

HIGHLANDS DEVELOPMENT CREDIT BANK
MINUTES OF THE MEETING OF SEPTEMBER 3, 2009

PRESENT

SCOTT WHITENACK)	CHAIRMAN
DALE DAVIS III)	DIRECTOR
MICHAEL HALPIN)	DIRECTOR
THEODORE MAGLIONE)	DIRECTOR
JOHN WEINGART)	DIRECTOR

VIA TELECONFERENCE

SUSAN CRAFT)	DIRECTOR
RALPH SIEGEL)	DIRECTOR

ABSENT

ERIK PETERSON)	DIRECTOR
KENNETH KLIPSTEIN)	DIRECTOR

CALL TO ORDER

The Chairman of the Board, Scott Whitenack, called the 6th meeting of the Highlands Development Credit Bank Board of Directors to order at 1:05 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

APPROVAL OF MINUTES for July 2, 2009. *Mr. Whitenack introduced a motion to approve the minutes. Mr. Davis seconded it. Messrs. Klipstein and Peterson were absent. Mr. Siegel abstained. All other members present voted to approve. The motion was APPROVED.*

Mr. Borden informed directors that they could vote for approval of minutes from a previous meeting if they were not present as long as they believed the minutes to accurately reflect the proceedings.

CHAIRMAN'S REPORT

Chairman Whitenack thanked all members for coming during the summer and asked the Executive Director Eileen Swan to make her report.

EXECUTIVE DIRECTOR'S REPORT

Ms. Swan began her report with an update on **Plan Conformance**. She noted that 75 of the 88 Highlands Municipalities have filed a Notice of Intent (NOI) to conform to the Regional Master Plan and mentioned that the NOI was not binding for Planning Area municipalities. However, it is mandatory for those municipalities in the Preservation Area to conform to the RMP. The NOI has allowed municipalities to apply for the 2009 Plan Conformance Grant funding to assist them in their evaluation of Plan Conformance.

A question was raised as to how a municipality might "opt out." Ms. Swan responded that for the Preservation Area municipalities, they are required to submit a petition for Plan Conformance by December 8, 2009. However, the NOI is not binding for that portion of the municipality in the Planning Area. Ms. Swan also explained the two ways that a municipality is judged to be in conformance. In one case, a municipality would be considered conforming after adopting the regulations and master plan element until such time as they need to reexamine their master plan at which time if they take action that is not consistent with the Regional Master Plan they would no longer be in conformance. The other would be after 6 years the Highlands Council must revise the Regional Master Plan (RMP) and if a municipality does not make the changes to be consistent with the revised RMP, it would be no longer be in conformance.

She continued with the presentation summarizing the current grant funding for Initial Assessment – 72 municipalities and 4 counties have applied and for Plan Conformance Grant funding – 74 municipalities have applied. She concluded with a review of the status of the Highlands Municipal Build-Out Reports stating that 48 municipalities have received a final Municipal Build-Out Report and 72 have received their Module 1 Reports. She noted that staff expects 75 Build-Out Reports to ultimately be completed. She then showed a slide of the municipalities that had filed a NOI and spoke to the process of having the municipality and its professionals review the results of the Highlands Municipal Build-Out Reports and then after 10 days, the reports are posted on the Highlands Council website. If there are any revisions, after posting, they are addressed as well. She also described the nature of the relationship between Highlands Council staff and Highlands municipalities as a partnership which began with the vacant land analysis in Module 1 and then the application of the constraints from the RMP in Module 2. She characterized the Highlands Municipal Build-Out Reports as the growth potential of municipalities at full build-out based on available land for septic system and sewer development, as constrained where applicable by utility capacity and water availability. She described how the growth potential is captured at a point in time and that conditions could change in any municipality, e.g. redevelopment areas could be added. She also noted that applying what is a limiting factor analysis is really the basis for evaluating where the land has the capacity to support new development.

Ms. Swan was asked about the effect on the tax basis and she responded that the Build-Out Analysis did not get to that level, but that the individual municipality could do that analysis. She explained the importance of the Build-Out Analysis to the TDR program because the analysis provides the ability to see where there is infrastructure capacity for potential receiving zones.

With respect to the septic yield analysis, Ms. Swan discussed the NJDEP Statewide standard target of 2.0 mg/L for background nitrates and that this was the target used for the Existing Community

Zone but the Highlands Council used drought recharge in its model and thus made a more conservative standard than that of NJDEP. However, she also explained that NJDEP allowed for a more conservative approach through the process of Wastewater Management Plan approvals for the Highlands Region relying on the more detailed analysis. She noted that it was NJDEP that had developed the 25- and 88-acre model septic density standard for the Preservation Area.

Ms. Swan continued her presentation with an update on the TDR Feasibility grants. To date, there have been 10 TDR feasibility grants approved by the Highlands Council. The municipalities include: the Borough of Bogota, Chester Borough, City of Clifton, Town of Clinton, Harmony Township, Hopatcong Borough, Lopatcong Township, Oakland Borough, Tewksbury Township and Washington Borough. She noted that it is the interest expressed by the municipality that initiates the applications for these grants.

I. CONSIDERATION OF RESOLUTION – Adoption of HDC Bank Operating Procedures (voting matter with public comment)

Ms. Swan introduced Mr. LeJava to discuss the changes made to the HDC Bank Operating procedures before voting on the following resolution. Mr. LeJava reviewed the chronology of the draft HDC Bank Operating Procedures beginning with the first draft released for public comment on May 26, 2009. Public comments were received on that draft up to June 26, 2009. The HDC Bank then held a public work session on July 2, 2009, to provide staff with comments. Staff revised the draft operating procedures based on that input. Mr. LeJava continued with the specific changes that had been made as a result of comments from the HDC Bank Board, other State agencies and the public. Director Craft raised two questions with respect to the requirement of landowners noticing the HDC Bank Board if their credits were used for collateral. She did not agree with that provision. She also asked if in an auction whether the credit would go to the next highest bidder if the first bid were satisfied. Chairman Whitenack asked that Mr. LeJava continue his presentation and respond to Ms. Crafts questions at the end of the presentation.

Ms. Craft left the teleconference call having explained that she was experiencing difficulty in hearing the meeting but wanted to let the members know her two questions.

Director Siegel asked if the HDC Operating Procedures could be amended after voting on this resolution. He expressed concern about the lack of an appraisal process in the Operating Procedures. Chairman Whitenack asked Ms. Swan to address Mr. Siegel's questions. She reiterated that in Section 8 of the HDC Operating Procedures that there was a provision for the HDC Board on its own initiative or at the recommendation of the Executive Director to amend the Operating Procedures.

Ms. Swan then asked Mr. LeJava to show the Operating Procedures on the screen in the meeting room to address Ms. Craft's questions regarding notice to the Bank where credits are pledged as collateral. Mr. LeJava explained that, as the agency charged with issuing and tracking the HDC credits, it is important for the Bank to track the use of credits as collateral. He stated that it could be an issue to future sale of such credits if they were previously pledged as collateral to a loan. Such credits would be encumbered and could not be sold without a release from the holder of those credits so pledged. Mr. Siegel asked how the HDC credits could have a collateralized value. He did not believe that a bank would accept these credits for collateral.

Mr. Weingart introduced a motion to approve the resolution. Mr. Halpin seconded it.

There was additional discussion relating to the notice provision and Mr. LeJava cautioned that it was necessary to ensure that nothing was missed on the back end of the transaction.

There was a motion to amend the Operating Procedures to add clarification that this notice provision was for recording and tracing purposes only and to eliminate the language in Section 4. The motion was seconded and *approved*

Chairman Whitenack asked Mr. LeJava to address the second question raised by Ms. Craft regarding the maximum/minimum award of credits and whether they would flow down to the next bidder. Mr. LeJava explained that the issue concerns what happens to credits remaining if someone bids for 150 credits and the minimum is 125 and there are only 130 available. If the minimum bid is satisfied, there would be an additional 5 credits available. It was agreed by all to revise the language so that all available credits, even if they exceeded the minimum bid, would be offered to the bidder. There was a motion to amend this language and it was seconded. The motion was *approved*. There was additional discussion as a result of Ms. Craft's questions to address whether available credits if they exceeded a bid request would be offered to the next highest bidder. It was agreed that the language provided for that eventuality and no further changes were proposed.

PUBLIC COMMENT ON THIS RESOLUTION

HELEN HEINRICH, NJ FARM BUREAU

She expressed concern that the paragraph describing the duties of the HDC Bank Board had been removed from the HDC Operating Procedures and recommended a reference to the location of the duties and where they were in the by-laws be added to the HDC Operating Procedures. She also had concerns that the definition for financial hardship was too limited. She described the financial problems that were most devastating to farms was foreclosure or when a landowner dies not to have a good provision for paying off the tax liability.

DEBRA POST, CHESTER TOWNSHIP

She gave her opinion that the HDC Operating Procedures gave excessive control to the Executive Director who is not an elected official. She does not believe that the Operating Procedures will provide for an open marketplace. She does not agree that the Resolution on the Operating Procedures should be voted on unless all members are in agreement with the Operating Procedures.

DAVID SHOPE, LONG VALLEY

He raised his objection to the Highlands Council and HDC Bank sharing staff and advocated for each to have an independent staff. He spoke about the delay in meeting deadlines of the TDR grant to the Town of Clinton and adoption of the RMP.

JULIA SOMMERS, NEW JERSEY HIGHLANDS COALITION

She advocated for moving forward on the Operating Procedures in order to handle hardship cases.

After the Public Comment was closed, Chairman Whitenack asked for a vote on the resolution. Ms. Craft and Messrs. Klipstein and Peterson were absent. Mr. Siegel abstained. The remaining members voted to approve. The resolution was *APPROVED*.

II. CONSIDERATION OF RESOLUTION – Authorization of HDC Purchase Program Initiation (voting matter with public comment)

Mr. Siegel introduced a motion to approve the resolution. Mr. Maglione seconded it.

Ms. Swan read the “Now, therefore” section of the resolution. Mr. LeJava suggested using “extenuating financial circumstances” consistently throughout the resolution. A motion was introduced to amend the resolution as suggested by Mr. LeJava and seconded. The resolution for amendment was *approved*.

PUBLIC COMMENT ON THIS RESOLUTION

MONIQUE PURCELL, DEPT. OF AGRICULTURE

She commented that she had understood at the last meeting that the application process was going to be open to anyone. She did not believe the resolution reflected that understanding.

DEBRA POST, CHESTER TOWNSHIP

She believes that the priority is being given to developers and that their investment backed expectations are more important in this process than those of farmers. She finds the language in the resolution offensive.

DAVID SHOPE, LONG VALLEY

He disagrees with the modifications on hardship cases proposed in the resolution.

HELEN HEINRICH, NJ FARM BUREAU

She also believed that at the working meeting the application process would be open to all. She asked for a clarification in the section describing financial hardship.

Mr. Weingart proposed an amendment to the Resolution to clarify the language regarding priorities for acquisition of Highlands Development Credits. There was a motion to amend the Resolution, and it was seconded and *approved with Mr. Siegel abstaining*.

Mr. Davis asked if the public had had ample opportunity to comment on the HDC Purchase Program. Ms. Swan replied that the public had been fully engaged in the process at Highlands Council, HDC Bank meetings, and TDR Committee meetings.

Chairman Whitenack called for a vote on the resolution. Messrs. Klipstein and Peterson and Ms. Craft were absent. Mr. Siegel abstained. The remaining Directors voted to approve. The resolution was *APPROVED*.

Ms. Swan continued her presentation with an update on the conservation restrictions. She explained that the first draft of the restrictions was released to the public on April 17, 2009. Based upon public comment staff revised the documents and released them on June 3, 2009. State agencies including the State Agriculture Development Committee (SADC) and the Agriculture Department provided their input and staff made further revisions. Ms. Swan reiterated the many discussions that were incorporated into the restrictions and added that, if the Directors had any additional comments, to please let her know prior to the next Highlands Council Meeting scheduled for October 15th.

There was some additional discussion about the responsibility for identification of violations. Ms. Swan mentioned that she had had discussions indicating that SADC and the county agriculture development boards may assist with enforcement for agricultural properties. However, she did note that there were concerns expressed by Ms. Craft about her staff's time to do so.

PUBLIC COMMENT

DEBRA POST, CHESTER TOWNSHIP

She expressed her opinion that she had not had adequate opportunity to provide comments and that she was disappointed not to have been interviewed for a position on the HDC Bank Board. She provided a summary of her qualifications.

DAVID SHOPE, LONG VALLEY

He concurred with Ms. Post's comments. He believes that his comments have been ignored and he expressed his concern for no just compensation for landowners as promised by Senator Smith. He also mentioned that he was one of nine plaintiffs bringing legal action against the Highlands Act.

JULIA SOMERS, NEW JERSEY HIGHLANDS COALITION

She commented that it was helpful to have the power point presentations posted on the website. She asked if the conservation restrictions could be posted on the website with tracked changes if possible.

HELEN HEINRICH, NJ FARM BUREAU

She asked about the process of getting the conservation restriction language to the Highlands Council. She also asked if the audio system could be addressed with microphones on the members as it was difficult to hear in the meeting room.

Ms. Swan responded that it was part of the protocols to post presentations and they will be posted. She also mentioned that the conservation restrictions would be posted prior to the next Highlands Council meeting and that any comments would be considered if directed to her.

DAVID PEIFER, ANJEC

He commented that easements are inherently flexible and asked that the language allow for some flexibility. He noted that a one size fits all is not realistic and also asked for a provision to be added for baseline information as over time, the conditions can change dramatically and he feels that it is important to have a starting point. He also added that there was a good paper on ANJEC's website on conservation easements written by Jim Wyse, Esq. He finished by saying that his organization appreciated the effort that the TDR program was undertaking to preserve land.

The meeting was adjourned at 2:54 pm.

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: 11/9/09

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

TRUE COPY

**Vote on the Approval of
these Minutes**

	<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	✓		✓			