

# PINELANDS DEVELOPMENT CREDIT BANK

20 West State Street  
Trenton, NJ

## Minutes

September 1, 2009  
SPECIAL MEETING

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

Members Present: Terry K. McEwen, Commissioner's Chair Designee  
Assistant Attorney General Gerard Burke, Designee  
Susan Craft, Department of Agriculture Designee  
Daniel M. Kennedy, Pinelands Commission Designee  
Cecile Murphy, Alternate NJDEP Commissioner's Designee  
Edward J. McGlinchey, At Large Member  
Robert C. Shinn, At Large Member

Members Absent: None

Others Present: Guillermo Vivas, Executive Director, Pinelands Development  
Credit Bank  
William Schnurr, DAG, Department of Law and Public Safety  
(Board Counsel)  
Norman F. Tomasello, Acting Chair, Pinelands Commission

Chairman Terry McEwen called the meeting to order at 10:05 a.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 August 20, 2009 special meeting. Ms. Craft moved for approval and Mr. Kennedy seconded; motion carried. Abstentions: Ms Murphy and Mr. Burke.

### **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. Shinn 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 2:30 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.

Mr. McEwen explained the concerns that he and other board members shared regarding whether or not there was the possibility of some alternative source of funding for the required acquisition of PDCs.

Commissioner Shinn expressed concerns regarding insufficient financial information, whether it be Seashore Gardens or the non-profit that is funding the project; that the Board has not been able to evaluate what kind of resources they have. He wanted to know if there is an Annual Report from the Seashore Gardens Foundation. Mr. Ruckenstein thought that the information had been previously provided.

Mr. McEwen asked whether they had sought any additional funds for the purchase of the PDCs through the NJ HMFA. Mr. Ruckenstein responded that they did go back to NJ HMFA to seek additional funds and they were told they could not get any more. Mr. Nehmad added that, as a result of the meeting on August 28<sup>th</sup> at the Pinelands Commission, there was currently a meeting going on in Galloway Township to determine if they could come up with between 2.50 and 5.00 PDCs for the project. Ms. Craft added that at the end of the meeting on Friday, August 28<sup>th</sup> at the Pinelands Commission, there had been an understanding that Galloway Twp. would commit to 2.5 PDCs and Seashore Gardens would commit to 2.5 PDCs if the PDC Bank would approve the transfer of the remaining 3.75 PDCs.

Chairman McEwen inquired if there are contingency funds associated with the project that could possibly fund the purchase of PDCs. Mr. Ruckenstein explained that there are contingencies but they cannot be looked at until the end of the project because of the inherent risks during the construction project. They exist there to protect the investors.

Mr. Nehmad commented that he observed a spirit of cooperation from the Pinelands Commission's staff at the meeting there on Friday, August 28<sup>th</sup>, in terms of being able to issue a letter once they see an unconditional commitment from the PDC Bank Board, or Galloway Twp., or from someone else, to provide the require PDCs. He added that he had also learned from Galloway Twp. That they have funds in their Affordable Housing Trust Fund that they will lose if they don't used them within a specified period of time. Mr. Ruckenstein added that they are committed to provide their 2.5 PDCs share; that they don't know how they will get them, but they are committed to get them.

Commissioner Shinn said he had received a simple pie chart illustrating 2.5 PDCs coming from Galloway Twp., 2.5 PDCs coming from Seashore Gardens and 3.75 PDCs coming from the PDC Bank Board. He recalled that Pinelands Commission Executive Director John Stokes had requested some documentation showing the progress. Mr. Ruckenstein reiterated that the commitment is there, but the funds are not in their budget.

Mr. Vivas brought up a concern relating to the redemption of PDCs *should* the Board approve the transfer of some undetermined number of PDCs and the Pinelands Commission requires the redemption of those PDCs. Once a redemption is made, it is irreversible. Should Seashore Gardens not be able to come up with the funding for their share of PDC obligation, then the PDC Bank would be out of those transferred credits because the redemption can't be undone. Commissioner Shinn pointed out that the condition he had suggested, stating that *a confirming letter be received within fifteen days from the Pinelands Commission documenting the acceptance of the condition on a letter from John Stokes*; so our action would be subject to a letter from the Pinelands Commission letter acknowledging that they have received the credits and we would be protected. Mr. Kennedy questioned why, if it is a commodity given from the State to the applicant, why couldn't that transaction go in the reverse? Mr. Vivas explained that there have been prior decisions from the Attorney General stating that a redemption is made for development on a specific piece of property and cannot be undone. Commissioner Shinn clarified that what the Pinelands Commission wanted was a commitment from Seashore Gardens and from Galloway Township that they will come up with their share of the required PDCs—knowing that 3.75 PDCs are coming from us—so that there is a system in place that will put 8.75 PDCs on the table so that they can issue an NFA (no further action) letter, and that letter will trigger the release of the 3.75 credits from us.

Ms. Craft asked Mr. Nehmad to elaborate on the reasons why the funds for the PDCs that were supposed to have come from Galloway Township had not materialized; that it was not just that the economy had turned bad and those developments that were originally slated to provide funds had not occurred, but that there was also litigation involved; that Blue Heron had sued the Township to get relief from their affordable housing obligation and how it had affected this project's funding for the PDC acquisition specifically as it related to the timing and the application before the board now. Mr. Nehmad explained that in the interim, the Superior Court of NJ Appellate Division had handed down a decision that the "round three rules" were unlawful because they did not provide density bonus to developers. That happened after Blue Heron got their approvals but before they filed the lawsuit. The Judge ordered that Blue Heron was not obligated to provide the affordable housing fund contribution and remanded that matter back to the planning Board to resolve the issue. That was only one of the applicants that were not required to pay affordable housing fees; there were three others. However, Blue Heron was such a large development project that by its self would have been able to provide the funding for the acquisition of the PDCs for this project. Judge Persky's decision was in the latter part of 2008 and the remand hearings were in early 2009.

Mr. Schnurr asked for some clarification about the agreement entered into at the August 28<sup>th</sup> meeting at the Pinelands Commission offices, that they (Pinelands Commission) will allow Seashore Gardens to start constructionj by September 28<sup>th</sup> (deadline), provided there is a guarantee by Seashore Gardens for 2.5 credits, Galloway Twp. for 2.5 credits and this Board for the remainder of the credits, but that the credits don't actually have to be redeemed? Mr. Nehmad explained that the Pinelands Commission is agreeable to provide a no further action letter provided that Seashore Gardens can show a firm commitment for the funding of the 8.75 PDCs. Mr. Schnurr wanted to know what would happen to the credits assigned by the PDC Bank Board if, after starting construction, Seashore was (for some unknown reason) unable to come up with the funding for their

share of the credits? Mr. Nehmad responded that they will have to come up with assurances that they will be able to come up with the funding for their share of 5 credits, whether it is from Galloway Township, or from something in their contingent fund that is approved by the agency; they will have to have something in place. Commissioner Shinn suggested that the Board could assign "x" number of credits to be held in escrow by the Pinelands Commission until Seashore Gardens came up with their obligation. That way the Board would be protected.

Ms. Murphy inquired—in view of the new information that Galloway Township may end up financing the purchase of 5.00 PDCs—whether they would be able to fund all 8.75 PDCs. Mr. Nehmad responded that as far as he had understood from Ms. Cuviallo (Galloway Township's Planner) there are additional projects and obligations (rehabilitations, accessory apartments, rental units and market units to buy them down to affordable) besides this one for which they have to provide funding in order to maintain their affordable housing plan validity.

Mr. Burke wanted to know—assuming the Board approve the transfer of a certain number of PDCs--whether the PDC Bank could get reimbursed for the value of the PDCs if, at the completion of the project, it turned out that there were monies left over from contingency funds in their budget. Mr. Ruckenstein confirmed that these representations had been made at the previous meeting and could be made a condition of the Board's approval. In response to additional concerns voiced by Board members as to what would happen if Galloway Township did not come up with a commitment to provide all 5 credits, Mr. Ruckenstein said that if that were to happen, then the project is going to have to step up to the plate and provide that commitment, and provide it in such a manner that it will be satisfactory to the Pinelands Commission or they will not be issuing the letter of no call up.

Chairman McEwen asked if there were any other questions. Ms. Craft did not have any questions but observed that there were two issues before the Board. The first is whether the Board is going to allocate any credits at all for the project. If the answer to that is yes, then, how many. She felt that it was important to answer the first question.

Commissioner Shinn asked whether someone from the applicant's team make a call and have the latest Annual Report from the Seashore Gardens Foundation faxed over right then.

There ensued additional discussion about the current conditions of supply and demand of PDCs and whether or not the transfer of PDCs by the Board would have any impact on the private market sales, with various points of views and different opinions expressed, from some who believed there would be an impact to others who felt there would be none at all because of the many variables that have an effect on the available data.

Ms. Craft made a motion to deny the application for the transfer of PDCs at zero payment. There was no second to the motion; motion failed.

Ms. Craft commented that she was not convinced the applicant had satisfied the burden of proof regarding the need to receive the PDCs at no cost; that the project is a great project and we would all like to see it built; that if the Board gives away credits it will set

a precedent; that this rule had been established to be used as a last resort; that the conveyance of public property to basically the private sector (so PNC Bank can get a tax credit) and these affordable units can be filled; that we are conveying a state asset for nothing and the question is what are we getting in return for that? We are not getting anything; we are getting affordable housing, but this should have been the last resort. For us to attend a meeting on Friday, and the applicant learned that the Township had money potentially had money; and potentially could have had more money available; that September 1<sup>st</sup> or August 28<sup>th</sup> isn't the time to be asking these questions. The applicant clearly was aware, at least a year ago, since the filing of the lawsuit by Blue Heron about a year ago, that the possibility of Blue Heron not providing the funding for their credits had become substantial. They should have been exploring other means of funding. They did not include the value of the PDCs into their request for financing. Those are big unanswered questions. They have not discussed whether they could lower their construction costs of \$7,000,000 down a half-million dollars to make up the difference. To this day, we are still sitting here trying to turn stones over to see if there is any available funding from from somewhere. The applicant just stated today that they will have to "step up to the plate" and see if they can come up with the funding for the 2.5 credits. They have not demonstrated whether or not they have the ability to come up with the funds to cover all of them. What they have demonstrated is that they have a great project; that all their construction costs are in line with industry standards, and that they have a serious deadline impending on them. She did not feel that they had proven to the Board that this project cannot move forward without the Board giving them State assets.

Mr. Burke disagreed that the Board is not getting something for the credits. Affordable housing is certainly a worthwhile goal, but special needs housing in the State's arsenal of things to combat these issues, when we can make the other findings that it won't impair the market, in his view, it would be a good use of the credits for a project of this kind.

Mr. McGlinchey then made a motion to approve the transfer of some undetermined number of Pinelands Development Credits to Seashore Gardens; Mr. Burke seconded the motion. Additional discussion followed: Mr. McGlinchey added that all the conditions previously discussed would be a part of his motion. Ms. Murphy suggested adding to the transfer: that it should be conditioned upon the applicant receiving a "letter of no callup" from the Pinelands Commission; and also, that if there should be a change of use for the subject property in the future there should be an obligation to reimburse the PDC Bank for the value of any PDCs transferred at no cost. (No vote was taken at that time.)

Mr. Schnurr advised the Board that they should make the five findings that are listed in the Statute; then if they determine that they will be conveying any credits, then they should move on to placing those conditions on the conveyance.

Commissioner Shinn asked if there was going to be any further review of the applicant's financial statement. Mr. Vivas asked Chairman McEwen to close the meeting for a few minutes as he had to go to his office and print that document (which had been sent to him electronically during the meeting and was in his computer). Mr. McEwen called for a five-minute recess.

When the meeting resumed, Mr. McEwen explained to the Board that he would go over each of the requirements in the statute and all are in agreement that the Board is ready to move forward and act on the motion still before them:

1. That the proposed development will serve a compelling public purpose. (All were in agreement.)
2. That the proposed development could not proceed without the conveyance of Pinelands Development Credits at no cost. Mr. Vivas called the roll. Five members voted yes, Ms. Craft voted no, and Mr. McEwen abstained.
3. That the benefit of the conveyance of Pinelands Development Credits at no cost will enure to the public and will be made to a governmental agency or incorporated, not for profit organization. (All were in agreement.)
4. That the conveyances of Pinelands Development Credits at no cost will not substantially impair the sale of Pinelands Development Credits in the private market. (There was some discussion about this parameter, but in the end it received a unanimous consent that it would not have any *substantial* effect.)
5. That the Pinelands Development Credits being conveyed will be redeemed within one year of the Board's authorization. (All were in agreement.)

Chairman McEwen abstained from voting on all of the above.

Commissioner Shinn expressed his satisfaction with the financial information submitted by the applicants. Mr. Kennedy made a motion not to condition the Board's Resolution on any further review of the applicant's Budget. Mr. Burke seconded. Motion carried by a majority affirmative voice vote.

Mr. McGlinchey then moved for the PDC Bank Board's adoption of a Resolution to authorize the transfer of 3.75 PDCs to Seashore Gardens, and Mr. Burke seconded. Before taking action on the adoption of the Resolution, Mr. Vivas reviewed out loud the proposed Resolution and went over one by one, all the conditions and details that the Board had requested be included during their deliberations. Motion carried by a five (5) affirmative vote majority; Mr. McEwen abstained and Ms. Craft voted: no.

## PINELANDS DEVELOPMENT CREDIT BANK

### RESOLUTION

**No. 1-2009**

DATE OF INTRODUCTION: 9/1/2009

TITLE:

#### **A Resolution Authorizing the Executive Director to Convey Pinelands Development Credits (PDCs) at no Cost**

Executive Director Guillermo Vivas presents the following Resolution:

WHEREAS, on June 8, 2009 Seashore Gardens Foundation, a NJ Nonprofit Corporation (the "applicant") submitted an application to the Pinelands

Development Credit Bank Board requesting Board conveyance of up to 8.75 Pinelands Development Credits (or PDCs) at no cost for a 58 unit low and moderate income housing project for persons who are age 55 and older or developmentally disabled in Galloway Township, Atlantic County; and

WHEREAS, subsequent to submission of its application Seashore Gardens Foundation, a NJ Nonprofit Corporation and the Township of Galloway have committed jointly to fund the acquisition of 5.00 PDCs; and

Whereas, Seashore Gardens Foundation, a NJ Nonprofit Corporation application for the conveyance of PDCs is incomplete because it does not include written affirmation of the subdivision or site plan approval from the Pinelands Commission in accordance with N.J.A.C. 3:42-7.12©5

WHEREAS, the Executive Director of the Pinelands Commission has agreed to issue the required "written affirmation of the subdivision and site plan approval" pursuant to N.J.A.C. 3:42-7.12, (c) 5. conditioned upon the applicant and the Township of Galloway providing documented guarantees of their future purchase and redemption of PDCs, and the PDC Bank Board of Directors approving the transfer at no cost of 3.75 PDCs, altogether—between the three parties—totaling the required 8.75 PDCs; and

WHEREAS, the Pinelands Development Credit Bank (PDC Bank) Board of Directors may convey Pinelands Development Credits at no cost for use in projects that satisfy a compelling public purpose (N.J.S.A. 13:18A-42) ; and

WHEREAS, the Board has adopted standards to guide and evaluate the Board's conveyance of Pinelands Developments Credits, (N.J.A.C. 3:42-7) et seq.; and

WHEREAS, the PDC Bank Board of Directors has heard the applicants' request at meetings held on July 16<sup>th</sup>, August 19<sup>th</sup>, and September 1<sup>st</sup>, 2009 and deliberated on the material presented in support of the application; and

WHEREAS, Seashore Gardens Foundation, a NJ Nonprofit Corporation has satisfied those standards by demonstrating to the satisfaction of the Board that:

1. The proposed development will serve a compelling public purpose.
2. The proposed development could not proceed without the conveyance of 3.75 PDCs at no cost
3. The benefit of the conveyance of PDCs will enure to the public and will be made to an incorporated not for profit organization.
4. The conveyance of 3.75 PDCs at no cost will not substantially impair the sale of PDCs in the private market.

5. The PDCs conveyed will be redeemed within one year of the Board's authorization; and

WHEREAS, the New Jersey Home Mortgage Finance Agency (or HMFA) has approved an application submitted by Seashore Elder Housing, LP to finance \$1.2 million; and

WHEREAS, Seashore Gardens Foundation, a NJ Nonprofit Corporation has obtained Low Income Housing Tax Credits with a contingency that construction must commence within 120 days of their approval (by September 28, 2009); and

WHEREAS, the Pinelands Commission, Galloway Township and the applicant shall execute an agreement approved by the Executive Director of the PDC Bank, providing the guarantees for the purchase and redemption of 5.00 PDCs jointly by the applicant and Galloway Township and the issuance of the affirmation letter by the Pinelands Commission as described above.

**NOW, THEREFORE, BE IT NOW RESOLVED** that the Executive Director is authorized to convey 3.75 Pinelands Development Credits (15 development rights) at no cost to Seashore Gardens Foundation, a NJ Nonprofit Corporation under the following conditions:

1. The Pinelands Commission, Galloway Township and the applicant have executed, an agreement approved by the Executive Director of the PDC Bank, providing the guarantees for the purchase and redemption of 5.00 PDCs jointly by the applicant and Galloway Township and the issuance of the Pinelands Commission affirmation letter.
2. Should a change in use of this property or transfer of ownership to a for-profit entity take place within 45 (forty-five) years of the conveyance approved herein, Seashore Gardens Foundation, a NJ Nonprofit Corporation or their successors or assigns will remit to the PDC Bank the total cost of the PDCs being conveyed to through this resolution. The amount to be remitted will be based upon the value of each PDC assigned by the Bank at the time of the transfer.
3. This conditional approval will terminate upon loss of NJHMFA financing, the denial of any necessary local or Pinelands Commission approval, the failure of the parties to execute the agreement described herein or the failure of Seashore Gardens Foundation, a NJ Nonprofit Corporation and/or the Township of Galloway to purchase the PDCs which they jointly have committed to purchase.



4. This conveyance and redemption of Pinelands Development Credits at no cost will not occur until the PDCs have been purchased and redeemed by the applicant and Galloway Township and the affirmation letter has been issued by the Executive Director of the Pinelands Commission.
5. Receipt at the PDC Bank of a current Certificate of Good Standing for the Seashore Gardens Foundation, a NJ Nonprofit Corporation from the appropriate State Agency of New Jersey.
6. Seashore Gardens Foundation, a NJ Nonprofit Corporation the PDC Bank Board of Directors with a copy of their final audit at the completion of the project, and shall reimburse the PDC Bank, if there are funds available, for the value of the 3.75 PDCs transferred at no cost at the market sales value in existence as of the time of the transfer. The applicant shall submit written notice to the New Jersey Home Mortgage Finance Agency that it has identified the Pinelands Development Credit Bank as a contingency cost and is authorizing the NJHMFA to release the aforementioned funds to the PDC Bank.
7. The applicant shall provide a copy of this Resolution to the project's investors and to the NJHMFA.
8. The 3.75 PDCs being transferred will be issued to Seashore Gardens Foundation, a NJ Nonprofit Corporation, to be held in escrow by the Pinelands Commission on behalf of Seashore Gardens Foundation, a NJ Nonprofit Corporation, until the time of the redemption.

**RECORD OF BOARD OF DIRECTOR VOTES**  
**Motion by: Mr. McGlinchey**  
**Second by: Mr. Burke**

Directors	<b>AYE</b>	NAY	NP	ABS
TERRY MCEWEN				✓
SUSAN CRAFT		✓		
GERARD BURKE	✓			
DANIEL KENNEDY	✓			
EDWARD MCGLINCHY	✓			
ROBERT SHINN	✓			
CECILE MURPHY (ALTERNATE)	✓			
VACANT				
VACANT				

## **Adopted at a special meeting of the Pinelands Development Credit Bank**

Date: September 1, 2009

---

Guillermo Vivas, Executive Director

### **Business of the Board:**

Commissioner Shinn brought up the subject of a future auction to include private holders of PDCs. He explained how such a successful auction had been held some years ago in Chesterfield Township for their local TDR program. The credits under private ownership were given priority; then, once exhausted, the publicly owned (Chesterfield Township's) credits were sold. The matter had been previously discussed and there had been mention that the Board's former DAG had stated verbally (there was no formal written document), that the PDC Bank's statutes have no provision in them for collecting any fees; thus making it impossible to pass along the costs associated with an auctioneer to the buyers—as was done in Chesterfield Twp.

There ensued discussion regarding a statutory amendment and that the Pinelands Commission had not looked favorably on this course of action in the past. Commissioner Shinn felt that there must be some other method—be it rule change, amending the Board's By Laws, or some other mechanism—by which it could be accomplished. He asked the Board's legal counsel to look into this matter.

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

**Adjournment:** The meeting was adjourned at 12:55 p.m. on a motion by Ms. Craft, seconded by Mr. Burke, and a unanimous affirmative vote.

Respectfully submitted,

Guillermo Vivas  
Executive Director