

PINELANDS DEVELOPMENT CREDIT BANK

20 West State Street
Trenton, NJ

Minutes

August 20, 2009
SPECIAL MEETING

Meeting Location: 20 West State Street, Room 828, Trenton, NJ

Members Present: Terry K. McEwen, Commissioner's Chair Designee
Susan Craft, Department of Agriculture Designee
Daniel M. Kennedy, Pinelands Commission Designee
Terri Caruso, Alternate NJDEP Commissioner's Designee
Edward J. McGlinchey, At Large Member
Robert C. Shinn, At Large Member

Members Absent: Assistant Attorney General Gerard Burke, Designee

Others Present: Guillermo Vivas, Executive Director, Pinelands Development
Credit Bank
William Schnurr, Deputy Attorney General, Department of Law
and Public Safety (Board Counsel)
Marilyn Harvin-Henley, PDC Bank Staff
Norman F. Tomasello, Acting Chair, Pinelands Commission

Chairman Terry McEwen called the meeting to order at 2:10 p.m. and read the Statement of Compliance with the NJ Open Public Meetings Act.

Roll Call: Mr. Vivas noted that he keeps a written record of all members in attendance and absent.

Reading and Approval of Minutes:

Chairman McEwen called for a motion to accept the minutes of the July 16, 2009 regular meeting. Mr. Shinn moved for approval (with minor corrections) and Ms. Craft seconded; motion carried. Abstentions: Ms Caruso

Executive Session:

As some Board members felt the need to seek advice from their legal counsel on the complex matter before them on this special meeting, Mr. McGlinchey moved to go into closed, executive session and Mr. Kennedy seconded; motion carried. After conferring with DAG Schnurr, they came out of executive session at 2:50 p.m. and Mr. McEwen called the meeting to order.

**Hebrew Old Age Center, Inc. d/b/a Seashore Gardens Living Center
Block 866, Lots 4-8, Galloway Twp.
Request for transfer of bank owned Pinelands Development Credits
at no cost**

Stephen R. Nehmad, Esq. was before the Board, representing the applicant. Also with him were Martin Klein, Executive Director of Seashore Gardens, and Ron Ruckenstein, PP, the applicant's planning and grants consultant. Chairman McEwen thanked the applicants and informed all present that he and Mr. Vivas had made a visit to the site and met with Mr. Klein.

Mr. McEwen then explained that after reviewing the material submitted by the applicant since the last meeting there will be questions from the Board. He started by asking them whether the original plans had taken into account that there would be a need for PDCs. Mr. Klein explained that they had been aware that there would be a need for PDCs since 2001, when they received their municipal approvals. Their application required the granting of a "use" variance and that was what triggered the need for the PDCs. At the time, Galloway Township had established an Affordable Housing Trust Fund, where other residential development project would pay a certain amount to satisfy their low and moderate income housing Council on Affordable Housing (COAH) obligation. These funds were to be used for the purchase of the required PDCs in Seashore Gardens. The housing development industry came to a stop in September of 2008, and there have been no contributions to the Fund. There had been litigation against Galloway Township because of exemption from the PDC Purchase requirements to the benefit of Seashore Gardens. He said that this could be confirmed by talking to Tiffany CuvIELLO, who is the Galloway Township Planner.

Mr. McEwen asked if they could have found sufficient funds in their financial package for the purchase of the PDCs. Mr. Ruckenstein explained how the project budget had been prepared for their application for the NJ HMFA funding and is tied to the approved financing. The number of units proposed is tied to the number of PDCs required. In theory, they could reduce the number of proposed dwelling units and the number of required PDCs would go down, but then it will also reduce the amount of funding they will receive from HMFA, as it is based on a per dwelling unit cost basis.

Mr. McEwen asked for an explanation of the corporate structure. Mr. Ruckenstein explained that Seashore Gardens is a 501(c)(3) non-profit corporation and they are the management company for the facility and also the applicant. The owner of the property must be a for-profit entity for the tax credits to flow, as a non-profit is not subject to paying taxes. The Seashore Gardens Foundation is the fund raising corporation. PNC Partnership, as a for-profit corporation, will be able to receive the tax credits. He added that the rates for the tax credits continue to decline due to the economy. HMFA receives their funding from the real estate transfer tax.

Other Board members asked questions regarding the timing of their request to the Board, as they have had little time for an in-depth review of the materials presented to them.

Mr. McEwen informed everyone that in order to adequately cover all the requirements of the applicable statutes [N.J.A.C. 3:42-7.11, et seq.], it would be necessary to review them one by one, and stay focused on the matter being discussed.

(a) *The Board may authorize the Executive Director to convey at no cost Pinelands Development Credits when it determines that:*

1. *The proposed development will serve a compelling public good.*
 - a. No questions asked.
2. *The proposed development could not proceed without the conveyance of Pinelands Development Credits at no cost.*
 - a. Ms Craft asked if they could approach Galloway Township about granting them relief from the PDC requirement. Mr. Nehmad responded that he could provide documentation that the municipality cannot waive the PDC requirement.
 - b. Mr. McEwen asked if there was a possibility to re-negotiate some of the fees and costs listed in their budget and/or did they try to negotiate the construction loan interest, to cover the purchase of the PDCs. Mr. Ruckenstein responded that 7% was the interest rate at the time of the application. Mr. McEwen further clarified that he was not referring to just one item, but to all the fees and costs and whether they could be negotiated. Mr. Ruckenstein explained that they are built-in assurances that are guarded by the investor. He reiterated that all the numbers are the lowest they can be. Mr. McEwen explained that this continues to be an area of concern to the Board, whether any other attempts have been made to fund the cost of the PDCs before asking the Board to give them at no cost.
3. *The benefit of the conveyance of Pinelands Development Credits at no cost will enure to the public and will be made to a government agency or incorporated, not for profit organization.*
 - a. No questions asked.
4. *The conveyance of Pinelands Development Credits at no cost will not substantially impair the sale of Pinelands Development Credits in the private market.*
 - a. Mr. Vivas handed out two fact sheets (one titled "Private Sales Opportunities and Private Sales Transactions by Fiscal Year" had already been distributed at the July 16, 2009 Special Meeting, the other one titled "Supply and Demand" that compare 1997 data with 2009 data). He explained that in 1997 there were 425 development rights available for sale and a total need of 2,102 rights. As of June 30, 2009, there were 1,062 development right for sale and a total need of 1,419 rights. The biggest increase in the number of Development rights for sale (605 to 1,046), took place between fiscal years 2007 and 2008; and also corresponded with the largest drop in the average market value per development right (from \$25,599.59 to \$20,639.00). Mr. Nehmad contended that the demand in the housing market is the primary influence on the price of PDCs.

5. *The Pinelands Development Credits being conveyed will be redeemed within one year of the Board's authorization.*

a. No questions; not an issue.

(b) *Such authorization shall be made only upon an affirmative vote of two thirds of the Board's members.*

Mr. Nehmad asked how many members serve on the Board and whether six votes were required. Mr. McEwen and Mr. Vivas explained that although it is a nine-member Board, there are two vacancies, thus five votes will constitute a two thirds majority.

One additional pending requirement [N.J.A.C. 3:42-7.12,(c),5.], Mr. McEwen indicated, is: *Written affirmation of the subdivision or site plan approval from the Pinelands Commission.* Mr. Nehmad indicated that there were two issues pending before the Pinelands Commission could issue the letter of no callup. One of them is the acquisition and redemption of the required 8.75 PDCs; the other issue pertains to stormwater management and he feels that it will be resolved very soon. Mr. Vivas commented that this could always be made a condition of an approval resolution.

Mr. McEwen informed the applicants that, before taking a general vote to approve or deny their request, the Board will deliberate and take a vote individually on all the requirements mentioned earlier.

Mr. Nehmad asked for a moment in which to present his closing arguments, based generally upon the merits of the project to serve the public good, serve the poor and indigenous poor and developmentally challenged; that approval of the request before the Board will benefit a worthwhile cause.

Executive Session:

Some Board members expressed the need to seek some additional legal advice from Mr. Schnurr due to the complexity of the matter before them. Mr. McGlinchey moved to go into closed, executive session and Ms. Craft seconded; motion carried. After conferring with DAG Schnurr, they came out of executive session at approximately 4:30 p.m. and Mr. McEwen called the meeting back to order.

Mr. McEwen explained that the Board members are still grappling with all the information before them to be able to deliberate and reach an informed and fair decision. Because the meeting had lasted more than three hours, he opined that it would be better to continue the deliberation at another special meeting, rather than rushing to a decision. Mr. Vivas was able to arrange a special meeting for Tuesday, September 1, 2009, at 10:00 a.m.

The Chairman then asked if there were any additional comments or questions from the Board.

Ms. Craft expressed some concerns about several matters, including: that the Board may be setting a precedent; that the applicant appears not to have addressed the PDC obligation in their budget and original planning for the project, and that all the other possible alternatives have not been exhausted before coming to the PDC Bank Board.

She made reference to a conversation that she had with John Stokes, Executive Director of the Pinelands Commission, during which he had mentioned two municipalities—Hamilton Township and Manchester Township—where municipal some type of relief had been granted from the PDC requirements for construction of affordable housing. She offered to help set-up a meeting with Galloway Township and the Pinelands Commission to explore the possibilities. Mr. Shinn agreed that this was a good Idea. Mr. Nehmad agreed to call John Stokes at the Pinelands Commission although he was unaware that any such thing existed.

Mr. Kennedy asked that the Executive Director prepare a Resolution for the Board to have it ready at the next meeting and to be reviewed by Mr. Schnurr. He also asked for written recommendations from Mr. Schnurr and Mr. Vivas.

Business of the Board:

Commissioner Shinn informed the Board of a conversation he had with John Stokes of the Pinelands Commission about them possibly filling some of our needs, due to our current fiscal constraints. Likewise, he mentioned the \$20 million that was allocated to the State TDR Bank and felt that we could possibly enter into a Memorandum of Understanding (or MOU) with the Department of Agriculture since we are all part of the State of NJ and should be helping each other. Ms. Craft elaborated that out of the \$20 million allocation, \$10 million were set aside by a Governor's Executive Order to fund the Highlands Council; but, other than that, very little has been spent.

Chairman McEwen asked Mr. Vivas to explore this possibility.

Other Business: There was no one from the public in attendance for the meeting.

Adjournment: The meeting was adjourned at 5:35 p.m. on a motion by Ms. Craft, seconded by Ms. Caruso, and a unanimous affirmative vote.

Respectfully submitted,

Guillermo Vivas
Executive Director