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

PRESENT

SCOTT WHITENACK	)	CHAIRMAN
SUSAN CRAFT	)	DIRECTOR
DALE DAVIS III	)	DIRECTOR
MICHAEL HALPIN	)	DIRECTOR
RALPH SIEGEL	)	DIRECTOR
JOHN WEINGART	)	DIRECTOR

TELECONFERENCE

ERIK PETERSON	)	DIRECTOR

ABSENT

KENNETH KLIPSTEIN	)	DIRECTOR
THEODORE MAGLIONE	)	DIRECTOR

CALL TO ORDER

The Chairman of the Board, Scott Whitenack, called the 3rd meeting of the Highlands Development Credit Bank Board of Directors to order at 1:10 pm.

ROLL CALL

The members introduced themselves.

PLEDGE OF ALLEGIANCE

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.

APPROVAL OF MINUTES for March 5, 2009. *Mr. Halpin introduced a motion to approve the minutes. Ms. Craft seconded it. Messrs. Klipstein, Maglione, and Peterson were absent. All members present voted to approve. The motion was APPROVED.*

CHAIRMAN'S REPORT

Chairman Whitenack spoke to his own experience as a member of the TDR committee of the Highlands Council for the past two years and that committee's attempt to keep the methodology as simple as possible. He introduced the presenters for today's meeting – Jeff LeJava, TDR Administrator and Charlie Siemon from Siemon & Larson who has been a consultant with the Highlands Council and mentioned that he had been instrumental in working with the Council on the RMP and noted that he was here to discuss the TDR portion of the plan.

EXECUTIVE DIRECTOR'S REPORT

Ms. Swan prefaced her remarks by reiterating that the focus of today's meeting would be a presentation from Jeff LeJava and Charlie Siemon. She began her report with a brief discussion of the Request for Qualifications (RFQ) that was released by the Highlands Council for a consultant to provide Land Preservation support for the Highlands Council. She noted that there had been three responses and she expects that staff would be making a recommendation to the Council for action at its next meeting. She reviewed the outline of the scope of services in which included: developing a clearinghouse of information, coordinating the land acquisition process, prioritizing land acquisition activities, developing a landowner assistance, education and outreach program, and helping to implement the Highlands Transfer of Development Rights Program.

She gave an overview of the nature of Constituent Services at the Highlands Council where Staff are on call to answer constituent questions – taking the time to respond to concerns and provide guidance.

Ms. Swan continued with the status of TDR Receiving Zone Feasibility Grants. She discussed the $1,000,000 in grant funding that has been allocated by the Highlands Council and noted that municipalities in any of the seven Highlands counties not just the Highlands Region municipalities could become a receiving zone. She gave a status report of the municipalities that have applied:

Chester Borough – the Highlands Council awarded Chester Borough a feasibility grant on November 20, 2008, in the amount of $25,000. The Borough's consultants have started work, with a particular focus on assessing the Borough's current infrastructure capacity and appropriate future expansion.

Clifton, City of – the Highlands Council awarded Clifton a feasibility grant on October 4, 2007, in the amount of $40,000. Clifton has conducted an initial assessment of potential parcels for consideration and those parcels are currently being discussed by the city's Economic Development Committee.

Clinton, Town of – The Highlands Council awarded Clinton a feasibility grant on April 10, 2008, in the amount of $23,500. The town's consulting planners have held meetings with the town's Smart Growth Committee, prepared concepts for the potential receiving site, ruled out others, and are focusing now on the feasible economics of the potential transfer and sites that they are interested in.

Lopatcong Township – The Highlands Council awarded Lopatcong a feasibility grant on September 20, 2007, in the amount of $24,500. Lopatcong had completed their Phase I report and submitted the same to the Council in January 2009. Based upon an assessment of Lopatcong's existing zoning in light of the Regional Master Plan, Lopatcong concluded that it is not feasible to serve as a receiving zone at this time.

Washington Borough – The Highlands Council awarded Washington Borough a feasibility grant on October 30, 2008, in the amount of $25,000. The Borough's consulting planner has begun work under the grant and it is anticipated that work on the grant activities will be completed this summer.

She also mentioned that there had been other municipalities that have expressed interest and one municipality was a non Highlands community that was interested in setting up a meeting.

She gave a brief introduction of Charlie Siemon noting that he had 30 years of land use and planning experience in 30 states and Puerto Rico and that his New Jersey experience included working on the State Plan, Pinelands Comprehensive Management Plan, transportation planning in Bergen County and had had a role in the 2nd draft RMP and in drafting the TDR component. Mr. LeJava then introduced Mr. Siemon and noted that the primary focus of today's presentation would be the details of the TDR program.

Mr. Siemon gave an overview of his experience with TDR and said that he had been privileged to work on a number of programs that had given him a strategic perspective. He explained that the concept has been in existence for 40 years and as the environmental movement grew, the issue became framed initially as a takings issue. He described the concept of "windfalls and wipeouts" and the goal of achieving a balance between the two. As a result, he remarked that TDR was identified as an opportunity to achieve some balance.

Mr. Siemon spoke to his early experience with TDR around the country and likened TDR to a wrench that when it was the appropriate size, it could work effectively. He commented that the difficulty in making a TDR program work was significant and the HDC Bank responsibility is very important.

He gave his perspective that good public policy was to create an opportunity for balancing the "windfalls and wipeouts" situation and he recommended that the HDC Bank Board be cautious in measuring success in the beginning. He believes that the success should not be measured in terms of the number of transfers, but instead to look at opportunity as the benchmark. He noted that it might be 5-10 years to fully engage the program.

He also discussed the concept that value and market value are not fixed – they are relative. He expressed his opinion that the Bank needed perspective as to who had suffered the most and allocate its initial resources in that area. He recommended using the time value of land and the geographic location of land as guides.

He commented that he had reread the TDR Program as set forth in the RMP and the analyses supporting it. He still stands behind the program as written given the limitation of the statute and noted that funding the bank and linking the program to a long term regional strategy are important goals. He expressed his concerns about the complexity of the analysis, but said that he felt that if the outcome was transparent and easy to use that the fact that the program was based on a complex set of assumptions could be overcome. He is of the opinion that the most successful TDR program was one that included a long term perspective and an understanding of the market. He concluded by saying that he believes that the tool can be used and used successfully.

Ms. Swan commented in reference to transparency and access that staff had prepared a memo that was posted on the website and was designed to reference issues in the technical documents and provide a guide for the public.

Mr. LeJava thanked Mr. Siemon for his comments and began his power point presentation with an overview of how the program had evolved. He discussed the process that had been followed – examining the TDR section of the Highlands Act that dictated that receiving zones be voluntary, reviewing the State TDR program, takings law, other TDR programs around the country to try to identify which elements made them successful. He noted that a key element in TDR program success is often the establishment and operation of a TDR Bank. He also described the Ad Hoc and

TDR committee meetings – all of which had been public. He addressed some factors that had guided that process namely: the scale of the program in terms of the number of municipalities that could participate, the variability in real estate values in the region, and that receiving zones are voluntary.

He then turned to a review of the five main components of the Highlands TDR program: sending zones, receiving zones, allocation of Highlands Development Credits, Initial HDC Value and Highlands Development Credit Bank.

Sending Zones were defined as all lands located within the Preservation Area except for those located in the Existing Community Zone or approved as Highlands Redevelopment Areas; and upon municipal conformance, all lands located within the Planning Area except for those located in the Existing Community Zone or approved as Highlands Redevelopment Areas. He highlighted an important distinction that a parcel for which an allocation is sought must be at least 5 acres in size or have lost at least three development opportunities. Mr. LeJava also noted that a parcel could still not receive an HDC allocation if there were environmental constraints and/or the parcel is affected because of local zoning.

Mr. LeJava continued discussing **Receiving Zones** and the lands that qualify under the goals, policies and objectives of the Highlands TDR program upon approval of the Highlands Council. He also noted that 5 municipalities had undertaken a TDR Receiving Zone Feasibility Grant studies. He reiterated that lands located within a municipality outside of the Highlands Region but within the seven Highlands counties are also eligible to become a receiving zone.

He continued with an explanation of the **Allocation of Highlands Development Credits** to residentially-zoned parcels describing the three main components: Net Yield, Location Factor, and Zoning Factor. He noted that the complexity of the methodology was necessary in order to "normalize" the significant property value differences in seven counties. He cited disparate real estate values in Bergen and Warren counties as an example. He used a specific example to illustrate how the methodology worked with a municipality. He also stated that there would be a web-based tool available shortly for landowners to have a sense of how many credits could be allocated through the more formal process.

Mr. Davis asked if the zoning were the same in a township whether the formula would be the same. Mr. LeJava explained that the formula does not change. However, he indicated that the environmental constraints may be different for parcels which could affect the number of HDCs allocated. He also explained that the environmental constraints are plugged in to the analysis and the web-based tool will identify the known pre-Highlands Act constraints. He explained that even after the formal allocation process, the landowner will have the ability to submit additional information regarding zoning or environmental constraints for purposes of allocation. There will also be an appeals process.

He concluded this section by discussing one difference from other programs and that will be the allocation of credits for non-residential parcels. He mentioned that in the Pinelands presentation at the last meeting it was explained that non-residential allocation is being considered as an enhancement to the Pinelands program. Mr. LeJava discussed the various methodologies that had been considered. He continued the presentation speaking to the **Initial HDC Value.**

He discussed the fact that under the Highlands Act, the Highlands Council is charged with determining the initial HDC price. He noted the difficulty in determining that initial price because receiving zones under the program are voluntary; without specific valuation data for the receiving areas, one side of the equation was missing. Mr. LeJava explained that to try to meet the requirement of the act and provide the sending zone owners with the ability to realize a sufficient value, there was an inherent problem and that was that the value in the sending zone could not be so great that it could not be realistically used in the receiving zone to attract a developer to build at a greater density. He gave the example that the pricing could result in a developer being better off to build at the existing zoning and that was not the desired outcome. He emphasized that there had to be a profit motive for the developer to use credits resulting in lower land cost.

Mr. LeJava continued with a detailed example of the use of the methodology for determining the Initial HDC value. He explained the steps the Council conducted to determine an initial HDC value, including the discounting of a regional lot value average by 75% to reflect a "developer's willingness to pay" measure. He noted that other programs had applied a 50% reduction in lot value to reflect this "developer's willingness to pay" measure, but that those programs had mandatory receiving zones. In the case of the Highlands program, there was an attempt to err on the lower side of an initial HDC value to prime the marketplace.

Mr. Halpin asked what the advantages were for a municipality to become a receiving area. Mr. LeJava gave some examples as follows: ability to assess one time impact fees related to additional infrastructure needs, $250,000 of enhanced planning grants, grant funding to amend the master plan for paying its professionals, state support, and in the planning area legal representation for challenges.

A discussion followed some questions from members clarifying the use of impact fees. Mr. LeJava explained that the municipality has to assess the impact fee through a municipal ordinance and that it can be assessed across all units, including bonus, but it must be reasonably related to the infrastructure and capital costs of the municipality serving as a receiving zone. He also noted that the use of impact fees is the municipality's decision. He indicated that a model ordinance would be prepared for municipal use. Mr. LeJava also commented in response to questions that if a municipality becomes a receiving zone that action will have an impact on the municipality's COAH obligation. He highlighted the issue of profitability for developers and that their willingness to pay impact fees. He reiterated his earlier example of the variability in price per acre ($14,000 in Warren County to $108,000 in Bergen County) among the counties in the Highlands region.

He presented an example of the Pinelands Credit price that started at $2,500 per right in 1981 and has varied from that level to as much as $40,000. Rights under the PDC program are now transacting at an average of approximately $18,000. He explained that if the Highlands Initial Credit Value of $16,000 was adjusted to compare to the initial price of a right under the Pinelands program, the Highlands price would be approximately $5,200 in 2008.

In conclusion, he said that the next steps were to decide under what circumstances the HDC Bank would purchase credit e.g. hardship cases.

Mr. Weingart left the meeting.

Chairman Whitenack thanked both Mr. Siemon and Mr. LeJava for their presentations. He asked the other Directors to let him know if they needed more information and he asked that staff provide it.

He summarized next steps as: drafting operating procedures building on the bylaws, establishing the goals of the bank and the acquisition policy and a hierarchy for prioritizing the hardship cases. He noted that the Policy Committee would begin its work on these issues shortly.

Mr. Siegel commented that the valuation process was very complex and he believed the model would only function with the system in full operation. Mr. Siemon explained that even in the most complex analysis it was only a snapshot of relative value and that the initial credit price was only a starting point. He gave the example that the ultimate value might be from appraisal or resulting from an arm's length transaction.

Ms. Swan spoke about the elements of EO114 detailing the section that allocated $10 million as seed money to start the TDR process and address hardship cases. She discussed another objective that was to seek a State TDR bill that would allow the Pinelands and Highlands to have receiving areas anywhere in the State. She noted that Director Craft had worked on this legislation and will be asked to promote the concept again.

Mr. Davis asked about education for the municipalities. Ms. Swan discussed the municipal information program that she and Mr. Borden have been working on and that on average 2-3 nights per week, they are meeting with municipalities to discuss Plan Conformance and always include redevelopment. She spoke about the current Build out Analysis that is being completed and will result in a capacity analysis that will help towns evaluate future growth. This analysis will help in determining the feasibility of increased development capacity in municipalities and can be used to work with towns who would consider being a receiving area. 73 of the 88 municipalities that have filed a notice of intent to conform to the RMP.

Mr. Halpin inquired about the criteria for the TDR feasibility grants and mentioned that Lopatcong had applied and then decided not to go ahead. Ms. Swan explained that Mr. LeJava reviews the grant applications and that they are mainly an infrastructure analysis. She commented that she believes the grant monies are well spent as this process started before plan conformance and now as a result of the plan conformance process, the municipalities and staff have more information to evaluate existing constraints in connection with future grant applications. She gave Clinton Town as an example where they had good sites to study.

PUBLIC COMMENT

Chairman Whitenack reminded members of the public to limit comments to 3 minutes and reiterated that the public comment period was not a question and answer session. Any questions can be presented directly to the Board and they will endeavor to get those answers.

CANDY ASHMUN, Pinelands Commission

She suggested that the HDC Bank board consider whether to exempt affordable housing noting the Pinelands policy is to do so. She also asked the board to define the term of the credits in connection with their use as collateral for loans. She noted that the Pinelands term is two years. Mr. LeJava commented that the credits were good for two years. She then mentioned using HDC credits as investments and noted that the Board needed to define the time so that the credits can be sold during that time period. She said that that there are many people in the Pinelands who hold the credits as investments noting that their program is totally market driven.

HELEN HEINRICH, NJ Farm Bureau
She asked for the interactive tool on the website citing its importance in providing information to landowners and determining the amount of interest in the program. She commented on the initial value reduction by 75% based on 2006 information. She represented that landowners believe that number is unacceptable and asked that the Board reexamine it. She asked for clarification about when the town conforms and is involved in a sending area whether the values based on 2004. She supports the process.

DAVID SHOPE, Lebanon Township
He spoke to the Highlands Act section to establish the TDR Bank within 18 months and he expressed disappointment that the Bank was just getting started. He discussed the aging population of farmers in New Jersey and advocated that the process be quicker. He believes that the scenic and other values of individual properties had not been considered in the establishment of the initial credit price. He commented that the COAH obligation should be an additional source of income to the landowner and suggested that the initial credit price was too low and said that he thought the numbers were flawed.

HAROLD DANIELSON, Hampton Borough
He concurred with Mr. Shope's comments and commented that the TDR issues should have been addressed earlier. He wants a timeline for the program to begin. He asked for a list of references for the figures. He noted that he believed that property owners needed representation.

Ms. Craft left the meeting.

ANDREW DRYSDALE, Chester Township
Mr. Drysdale spoke to the devaluation of the dollar and its effect on the HDC price in the future. He suggested that the Board study US history to understand that when government takes too many rights resulting in taxes being raised.

DAVE PEIFER, ANJEC
He made his comments from the point of view that the program was a success, had preserved land and created good development. He asked how the bank was going to guarantee that land remains preserved in the future and expressed his concern about municipalities holding conservation restrictions from the point of view of stewardship, maintenance and monitoring. He asked the Board to allocate resources to those issues outlined.

Mr. Siegel asked if a deed restriction would be filed at the county when the credits were allocated and they would be. He was clarifying that the concern raised by Mr. Peifer was with respect to the long term maintenance and stewardship.

Ms. Swan noted that there was a memo on the website for today's meeting on the calendar that referenced all the work that serves as the background for today's Power Point presentation and also included a reference guide to the information in the various technical reports.

Chairman Whitenack, after seeing no additional public comment, asked for an adjournment motion and the motion was APPROVED.

TRUE COPY

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

DATE: June 5, 2009

NAME: Paula M. Dees
Paula M. Dees, Executive Assistant

Vote on the Approval of these Minutes	Motion	Second	Yes	No	Abstain	Absent
Director Craft			✓			
Director Davis			✓			
Director Halpin	✓		✓			
Director Klipstein					✓	
Director Maglione					✓	
Director Peterson						✓
Director Siegel						✓
Director Weingart		✓	✓			
Director Whitenack			✓			