

HIGHLANDS DEVELOPMENT CREDIT BANK
MINUTES OF THE MEETING OF MAY 6, 2010

PRESENT

THEODORE MAGLIONE)	ACTING CHAIRMAN
SUSAN CRAFT)	DIRECTOR
DALE DAVIS III)	DIRECTOR
MICHAEL HALPIN)	DIRECTOR
KENNETH KLIPSTEIN)	DIRECTOR
JACK SCHRIER)	DIRECTOR
RALPH SIEGEL)	DIRECTOR

CALL TO ORDER

The Acting Chairman, Theodore Maglione, called the 9th meeting of the Highlands Development Credit Bank Board of Directors to order at 1:05 pm.

OPEN PUBLIC MEETINGS ACT

Acting Chairman Maglione announced that the meeting was called in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6; the Highlands Development Credit (HDC) Bank had sent written notice of the time, date, and location of this meeting to pertinent newspapers of circulation throughout the State and posted the same on the Bank's website.

ROLL CALL

Roll call was taken. Director Sigel was absent. All other members were present.

Acting Chairman Maglione wanted to acknowledge that the HDC Bank lost two valuable members, John Weingart and Scott Whitenack. They did a great job steering the Bank to where it is now. Acting Chairman Maglione then welcomed Director Schrier to the Board. Director Schrier is the Acting Chairman of the Highlands Council.

PLEDGE OF ALLEGIANCE was then recited.

APPROVAL OF MINUTES for JANUARY 7, 2010. *Director Craft introduced a motion to approve the minutes. Director Davis seconded it. Director Schrier abstained. Director Siegel was absent. All other members present voted to approve. The motion was APPROVED 5-0.*

Director Davis made a motion at 1:07pm to go into Executive Session to review confidential financial documents submitted by applicants for Highlands Development Credit Certificates with hardship consideration. Director Craft seconded the motion. The motion was APPROVED 6-0.

[EXECUTIVE SESSION]

Acting Chairman Maglione made a motion to close the Executive session and resume the HDC Bank Board meeting at 2:05pm. Director Klipstein seconded the motion.

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ACTING CHAIRMAN'S REPORT

The Acting Chairman's Report was deferred until later in the Agenda.

EXECUTIVE DIRECTOR'S REPORT

Ms. Swan began her report aided by a PowerPoint presentation. She once again outlined the distinct and separate roles of the Highlands Council and HDC Bank Board regarding the Highlands TDR Program.

Highlands TDR Program

The role of the Highlands Council is to establish the TDR program, including working with municipalities to establish TDR Receiving Zones; approve deeds of easement; establish the initial Highlands Development Credit value (currently set at \$16,000 per HDC); determine HDC allocation for Sending Zone parcels and, where applicable, hardship eligibility; assess program at specified intervals for improvements; and work to pass new TDR legislation providing greater opportunities for use of HDCs (i.e., create more demand).

The role of the HDC Bank is to issue HDC certificates after a property owner records the appropriate deed of easement; to serve as administrator of TDR program by tracking all HDC transactions; to serve as an information clearinghouse regarding the TDR program and link potential HDC buyers and sellers; and also serve as buyer and seller of HDCs.

HDC Process Timeline

Ms. Swan continued her presentation by discussing the timeline for the Highlands Council's issuance of HDC Allocations (when a landowner is seeking to know the range of their credits available on their property if it is within the Sending Area) and Hardship Determinations. For HDC Allocations and Hardship Determination a Public Notice and HDC Estimator Tool on the Highlands Council's website was launched in November 2009. HDC Allocation Applications for the first round of hardship consideration was due by March 15, 2010. HDC Allocations Applications were then reviewed and, where appropriate hardship determinations were rendered by the Highlands Council.

The timeline for the HDC Bank's issuance of HDC Certificates was that a Public Notice was issued on February 2010. HDC Certificate Application for the first round of hardship consideration was due by April 15, 2010. Today, May 6, 2010, the HDC Bank Board will rank hardship applications according to HDC Bank's established priorities. If accepted and authorized by the Board, letters of offers to purchase HDCs and deed of easement will be sent to applicants. Ms. Swan further explained the process for ranking eligible properties, although she noted that for the applications being considered today there is no need for ranking as there is sufficient funding to address all applications that satisfy the first round of hardship consideration.

Steps to HDC Bank Purchase

Ms. Swan then presented the steps for the purchase of HDCs by the HDC Bank as follows: 1) Visit the HDC Estimator Tool on the website (residential property only). Commercial property owners need to fill out a formal application (also to be found on the website) and submit to the Highlands Council; 2) Submit HDC Allocation Application, including copy of deed and documentation of hardship. For the first round of hardship consideration there was a March 15, 2010 deadline. 3)

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Highlands Council will determine HDC allocation and whether property owner satisfies hardship criteria; 4) HDC Allocation Letter states the number of HDCs the property receives and whether the property owner qualified for hardship consideration; where no allocation is awarded, the letter will explain why. HDC Allocation Letter is valid for 3 years. 5) Property owner may seek Reconsideration where owner believes more HDCs should have been awarded; reconsideration is based on factual issues only, e.g. steep slopes, zoning, etc.; 6) Assuming HDC allocation is final, property owner may choose to do nothing further; 7) Property owner may also choose to begin HDC Certificate process; if so, submit HDC Certificate Application to the HDC Bank along with copy of HDC Allocation Letter. For the first round of hardship consideration there was an April 15, 2010 deadline; 8) HDC Bank will first process hardship applications and rank them according to HDC Bank's established priorities. Other HDC Certificate applications will then be processed; 9) For priority applications, Bank staff will present prioritization list to Bank Board of Directors for review and approval at HDC Bank's May 6, 2010 meeting; 10) Letters of offers to purchase HDCs will then be issued. Owners receiving letters will have a certain period in which to accept offers; 11) If offer accepted, property owner will be required to submit draft deed of easement, title and court search, affidavit of title, and letter or subordination agreement from mortgage holder, if applicable; and 12) HDC Bank will work with property owner to have deed of easement finalized and then recorded at appropriate county clerk's office. Bank staff will then issue HDC Certificate and work with property owner to close transaction.

Purpose of Today's HDC Bank Meeting

Ms. Swan discussed the purpose of the Board's meeting explaining that it is to determine whether the HDC Bank should authorize the Executive Director to make offers to purchase the allocated HDCs from those property owners that qualified for hardship consideration or having just missed Exemption #3 eligibility under the Highlands Act. Ms. Swan highlighted the Bank's acquisition priorities as decided by the Bank on September 3, 2009, under Resolution 2009-6:

- First priority consideration to any property that satisfies both of the following criteria:
 - comprises a major Highlands development that would have qualified for an Exemption #3 but for the lack of a necessary State permit; and
 - which satisfies the extenuating financial circumstance criteria;
- Second priority consideration to any parcel of land whose owner only satisfies the extenuating financial circumstance criteria; and
- Third priority consideration to any parcel of land that only satisfies the missing an exemption criteria above.

* For each priority level, consideration is given for the protection of land with significant ecological or agricultural importance consistent with the RMP, if there are more applicants than the Board can satisfy. This is not the case for today's consideration but the Bank Board will see the information that would be considered.

Status of HDC Allocations

Ms. Swan provided the status of the HDC Allocation Applications received by the Highlands Council. Sixteen (16) HDC Allocation applications were received through April 22, 2010; one (1) application was for a property located in the Planning Area and is ineligible for consideration at this time. Of the fifteen (15) applications for property in the Preservation Area, nine (9) applications sought to be reviewed under the hardship criteria established by the Highlands Council and the HDC Bank; and four (4) applications have satisfied the hardship criteria. One (1) application sought

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review under the Highlands Act priority for just missing to qualify for Exemption #3 and that application demonstrated it qualifies for priority. Eleven (11) applicants have received an allocation letter from the Highlands Council with ten (10) of the properties receiving an allocation of HDCs. The 11th property is subject to a prior deed restriction that already severed any development potential.

Ms. Swan continued with her presentation on the status of HDC Allocations. A total of 286 HDCs have been allocated to date with a total value of \$4,576,000 based upon the \$16,000 initial HDC price established by the Highlands Council. A total acreage receiving an HDC allocation to date is 492.55 acres. Based upon the total value of HDCs allocated to date, the average per acre price for the eligible parcels is \$9,290.43. This represents a total of 127 pre-Highlands Act residential development opportunities and 63,117 square feet of pre-Act non-residential development that would be reduced if the allocations were transferred through the program or purchased by the Bank. As of April 15, 2010, 4 HDC Certificate Applications received from the 4 property owners qualified for hardship consideration by the HDC Bank; 1 HDC Certificate Application received from property owner qualified for priority consideration due to having just missed Exemption #3 eligibility under the Highlands Act.

Criteria for Hardship Consideration

The Highlands Council reviewed those HDC Allocation Applications where the property owner is seeking hardship consideration and made those determinations. To qualify for hardship consideration, a property owner must have demonstrated that either: 1) the owner is experiencing an extenuating financial circumstance and that the owner's equity in the property to which HDCs will be allocated is substantial in relation to the owner's net worth, or 2) the property would have qualified for Exemption #3 under the Highlands Act, but for not securing a needed State land use or water permit where an application for that permit was pending before the Department of Environmental Protection as of March 29, 2004.

Hardship & Missed Exemption #3 Priorities

Ms. Swan then presented a chart that represented the applications for consideration.

Municipality	Block & Lot	Acreage	Lost Development Opportunities (Pre-Act)	Allocated HDCs	Total HDC Value	Applicable Easement	Exemption	Comments
Liberty	B.11/L.45	40.95	8	16	\$256,000.00	Non-Ag	NA	Developed with a single family home.
Bethlehem	B.9/L.6	15.45	2	4	\$64,000.00	Ag	NA	Developed with a single family home.
Washington (Morris)	B.59/L.12	51.5	1	2.75	\$44,000.00	Non-Ag	NA	Developed with a single family home.
Jefferson	B.250/L.18	19.8	1	2	\$32,000.00	Non-Ag	Retiring Exemption	Undeveloped; lot access completely constrained; surrounded on three sides by Morris County's Minnisink Park.
Washington (Morris)	B.37/L.4, 9	93.19	26 (24)	83 (66.5)	\$1,328,000.00 (\$1,064,000.00)	Non-Ag	Considering Retaining 2 Exemptions	Undeveloped; owner received final subdivision approval for 26 lots.
TOTAL		220.89	38	107.75	\$1,724,000.00			

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Referring to the chart, Director Craft stated that the lost development opportunities were based on analysis of development potential before Highlands Act. Ms. Swan verified that this was the case. Director Craft asked staff what type of easement was in place for the property that had already severed development potential. The question would be answered when Mr. LeJava returned to the meeting.

Director Craft asked how Council determines the difference between the Allocated HDCs and the Total HDC Values in the case of Block 37 lots 4 and 9 in Washington. Mr. LeJava responded that dependent on whether the property has priority conservation or agriculture areas, it may receive a bonus to encourage the property owner to not exercise an applicable exemption. In this case, there was a bonus applied which explains the difference in credits if the exemptions were retired.

Referring to the chart, Director Davis asked if property is farmland assessed why under applicable easement would Non-Ag be noted. Mr. LeJava responded to say that it is based on the existing use of the land and that land under woodland management would receive a Non-Ag easement.

To answer Director Craft's question earlier on Applicable Easement, Mr. LeJava responded to say that deed of easement was part of a HAD application approved by the Department of Environmental Protection. As a result of that application, the landowner was given the right to build two buildings and an easement was applied to the rest of the land with no development rights remaining.

Ms. Swan continued with her presentation to show maps of all the properties being considered and the resource values associated with those properties. This analysis would be used when necessary to rank properties that were being considered

Offer Letter Contents

Ms. Swan then stated that if the Board goes ahead to approve the Resolution considered, the offer letter will include the following information: A listing of the municipality and block and lot of the parcel(s); the number of HDCs to be purchased; the price per HDC to be acquired by the HDC Bank; a statement that the offer must be accepted and acknowledged within thirty (30) days of the date of the offer letter; letter will have to be signed and returned to the HDC Bank within the time period established; and an offer to pay closing costs associated with HDC transaction (only for the 4 under financial hardship, not for the 5th property that missed the exemption), up to a maximum of \$2,500. All costs would be paid on a reimbursement basis upon presentation of invoices indicating the closing costs incurred, as well as an explanation of the documentation necessary to complete the transaction, including a deed of easement.

HDC Bank Purchase – Closing Process

Ms. Swan noted that the documentation necessary to complete the HDC transaction is as follows: 1) Appropriate deed of easement to be recorded against the property limiting most future development potential of the parcel (certain Highlands Act exemptions may be permitted; on agricultural lands, agricultural development is permitted consistent with the Highlands Act); 2) A 60-year title search; 3) A 20-year upper and lower court search; 4) An Affidavit of Title attesting that owner is sole owner of property, that there are no liens or encumbrances on the property that would prohibit owner of property from encumbering with the deed of easement; 5) If applicable, Corporate

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Resolution indicating authority to enter into transaction; 6) If applicable, a Mortgage Holder Letter or Subordination Agreement indicating mortgage holder aware deed of easement to be placed on property; and 7) If applicable, an Affidavit of Judgment. The Deeds of Easement were finalized and approved by the Attorney General's office, sent to the Directors and Highlands Council members and are posted on the Council's website.

HDC Process – Next Steps

Ms Swan reiterated to say that if the Board approved the Resolution, the Executive Director would issue the Offer Letters to purchase HDCs; offers must be accepted within 30 days of date of offer letter; HDC Bank staff and property owner would work to complete necessary documentation to effectuate transaction, including recording of appropriate deed of easement and issuance of HDC Certificate; Closing of HDC purchase to occur at Highlands Council office in Chester with transfer of HDC Certificate and issuance of check.

Ms. Swan further stated that the Resolution which was in the packet and on the agenda refers to one Resolution. At the request of the Acting Chair, the Resolution was split into two Resolutions with the same information being considered. The first Resolution the Board is considering is to authorize the offer letters and the closing costs and the second Resolution is to authorize the second hardship round.

Acting Chairman announced that the first round Resolution was being considered for the properties and closing costs:

I. CONSIDERATION OF RESOLUTION FOR HIGHLANDS DEVELOPMENT CREDIT BANK AUTHORIZATION TO ACQUIRE HIGHLANDS DEVELOPMENT CREDITS UNDER FIRST ROUND OF HARDSHIP.

Director Schrier made a motion to approve the Highlands Development Credit Bank Authorization to Acquire Highlands Development Credits under First Round of Hardship Consideration and Director Craft seconded it.

PUBLIC COMMENT

Wilma Frey, New Jersey Conservation Foundation asked who is holding the deed of easement. The Chair indicated that staff should respond and Mr. LeJava responded to say that the Highlands Council will hold and monitor the deed of easement.

David Shope has land in the Preservation Area and since he is unable to see the deeds of easement on the website, he suggests that the Board keep it simple and advise the building department of each town that no house can be built on these properties.

Keith Klinger asked if a property were to have the HDC purchased what would be the regulations regarding any construction or farm use building on that property in the future. Ms. Swan responded that the deeds of easement may be provided for both Mr. Shope and Mr. Klinger to clarify what would be allowed on the property. Ms. Swan also mentioned that Staff accepts constituent calls in the office and if Mr. Klinger seeks further clarification staff would be very glad to respond.

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Ms. Swan asked Mr. LeJava to further respond briefly on deeds of easements. Mr. LeJava responded by saying that the deeds of easements essentially sever any development protection that remains except to the extent that there might be an applicable Highlands Act exemption. In the case of a non-agricultural easement, it is more of a conservation deed easement, where the property owner basically gives up any developmental potential that remains, except in the case of an applicable Highlands Act exemption, in particular the right to retain an exemption for the construction of a single family home where the property is not previously developed. If the easement is the agricultural easement, there is the ability to construct agricultural and horticultural development as allowed under the Highlands Act. Mr. Klinger further asked if there are any specifics on what is available on the website. Mr. LeJava responded by saying that Mr. Klinger will see the prohibitions and rights remaining on the deeds of easements themselves.

DIRECTOR DISCUSSION

Director Craft asked for clarification regarding what a property owner may do under the deed of easement where a property is farmland assessed by way of a woodland management plan. Specifically, she asked for clarification on the ability to sell HDCs and to continue to be qualified for farmland assessment. Mr. LeJava responded that the deeds of easement specifically call out and allow woodland management activities to continue as the Highlands Act exempts such activities, provided the activity is conducted pursuant to a woodland management plan.

Acting Chairman Maglione called for a roll call vote. Director Siegel voted against the Resolution and all other Directors present voted to approve the Resolution. APPROVED 6-1.

Acting Chairman announced that the second round Resolution was being considered for hardship applications:

II. CONSIDERATION OF RESOLUTION FOR HIGHLANDS DEVELOPMENT CREDIT BANK AUTHORIZATION TO PROVIDE NOTICE OF A SECOND ROUND OF INITIAL PURCHASE PROGRAM FOR HARDSHIP.

Ms. Swan stated if this Resolution is approved by the Board, the Allocation Applications are due to Highlands Council by July 1, 2010; HDC Certificate Applications due to HDC Bank by August 8, 2010; HDC Bank to consider second round applications at September 2, 2010 meeting. Ms. Swan wanted to reiterate that anyone can apply for the allocation.

Director Schrier made a motion to approve the Highlands Development Credit Bank Authorization to Provide Notice Of A Second Round Of The Initial Purchase Program For Hardship Consideration and Director Davis seconded it.

NO PUBLIC COMMENT was received.

DIRECTOR DISCUSSION

Director Klipstein asked for a status report on the Bank's annual report of real estate values. Mr. LeJava responded by saying that that will be addressed

Director Craft asked to expand on the decision of having another round. Ms. Swan responded by saying that currently the HDC Bank has \$10 million available to it. The Council and the Bank made

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it clear to the staff that they wanted to move this program ahead and the \$10 million was given to start the program understanding that it takes a long time to get market-based program. The idea was to encourage allocation applications to give a better indication of the nature of the demand. That is why it is important to make sure this is open fully to anyone who wants to seek an application at this point. It was also made clear that the Council and Bank wanted to prioritize consideration of hardship cases.

Director Craft then asked if this resolution is intended to authorize another round of purchases limited to hardship. Ms. Swan responded that as proposed the second round purchases are limited to hardship cases, but the allocations are open to anyone. Director Craft asked Ms. Swan if staff is looking at those applications under hardship first for next round. Ms. Swan responded to say at this point yes.

Acting Chairman Maglione called for a roll call vote. Director Siegel abstained and all other Directors present voted to approve the Resolution. APPROVED 6-0.

TDR Legislative Update

Ms. Swan concluded with her final slide and an important message that yesterday Governor Christie signed the Highlands TDR expansion bill (S-80/A-602) amending section 13 of the Highlands Act to permit any municipality statewide to serve as a TDR receiving zone. The bill also amends the requirement that the municipality receive Plan Endorsement before it may serve as a Highlands receiving zone. Now, the State Planning Commission and the Highlands Council may agree that a project area is appropriate to serve as a receiving zone. Information developed during the feasibility studies supported by the Council's TDR grant program will be used to demonstrate appropriateness. The bill passed the Assembly in February and the Senate in March. Ms. Swan acknowledged Donna Rendeiro from Office of Smart Growth in the audience today who represents the State Planning Commission and would work with Highlands staff to ensure that receiving areas were appropriately designated.

ACTING CHAIRMAN'S REPORT

Acting Chairman Maglione asked the Directors to reflect on the Bank Board's next steps. He further stated that he would like the HDC Bank staff to prepare a report/outline for our September 2nd meeting on how much funding we have remaining. Acting Chairman Maglione continued to say that staff may want to consider modifying some of the procedures the Board had adopted to allow for a more fluid presentation and determination. Ms. Swan commented that by the end of July staff should have a good indication of the allocations and hardship applications so staff should be able to give the Bank Board substantial information to consider the Board's next steps. Acting Chairman Maglione also wanted to reiterate and extend his appreciation to Scott Whitenack and John Weingart for their outstanding service to the HDC Bank Board.

PUBLIC COMMENT

Monique Purcell, Department of Agriculture extended her congratulations to the Board on today's action. It is a small step but a very important one. She looks forward to future rounds as soon as possible.

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David Shope, Lebanon Township spoke about the Whitehall study which monitored the health effects on government bureaucrats and expressed concern that the HDC Bank Board shares the same staff with the Highlands Council.

Helen Heinrich, New Jersey Farm Bureau added to Ms. Purcell's congratulatory comments. Ms. Heinrich said she will see what happens with the second round, but has faith in the process. She also wanted to know what happens with the fifth applicant. Ms. Swan responded to say we had nine applications for hardship and four that qualified and Staff needed more information which applicants still have an opportunity to submit if they wish to be considered in the second round.

Director Schrier made a motion to adjourn the meeting and Director Halpin seconded it. Meeting was adjourned at 3:02pm.

CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of the meeting of the Highlands Development Credit Bank Board.

Date: 12/10/10

Name: Annette Tagliareni
Annette Tagliareni, Executive Assistant

<u>Vote on the Approval of the May 6, 2010 Minutes</u>	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Director Craft	_____	_____	✓	_____	_____	_____
Director Davis	_____	_____	✓	_____	_____	_____
Director Halpin	_____	_____	_____	_____	_____	✓
Director Klipstein	_____	✓	✓	_____	_____	_____
Director Schrier	✓	_____	✓	_____	_____	_____
Director Siegel	_____	_____	_____	_____	_____	✓
Acting Chair Maglione	_____	_____	✓	_____	_____	_____