

HIGHLANDS DEVELOPMENT CREDIT BANK
MINUTES OF THE MEETING OF FEBRUARY 2, 2009

PRESENT

SCOTT WHITENACK)	CHAIRMAN
SUSAN CRAFT)	DIRECTOR
DALE DAVIS III)	DIRECTOR
KENNETH KLIPSTEIN)	DIRECTOR
THEODORE MAGLIONE)	DIRECTOR
RALPH SIEGEL)	DIRECTOR
JOHN WEINGART)	DIRECTOR

TELECONFERENCE

MICHAEL HALPIN)	DIRECTOR
ERIK PETERSON)	DIRECTOR

CALL TO ORDER

The Chairman of the Board, Scott Whitenack, called the 1st meeting of the Highlands Development Credit Bank Board of Directors to order at 1:15 pm.

ROLL CALL

The members introduced themselves.

OPEN PUBLIC MEETINGS ACT

Chairman Whitenack announced that the meeting was called in accordance with the Open Public meetings Act, N.J.S.A. 10:4-6, and that 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 Highlands Council website.

PLEDGE OF ALLEGIANCE

CHAIRMAN'S REPORT

Chairman Whitenack noted that there would be a report to the Highlands Council on actions taken by the HDC Bank. He suggested to the new directors that they refer to Chapter 4 in the Regional Master Plan for a written description of what the HDC Bank is going to be doing. He then briefly described the functions of the HDC Bank.

EXECUTIVE DIRECTOR'S REPORT

Ms. Swan welcomed the new board members and explained that the Highlands Council staff would be supporting the HDC Bank as well as the Highlands Council. She described the makeup of the staff. She introduced the Highlands Council staff that were in attendance at the meeting and noted that Jeff LeJava was the architect of the Transfer of Development Rights (TDR) program and that he had worked with many professionals, including Susan Craft, John Stokes and Pinelands staff, Charlie Siemon and Ralph Siegel to develop the recommendations provided to the Highlands Council for formation of the program.

Ms. Swan gave a power point presentation (see attached) providing an overview of the Highlands Region, and its relationship to previous and current regional planning efforts. She explained that the region was designated as a Special Resource Area in the 2001 State Plan and recognized Lorissa Whitaker from the Office of Smart Growth.. The presentation also contained an overview of the analysis and approach taken in completing the Regional Master Plan, including a timeline.

MR. ERIK PETERSON JOINED THE MEETING BY TELECONFERENCE.

Ms. Swan continued the presentation by showing a number of slides highlighting the use of the various overlay zones established in the Land Use Capability Map series. The presentation introduced the relationship between the Highlands Council and the HDC Bank Board, and explained the ongoing responsibilities for the program by the Council.

Ms. Swan then introduced Jeff LeJava, the Administrator of the TDR Program, to present an overview of the Highlands TDR Program. He briefly explained the requirements for sending and receiving zones under the program and highlighted the significant grant funding that is available to municipalities that may wish to consider becoming a part of this program. To date, grants have been awarded to Chester Borough, City of Clifton, Town of Clinton, Township of Lopatcong and Washington Borough. He then discussed the role of the HDC Bank under the Highlands TDR Program.

CONSIDERATION OF RESOLUTION FOR HIGHLANDS DEVELOPMENT CREDIT BANK ANNUAL MEETING SCHEDULE FOR 2009

Mr. Halpin introduced a motion and Mr. Weingart seconded it. All members present voted in favor. The resolution was *APPROVED*.

There was some discussion of the meeting schedule. It was agreed that meetings would be held on the first Thursday of each month at 1pm, the chair was open to considering other times but wanted to have the first few meetings before considering changes. Ms. Swan noted that the packets providing materials for the upcoming meetings would be sent to the directors the week before the meeting and non-confidential material would be posted on the Highlands Council website prior to the meeting.

The next meeting will be Thursday, March 5, at 1 pm.

CONSIDERATION OF RESOLUTION FOR HIGHLANDS DEVELOPMENT CREDIT BANK DESIGNATION OF NEWSPAPERS

Mr. Siegel introduced the motion and Mr. Klipstein seconded it. There was one public comment from Jody Anderson asking that all editions of the Star Ledger carry this information. Mr. Borden clarified that this resolution was just for the public notice not the news articles.

All members present voted in favor. The resolution was *APPROVED*.

Chairman Whitenack announced that draft bylaws prepared by staff would be sent out to the Directors for their review in about one week. Mr. Borden provided background on the creation of

the draft explaining that the bylaws of the Highlands Council, the State TDR Bank, and the Pinelands TDR bank had all been reviewed to develop this draft. Copies of the bylaws used to develop the draft will also be provided to the Directors.

Mr. Whitenack advised members that the Council By-laws had gone through extensive review and hoped that the members would thus find the HDC by-laws easier to review. He mentioned that in order to elect a vice-chair and treasurer, the bylaws needed to be in place. He also briefly discussed the committee structure that he is considering having the Directors approve. As currently contemplated, the committees will consist of a Policy Committee with responsibility for the administration and operation of the HDC Bank and a Finance Committee with responsibility for overseeing the HDC Bank's operating and capital budgets and securing additional bank funding. He finished by saying that Executive Director Swan and the Highlands Council staff would work to bring new members up to speed.

He then asked for public comment.

PUBLIC COMMENT

Chairman Whitenack explained the "ground rules" that would be followed asking that those commenting limit their comments to three minutes and that there would not be a dialogue with board members but that where appropriate staff would follow up with responses.

Deborah Post, Chester Township

Ms. Post submitted two documents for the public record to be attached to the minutes. She spoke to the issue of her concerns on transparency of the process for pricing of Highlands Development Credits and the nature of the valuation method used.

Hank Klumpp, Tewksbury Township

He asked how many of the new directors owned property in the Highlands Preservation Area. The question was asked because of his concern over the impact of the Act and the Plan on property owners. He commented that the \$10 million funding for the TDR program was not even enough to buy his farm.

Helen Heinrich, NJ Farm Bureau

She welcomed the new board members and offered to help in any way to facilitate the process.

Richard Longo, Boonton Township

He spoke of his dismay not being able to pass down his land to his grandchildren with the property devalued by the Highlands Act. He requested compensation for his land.

Mark Zakuntansky, New Jersey Highlands Coalition

He looks forward to working with the new board and is enthusiastic to work on the reauthorization of the funding for the Garden State Preservation Trust in the coming year.

Director Craft commented that she appreciated the public comments and she explained that she had worked for many years on TDR implementation and pledged to do her best to maximize the success of this program.

Mr. Siegel introduced a motion to adjourn and Ms. Craft seconded it. The meeting was adjourned at 2:33 pm.

CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of the meeting of the Highlands Water Protection and Planning Council.

Date: 3/20/09

Name: Paula M. Dees
Paula M. Dees Executive Assistant

TRUE COPY

<u>Vote on the Approval of these 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 Maglione	_____	_____	✓	_____	_____	_____
Director Peterson	_____	_____	✓	_____	_____	_____
Director Siegel	_____	_____	✓	_____	_____	_____
Director Weingart	_____	_____	_____	_____	_____	✓
Director Whitenack	_____	_____	✓	_____	_____	_____

TDR Bank Board Comments, February 2, 2009

My name is Deborah Post, Chester Township.

I would like to begin my comments by submitting ²three documents for attachment to this meeting's minutes with the request that those of you on this Board new to this process read them. The first are comments regarding TDRs that I gave to the Highlands Council way back on December 1, 2005 when we still believed that the TDR mandate legislated in the Highlands Act would be implemented on a timely and fair basis. Delay was always the well crafted strategy. The second are comments submitted to the Highlands Council in connection with the Regional Master Plan which address the TDR printing press approach of the Plan that creates inflatable funny money. ~~And third is a recent article in the Daily Record regarding the establishment of this Board.~~

Transparency

How are you going to insure that all transactions of TDRs are transparent and disclosed timely?

How are you going to insure that all buyers and sellers of TDRs are transparent, and knowledge of the market place players available to all?

How are you going to insure transparency of transaction pricing?

How are you going to insure that TDRs don't realize their potential as a boon for the corrupt politics of New Jersey?

Based on my review of GSPT funds used in Morris County, there is little doubt that the already-rich and the politically connected have received the lion's share of the Trust's funding, while the little guy has rarely participated.

Will you disclose the data detail and base analysis that Integra used in valuing the HDCs? Is valuation data to be kept as big a secret by this Board as the priority list of properties developed by the Council but deemed unsuitable for the public's eye?

The HDC valuation data we are told is largely tax data, a valuation approach not accepted by any court in any State as useful in the determination of fair market value. Federal and State courts have consistently defined "just compensation" as fair market value. The eminent domain commission does not accept tax assessments as evidence of fair market value.

Will this Board, in contradiction of all case law, agree to use tax assessment data in valuation of HDCs?

What are your plans for creating a marketplace for the HDCs? A bank without a marketplace has no real function.

What are your plans for allocating the HDCs to all harmed Highlands landowners? Don't kid yourself that this is a voluntary process of application. Not one landowner volunteered their land for a regulatory taking.

Pricing

The Highlands Council has disclosed their intentions regarding the initial market price of a HDC. When questioned in detail regarding the actual appraised value of that HDC per the work of the Integra consultants, i.e. the lost development value it is supposed to reflect, the TDR committee told us that the initial offering price represented a 75% discount to value. Let me repeat: a 75% discount to real value. That's right, they have set the initial TDR price at approximately one quarter of the development value taken from landowners by the Highlands Act. While a slight discount to market – rarely more than 3% - is typical in Wall Street pricing of IPOs, the purpose being to stimulate participation in the offering. However, any banker who recommended to his client a pricing discount to market of 75%, would be immediately and soundly sacked. But here, the owners of the TDRs, the landowner stakeholders, have no representation in the process. The stakeholders aren't allowed to fire those who would misprice their asset. Continuing the tradition of the Council, this Board has been stacked with people with no interest in a fair, transparent and effective program of landowner just compensation. My apologies to the newcomers, but you are not stakeholders, just more political appointees with a history of playing political ball. And the Council members on this Board have a four year history of aggressive efforts to deprive landowners of their lost equity. They waited for a global financial crisis before even establishing this Board, prima facie bad faith.

The result of pricing the TDRs initially at a 75% discount to its real value is to insure that the elderly, the cash strapped, and the financially desperate who must walk through the door first, will get the largest fleecing. This is worse than despicable, it is pure evil.

COMMENTS TO HIGHLANDS COUNCIL, December 1, 2005

My name is Deborah Post. I own property in Chester Township. In contrast to the past, my comments today may exceed the three minute limit and I claim the additional minutes of John Post, whose power of attorney I hold.

The “administrative remedy” of the development right transfer has been much highlighted and discussed. The TDR remedy remains in the realm of theory as not one Highlands TDR transaction has taken place to date. This Council is charged with moving the TDR from theory to practice. Today I will comment on the TDR and request that I be allowed to complete my TDR comments covering pricing, marketplace, transparency, and structure.

TDR Pricing. In marketplaces where TDRs have been utilized, the TDR has typically been structured with one TDR credit being issued for each possible buildable dwelling. Structured as such, each credit ended out with a five figure value. I propose that, instead of one credit for each buildable dwelling, the Highlands TDR program be structured with each buildable dwelling being allocated a large number of TDR units, with the units structured to trade in the range of a typical stock, i.e. ideally a two figure number. It is important that a TDR unit be priced more like a share of GE than a share of Berkshire Hathaway. All Highland TDR units should be fungible, interchangeable and saleable in any receiving zone. The rules of marketplace liquidity must be honored. The difference in development right values across the Highlands would be more easily accommodated with the issuance of varying numbers of Highland TDR units depending on location.

TDR Marketplace. In its infinite wisdom, the legislature failed to mandate receiving zones for the theoretical sending zones they created with the Highlands Act. The idea that there will ever be a large enough voluntary receiving zone marketplace to absorb the estimated \$6 billion dollars of TDR value in the preservation zone is unfortunately laughable. Therefore it is imperative that an alternative marketplace be developed. I propose that this Council recommend to Trenton that every building permit issued in the State of New Jersey for any purpose be required to purchase a number of TDR units, possibly based on square footage, as a cost of permit issuance. If the purpose of the Highlands Act is to preserve an environment for all than it is clearly appropriate for all of the beneficiaries of this public purpose, i.e all of the residents of our Garden State, be required to contribute to the cost of garden preservation, not just the hapless Highland resident.

TDR Transparency. All TDR transactions must be transparent in an open marketplace. This means that all purchases and sales of TDRs must be disclosed with pricing detail that is readily available to all. Actual transaction pricing posted on the internet would be ideal. Transparency of pricing and buyers will insure that TDRs don't become the next windfall of corrupt politicians and their cronies. The potential for misuse of a Highland TDR program is obviously huge.

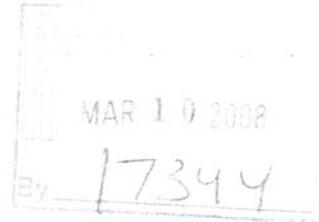
capricious, arbitrary, without scientific basis and certainly without the consensus or agreement of those owning property within the preservation boundaries.

Do not treat the landowners as fools by suggesting that any participation in a TDR program, which is being presented as an administrative remedy, is voluntary. Just compensation in this regulatory taking is being defined as the TDR. The landowner did not agree to the taking by definition.

The easement restrictions of other voluntary New Jersey programs are onerous and, de facto, represent the sale of rights protected by the Fourth Amendment. These easement restrictions allow Big Brother to move into the barn. These easement restrictions hand a license to harass to over empowered government employees and officials. As a farmer in Chester Township, I am excruciatingly familiar with the pain and suffering inflicted by the harassment techniques of farmer-hating officials such as the mayor. Do not give him more power to harass.

Highland landowners have had their net worth decimated by this bill. Do not add insult to injury by requiring them to sell their privacy and the sanctity of their homes in order to realize their just compensation.

From: DAPost2@aol.com [mailto:DAPost2@aol.com]
Sent: Friday, February 29, 2008 4:31 PM
To: RMPComments
Subject: RMP Comments



To: Highlands Council
From: Deborah Post
Chester Township Landowner

February 28, 2008

Re: Comments on Draft Regional Master Plan
referencing Part 7 Landowner Fairness of Chapters II, IV & V.

The Highlands Water Protection and Planning Act (the Act) states clearly that a transfer of development right (TDR) program shall be implemented to compensate landowners in the Highlands Preservation Area for the loss of their right to develop. There is nothing unclear about the concept that a development right is related to, and only related to, the right to develop, the most valuable in the State of New Jersey of the bundle of rights associated with land ownership.

The Highlands Regional Master Plan (RMP) fails to *implement* a functioning TDR program as directed by the Act, fails to calculate the number of development rights to be included in such a program, and fails to follow the Act's mandates for a TDR program.

The RMP only generically discusses goals and policies of a Highlands Development Credit program in a general and unspecific manner, sounding more like a textbook on the subject than a detailed and defined TDR program crafted specifically and statistically for the Highlands Preservation Area. (For example, the credit allocation formula is theoretical only with no quantification of base credit, end use, or market adjustment factors. The terms of associated deed restrictions are unaddressed.)

The RMP states that any Highlands TDR program is challenged by its sheer size and the lack of a market place, i.e. receiving zones, for the Highlands development credits, if and when issued. The recitation of these challenges is a de facto admission that a Highlands TDR program is not feasible and will never be implemented.

Disturbingly, the RMP discusses the allocation of Highlands Development Credits (HDCs) using vague wording such as "resource values" of a property. The RMP's language appears designed to allow the Council to utilize HDCs far more broadly than the Act contemplates and intended. The RMP language might be read as creating an ever expanding "currency" of HDCs that the Highlands Council may inflate at will and utilize to reward a myriad of environmental goals under the guise of "resource value" that are not at all related to compensating landowners for the loss of their right to build.

The RMP fails to define the exact number of HDCs that are to be issued to Highlands landowners as just compensation for lost development rights. The Act clearly states that it is development rights pursuant to local land use law as of August 2004 that must be quantified. The lost development potential of the Highlands Preservation Area as of August 2004 is an historical knowable fact and it was the duty of the Highlands Council to research and specifically define this statistical fact. The RMP should have, but does not, calculate the total and fixed number of lost rights to develop in the Highlands as of August 2004 and translate such lost development rights into Highlands Development Credits, also a fixed and knowable figure.

It is imperative that any transfer of development right program implemented in the Highlands be strictly limited to compensation for lost development rights, i.e. lost buildable lots, of Highlands Preservation Area landowners as of August 2004. If "resource values" and other amorphous and undefined objectives are to be compensated or encouraged, a separate and distinct compensation mechanism must be created, the funding of which must be subordinated to the full and complete compensation of development right losses.

The Act does not provide for a TDR program to compensate Planning Area landowners as the Planning Area was intended as an area for planned building and receiving zones. The TDR program authorized by the Act for Preservation Area sending zones must not be expanded, diluted and rendered additionally infeasible by allocating credits to Planning Area lands.

The Act charges the Highlands Council with creating a TDR program and provides for "build" exemptions. The legislator intended these to be separate and distinct mitigations for lost development rights. The RMP has erroneously combined the two, providing for the exchange of exemptions into additional HDCs. Exemptions must not be exchangeable into HDCs as this is not what the Act states, is not what the legislature intended, upsets the balance of mitigation opportunities, and will unnecessarily expand the already unfundable funding need of the transfer of development rights program. Any inflation of the number of HDCs to be issued reduces the likelihood that adequate and complete compensation will be paid for the staggering financial cost to landowners of their lost build right.

A Highlands transfer of development rights program must not morph into a tool of corruption whereby HDCs are given to parties for willy-nilly environmental reasons at the whim of politically appointed Highlands Council members. HDCs must be narrowly defined as compensation for lost build lots as of August 2004 in the Preservation Area. HDCs must be of a knowable and fixed amount, issued and funded prior to compensation of other environmental goals. The RMP must include the fixed number of HDCs to be issued in any future Highlands transfer of development right program. In fact, pursuant to Section 6n, the RMP should specifically identify the landowner recipients of development credits and state the amount of HDCs to be issued to each such landowner.

The Act charges the Highlands Council with identifying lands not suitable for development and landowners due just compensation via a transfer of development right program. The RMP does not identify such lands or landowners. The RMP turns the duties of the Council on its head requiring landowners to "apply" for HDCs. By creating a bureaucratic and paperwork application nightmare, the Council has shirked its duty and set the stage for an ill-defined program subject to manipulation and corruption. The RMP must define the lost build rights at the outset, fixed, knowable, and identified as required by the Act.

The RMP describes the transfer of development right program as a voluntary program. Any Highlands TDR program is NOT a voluntary program. Landowners in the Preservation Area did not volunteer their property for a regulatory taking. HDCs must be issued to all harmed landowners equally, and not based on a voluntary application process. If a landowner wishes to retain ownership of their HDCs along with their property title, and seek not to sell their HDCs, that is the privilege and right of the landowner. (Analogously, when rights are issued to stockholders, they are issued to all stockholders, not stockholders that apply. The choice to exercise an issued right is the stockholders.) To not issue HDCs to all harmed landowners, equally and proportionately, would be a violation of equal protection.

The RMP notes that HDC Certificates will not be issued until a conservation easement has been recorded that will "restrict the future use of land in accordance with the Highlands Council's HDC Allocation Letter". However, the language of the conservation easement and the contents of said Allocation Letter are not included in the RMP, an egregious and conscious omission designed to obfuscate the terms of the program and mislead. Any and all deed restrictions must be in accordance with, and only in accordance with, the requirements of the Highlands Act itself, and not in accordance with unknown and undisclosed restrictions of a non-existent Allocation Letter of the Highlands Council. The deed restriction associated with the sale of development rights must be limited to, and only limited to, restrictions on the right to build and develop. Conservation easements that require more than the Highlands Act itself requires are exactions and violations of landowner equal protection rights with their neighbors. The argument that a Highlands landowner voluntarily applies for HDCs and voluntarily accepts the provisions of a highly restrictive conservation easement is an insult to those who have suffered great financial hardship and been harshly punished for their ownership of coveted and rare open space.

February 16, 2009

Attn: Ms. Paula Dees
New Jersey Highlands Council

I commented at the first meeting on February 2, 2009 before the Highlands Development Credit Bank.

I'm forwarding my written comments and request that they be included in the minutes of the aforementioned meeting and be made part of the record.

Thank you.

Richard A. Longo
540 Powerville Road
Boonton Township, NJ 07005
973-334-9563
Email: thelongos1@optonline.net

State of New Jersey
Highlands Development Credit Bank

Meeting February 2, 2009

My name is Richard Longo. My wife, Gretchen, and I live at 540 Powerville Road, Boonton Township, Morris County.

Since the passing of The Highland Water Protection Planning Act my property has been devalued and my property rights were destroyed. My wife and I have always planned to either give our property to our daughter and/or to her children if she married and had a family. My daughter is the ninth generation on my wife's side of her family to continuously live on our land. My two grandchildren would have been the tenth continuous generation to live on our treasured Wayside Farms. But, because of this law, they cannot. We have owned the property for thirty two years and have been approached many times during our ownership to sell to builders and others. We would have made a ton of money if we did sell, but we didn't do so before this act because of our grandchildren's' legacy.

On many occasions in the past it has been brought up about compensating landowners who have been harmed by this act. Compensation is in the Law. It has been brought up and discussed at Highland Council meetings, in newspaper articles and all over the place. Even the NJDEP Commissioner, Ms. Lisa Jackson, addressed the Council on June 1, 2006 and requested that the Council submit to her the names of landowners who have come forward seeking compensation as stated in the Law. Nothing has been done. August 2004 – now it's February 2009. I appeared before the Highlands Council on June 22, 2006 and requested compensation and now I'm back almost three and a half years later. I would really, really like the fair value of what we are entitled to now so that we can purchase property in close proximity to our farm and give it to our grandchildren so they can build their homes and live in the area where they were born and are now being raised.

You can mail my check to:

Richard and Gretchen Longo
540 Powerville Road
Boonton Township, NJ 07005

Thank you.