the credit given under this section, the difference shall be paid. If the credit allowed is greater than the amount of tax due, no refund or carry over credit shall be allowed.

SECTION 8. Proceeds of Judicial Sale.

The tax herein imposed shall be fully paid, and have priority out of the proceeds of any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or cost of the sale and of the writ upon which the sale is made,

and the sheriff or other officer conducting such sale shall pay the tax herein imposed out of the first monies paid to him in connection therewith. If the proceeds of the sale are insufficient to pay the entire tax herein imposed, the purchaser shall be liable for the remaining tax.

SECTION 9. Real Estate or Interest Therein Partially Located in the Township.

Where real estate or an interest in real estate lying partly within the boundaries of West Bradford Township and partly without said boundaries is transferred, the tax herein imposed shall be calculated upon such portion of the value as shall be represented by the portion of the real estate or interest therein lying within the boundaries of the Township as determined by the Realty Transfer Tax Statement of Value filed with the Recorder of Deeds, or if no such filing is required, by affidavit of the transferor, or as separately stated in the document of transfer; provided, however, such value shall in no event be less than the highest assessed valuation for local tax purposes placed upon the real estate or the interest in the real estate in the assessment of the property within the Township.

SECTION 10. Statement of Value. Every document lodged with or presented to the Recorder of Deeds of Chester County for recording shall set forth therein and as a part of such document the true, full and complete value thereof. When

the full, complete and actual consideration for the transfer which is subject to the tax is not set forth in the document, the person liable for the tax shall, contemporaneously with the filing of the document, file with the Recorder of Deeds a "Realty Transfer Tax Statement of Value" identical to that promulgated by the Department of Revenue of the Commonwealth of Pennsylvania or, in the instance of an "acquired company", a "Realty Transfer Tax Declaration of Acquisition" identical to that promulgated by the Department of Revenue of the Commonwealth of Pennsylvania. The provisions of this section shall not apply to any excludable real estate transfers which are exempt from taxation based on family relationship.

SECTION 11. Recorder of Deeds as Agent for the Township.

The tax imposed hereby, including any amount payable to the Township based on a redetermination of the amount of tax due by the Commonwealth of Pennsylvania pursuant to Section 13 hereof, shall be collected by the Recorder of Deeds of Chester County who shall act as agent for the Township in the collection of the transfer tax as provided in 16 P.S. §11011-6, as amended. The tax thus collected shall be payable by the Recorder to the Treasurer of West Bradford Township at least monthly or at such other intervals as the Township and the Recorder of Deeds shall mutually determine.

SECTION 12. Documentary Stamps or Other Evidence of Payment.

The payment of the tax imposed by this Ordinance when received by the Recorder of Deeds shall be evidenced by the affixing of a documentary stamp or stamps or other evidence of payment as approved by the Pennsylvania Department of Revenue.

SECTION 13. Determination of Additional Tax Due or Redetermination. In the event a determination or redetermination of transfer tax due is made by the Pennsylvania Department of Revenue pursuant to §1111-C. of Act 1986-77, 72 P.S. §8111-C., such determination or redetermination shall be deemed to have been also made by the Secretary of West Bradford Township, and there shall be due and owing to the Township, as additional transfer tax, the amount determined or redetermined by the Department to be due the Commonwealth of Pennsylvania.

Upon a redetermination of the amount of realty transfer tax due by the Commonwealth of Pennsylvania, the Recorder shall re-record the document only when the transfer tax imposed by this Ordinance has been paid.

SECTION 14. Township Secretary as Enforcement Officer.

The Secretary of West Bradford Township is hereby charged with the enforcement of the provisions of this Ordinance and is hereby authorized and empowered to prescribe, adopt and

enforce rules and regulations relating to the registration and notation of transactions, the collection of transfer taxes, interest and penalties due hereunder, the prosecution of violations hereunder, and any other matter pertaining to the administration and enforcement of the provisions of this Ordinance. Provided, however, the Regulations which have been promulgated by the Pennsylvania Department of Revenue under 72 P.S. §8101-C, et seq., as the same are from time to time amended, are incorporated into and made a part of this Ordinance, and shall be deemed to have been adopted by the Township Secretary.

SECTION 15. Collection of Delinquent Transfer Taxes and the Imposition of Interest and Penalties.

(a) If for any reason the transfer tax is not paid when due, interest at the rate of six percent (6%) per annum on the amount of said tax, and an additional penalty of one-half of one percent of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid, shall be added and collected. Where suit is brought for the recovery of any such tax, the person liable therefor shall, in addition, be liable for the cost of collection and the interest and penalties herein imposed.

(b) The transfer tax when due and unpaid, together with all interest and penalties thereon, shall be a lien in favor of the Township on the real estate or interest in the real estate which is described in the document on which the tax is imposed, and upon any other property, both real and personal, of the person failing to pay the tax due, after said lien has been entered and docketed of record by the Prothonotary of Chester County in accordance with the Municipal Claims and Tax Liens law.

(c) If any part of any underpayment of tax imposed by this Ordinance is due to fraud, there shall be added to the tax an amount equal to fifty percent (50%) of the underpayment.

(d) The tax imposed by this Ordinance shall be collected and enforced in accordance with "The Local Tax Enabling Act". The Township Solicitor is authorized to pursue any and all remedies available by law for collection of the tax, and all such remedies shall cumulative and not exclusive.

SECTION 16. Violations.

It shall be unlawful for any person to:

(a) accept or present for recording or cause to be accepted or presented for recording any document, without the full amount of the tax thereon being duly paid; or

(b) fail, neglect or refuse to comply with or violate the provisions of this Ordinance or the rules and regulations prescribed, adopted and promulgated by the Secretary under the provisions of this Ordinance.

Any person who violates any of the provisions of this section shall be guilty of a summary offense and shall be liable, upon conviction thereof, to a fine not exceeding Three Hundred (\$300.00) Dollars, together with the cost of prosecution, and in default of payment of such fine and cost, shall be liable to a term of imprisonment in the County jail for a period not to exceed thirty (30) days.

SECTION 17. Severability.

The provisions of this Ordinance are severable, and if any of its sections, phrases, clauses, or sentences shall be held illegal, invalid or unconstitutional by final judgment of a Court of competent jurisdiction, such provisions shall not affect or impair any of the remaining sections, phrases, clauses or sentences. It is hereby declared to be the intent of the Board of Supervisors of West Bradford Township that this Ordinance would have been adopted if such illegal provision had not been included herein.

SECTION 18. Effective Date.

This Ordinance and the tax herein levied shall be effective five (5) days after enactment as by law provided and shall remain in effect until amended or repealed.

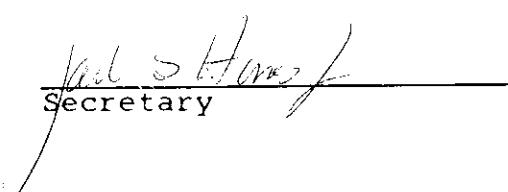
SECTION 19. Repealer.

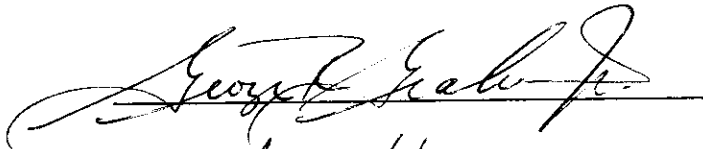
Any prior ordinances imposing a Real Estate Transfer Tax is hereby repealed in its entirety, such repealer to be effective concurrently with the effective date of this Ordinance.

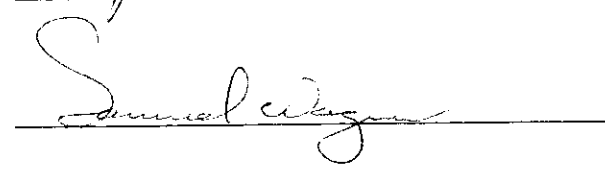
ENACTED AND ORDAINED as an Ordinance this 9th day of December, 1986.

ATTEST:

BOARD OF SUPERVISORS
OF WEST BRADFORD TOWNSHIP


Secretary


President


Samuel Wagner