

Adopted February 27, 2017

Pinelands Development Credit Bank Board
Offices of the Pinelands Commission
15C Springfield Road
New Lisbon, NJ 08064
December 12, 2016- 2:00 PM

Board Members Present :

Terry Caruso (for Fawn McGee), Department of Environmental Protection Designee
DAG Helene Chudzik, Department of Law & Public Safety Designee
Susan Payne, Department of Agriculture Designee
Richard H. Prickett, Pinelands Commission Designee
Robert Shinn, At Large Member

Board Members Absent:

Aileen Egan, Chairman, Dept. of Banking & Insurance Designee
Edward McGlinchey, At Large Member
Sam Mento, III, At Large member

Others Present:

Susan R. Grogan, Executive Director, PDC Bank
DAG Timothy Malone
Jennifer Moriarty, incoming Designee for Department of Law and Public Safety
Betsy Piner, Recording Secretary for PDC Bank Board

1. Call to Order

Ms. Chudzik called the meeting of the Pinelands Development Credit (PDC) Bank to order at 2:10 p.m.

Mr. Malone read the Open Public Meetings Act Statement.

Ms. Chudzik called the roll and declared the presence of a quorum.

(Note: Richard Prickett has replaced Candace Ashmun as the Pinelands designee to the PDC Bank Board pursuant to a December 9, 2016 letter from Pinelands Commission Chairman, Sean Earlen.)

All present pledged allegiance to the Flag.

2. Adoption of Minutes of the October 1, 2014 meeting and the September 8, 2015 meeting

Ms. Payne moved the adoption of the minutes of the Board's meeting of October 1, 2014. Ms. Caruso seconded the motion. Mr. Prickett (newly appointed to the Board), stated that although he had not been on the Board for the October 1, 2014 meeting, he had read the minutes and he requested confirmation from Mr. Malone that it was appropriate for him to vote.

Mr. Malone said that it would be appropriate.

The Board adopted the minutes of the October 1, 2014 meeting unanimously.

Ms. Payne moved the adoption of the minutes of the Board's meeting of September 8, 2015. Ms. Caruso seconded the motion and the minutes were adopted unanimously.

3. Executive Director's Report

Ms. Grogan made a slide presentation (*Attachment A to these minutes*) in which she highlighted some data from the Bank's Fiscal Year 2016 Annual Report. She said there have been no public sales of PDCs in recent years (Slide #2); that a number of PDC certificate holders choose not to be listed on the web site "Sellers List" as they may be planning to redeem their PDCs on a project or perhaps awaiting for improvements to the market (Slide #3); that most of the acreage has been protected in the Preservation Area District (PAD) (Slide Nos. 6 & 7); and the severance activity in FY-2016 included the protection of acreage in the Regional Growth Area (RGA), an uncommon situation involving a settlement agreement (Slide #5). Ms. Grogan noted the trend for all the graphs related to PDC allocations, sales activity/price and projects using PDCs, follow a similar shape, having peaked in the early 2000s and declining since that time. In discussing specific activities, for Slide #11, she said the redemption of 39 rights in Barnegat Township was for a large mixed use project consisting of commercial development on the first floor with apartments above. The PDCs were required for the residential component of the project.

Ms. Grogan said for the current fiscal year (FY-2017), thus far there have been three severances protecting 162 acres in the Agricultural Production Area (APA), 48 rights have been sold at prices ranging from \$8,500 to \$12,000 and, of 50 rights redeemed, 48 were on a single project in Winslow Township, a 300 unit apartment building.

In response to a question from Ms. Payne's regarding the purchase of PDCs, Ms. Grogan said normally a sale occurs and then the redemption follows relatively quickly. She said the Bank receives calls from those on the Sellers List regarding the recent prices and the process of selling a certificate. Likewise, developers also call with questions such as the validity of a certificate held by a potential seller. She said those included on the Sellers List provide a range of contact information and perhaps those who have included email addresses are more successful because they are easier to contact.

In response to a question from Commissioner Prickett, Ms. Grogan said once the Bank is notified of a sale, the Sellers List is adjusted accordingly. Occasionally some sales are not reported until sometime later, perhaps when the buyer tries to redeem a certificate with the Township only to discover that it cannot be done because the certificate is not issued in that buyer's name.

Ms. Grogan addressed the issue of supply and demand (Slide #13), noting that, for many years, the Commission has been concerned that the demand for PDCs will not accommodate the supply. Under the current rules, staff estimates there is a potential supply of 6,750 rights but, because there is little demand for them, perhaps only 2,000 rights, the imbalance would result in many certificates not being used. She said the supply estimate takes into account that some landowners will never sever their rights and some rights will be extinguished through the farmland preservation programs. She said the estimated demand of 2,000 rights is based on vacant land in the Regional RGA (the receiving area), and the types of projects, typically built at half the density allowed under municipal zoning ordinances.

Ms. Grogan said that staff had reviewed with the Board previously the Commission's proposed enhancements to the PDC program. She said there would be no change to the supply (no additional "sending areas" designated) but, by adding the Pinelands Town (PT) management area as a receiving area and making the use of PDCs mandatory, staff envisions an increased demand to 7,200 rights, ample to accommodate the projected supply of 6,750 rights.

Ms. Grogan said the Commission staff had met with members of the agricultural and building communities and were addressing some particular concerns expressed by the builders (the New Jersey Builders Association and the Builders League of South Jersey) in a November 2016 letter (Slide #14). She said the builders' issue of interest to the PDC Bank Board is that of a need for PDC Bank reform.

Ms. Grogan said with the current low level of activity, the Bank is able to operate smoothly. However, she said, if future activity increases as PDC use becomes mandatory, the Bank needs reform (Slide #15). She said the builders are asking for a simpler, easier way of buying PDCs. They want to go directly to the Bank and not have to negotiate with multiple sellers, often necessary for larger projects with larger PDC obligations. She said it would be more efficient for the developers if the Bank served as a clearinghouse. She said the Bank can sell PDCs now, but only through an auction with very specific requirements and currently, at a minimum established price (\$18,500/right), well above the current market price. Under the established rules, there is no opportunity for the Bank to reduce that price, only to increase it. Other elements of PDC reform include formally relocating the Bank from the Department of Banking and Insurance to the Pinelands Commission, and adjusting the Bank Board membership. She said the builders would like to see a developer serve on the Board. Ms. Grogan said the Commission has drafted amendments to the PDC Bank Act but legislation is required to adopt those amendments. She said the Bank has no money and would need an infusion of cash and would need to amend its regulations to allow the buying and selling of credits. Finally, she said the builders want this done *now*, regardless of any rulemaking to enhance the program. She said staff sees the Bank reform as a component of new PDC rules. Ms. Grogan said staff has briefed the Commission and the Commission's Policy and Implementation Committee and wanted the Bank Board to know these changes are being considered.

Mr. Shinn said he has been talking endlessly about having an auction yet he saw nothing in this presentation about an auction.

Ms. Grogan said, under the current rules, the required minimum bid of \$74,000/PDC is well above any sales price these days.

Mr. Shinn read a bidding document prepared by Burlington County regarding a Request for Proposals (RFP) to conduct an auction for Chesterfield's Transfer of Development Rights (TDR) program and he referenced a fee for an auctioneer of \$10,000. He noted that one cannot know what opportunities are available until an RFP is posted. He said unless the PDC Bank gets on board, it will not be ready when the market picks up and he wanted to see an effort put into it. He said he understood the Attorney General's office was going to look at the possibility of an auction.

Ms. Chudzik responded it was not.

Ms. Grogan said the Board discussed an auction briefly at the last meeting but the current rules are restrictive, there must be a demonstrated need for the Bank's sale of PDCs and the market price is much lower than the acceptable bid currently allowed by the rules.

In response to Ms. Payne's question as to the timing of the proposed rules, Ms. Grogan said the Commission has been working on enhancements to the PDC program for some ten years. She said the Commission hoped for a window of opportunity to put out a proposal within the next year. She said the Commission has spent a lot of time working with the municipalities regarding enhancements.

Ms. Payne said, regardless of the timing, the Bank needs to get started now. She said it was not a heavy lift to change the minimum and maximum prices for PDCs and the Bank needs to remove the obstacles.

Ms. Grogan said some of the obstacles are not in the PDC Bank rules but rather in the Pinelands Protection Act.

Ms. Chudzik said the Bank has statutory limits and cannot affect the private market.

Ms. Grogan said the Bank might, in the future, need to look at the auction process, particularly if it ever wants to sell the 23.75 PDCs it owns. She said she agreed that although there was no demand for PDCs in the foreseeable future, preparing for future demand would be wise.

Commissioner Prickett said when the presentations were made before the Commission and the Policy and Implementation Committee, he felt there was a lot of interest in the enhancements.

Mr. Shinn said he thought the Bank should give every benefit to the taxpayers and, without using an auctioneer, he didn't believe the Bank could conduct a successful auction. He recalled when the Burlington County freeholders auctioned 80.5 PDCs, always at a minimum bid of \$10,000 per right. He said if Chesterfield was able to get the prices at that level, why couldn't the PDC Bank. He referenced public contracts law and asked what limits were constraining the Bank.

Ms. Grogan responded that for at least the past five years, there has been so little demand for PDCs that there is no justification for investing time or money in an auction at this time.

Ms. Payne said she felt the biggest problem is the Bank cannot react to the market because of the rules. She said the mechanisms have to be in place and she didn't think it necessary to wait for other agencies to act. She said the PDC Bank rules should not be highly prescriptive and should not provide a fixed price for PDCs. She said the Bank could not maneuver if there were a fixed price for PDCs, no matter what the market. She said even starting today, it would take a year to amend the PDC Bank rules.

Ms. Grogan said it seemed to be the consensus of the Board to look at rule changes. She said she would draft rules to change the purchase and sales prices for PDCs but the Bank must agree to meet on a more frequent basis. She said she would talk with Mr. Malone about rule changes and the Bank should select the next meeting date.

In response to Ms. Payne's question if a subcommittee should be formed, Ms. Grogan said that shouldn't be necessary as she can simply send draft rules to all Board members so that everyone will be informed.

In response to a question from Ms. Caruso regarding statutory limits, Ms. Grogan said, from a practical side, the Bank has no money and little staff and one needs to be realistic about how the Bank will function.

In response to a question from Commissioner Prickett as to funding sources and if perhaps there were non-profit, federal or state sources, Ms. Grogan, said, as a state agency, there is little opportunity for the Bank to secure funding from non-profits.

Ms. Caruso asked for some clarification regarding the builders' interest in having the Bank serve as a clearinghouse.

Ms. Grogan responded the builders want to purchase their rights directly from the PDC Bank at a fixed price. They would prefer there to be no auction and no negotiation; they would like to come to the Bank and simply write a check to purchase the PDCs they need.

Ms. Payne said, if the Bank owns 23.75 PDC, and were to sell them at \$10,000/right, that would be a considerable source of funding but, as she has been saying for some time, funding should come from the open space fund, perhaps \$5 million to capitalize the Bank. She said she didn't understand why the two TDR Banks in the State (*Pinelands and Highlands*) have been left out of the funding. Also she said there are other sources the Bank can draw from based on the experiences of the TDR programs in Chesterfield and elsewhere, including Woolwich in Gloucester County and Montgomery County, Maryland.

4. Discussion of 2017 meeting schedule

Ms. Grogan suggested the Bank Board schedule meetings for Monday February 27, 2017 and Monday August 28, 2017, with the option to schedule additional meetings if needed. All were in agreement. She also said she would send materials in advance of the February meeting including rule language.

In response to Ms. Payne's question if a motion were needed, Ms. Chudzik said it was not.

5. Public comment

Mr. Jay Mounier identified himself as a Pinelands resident, a landowner within the APA, the owner of a Letter of Interpretation for PDCs and a former Pinelands Commissioner. He said he has been working to get enhancements to the PDC program for some 25 years. He said he felt that under its existing program, the Bank was slow to respond to the spike in activity back in the early 2000's when the prices went from \$12,000/PDC to \$120,000/PDC. He said there was a lot of activity and the Bank took a few months to respond but ultimately, Mr. Vivas, the Executive Director at the time, handled all the transactions that came through the door. He said the current Bank rules are workable but people should not have to wait for their transactions to be processed.

Mr. Mounier referenced the comments from the building community that they would like to come directly to the Bank and purchase PDCs at a fixed price, when they want them. He asked, when the builders want to acquire acreage in the RGA, to whom, exactly, do they go to purchase land for their project at a guaranteed price?. Likewise, where do they go for the guaranteed price for their lumber, shingles and other building materials? He said they needed to look at PDCs as a necessary part of a construction project and arrange to make that purchase part of the process. He said it was almost beyond reason that the builders would think that something held in private hands should be purchased from a public agency. He said after 35 years, it is time the PDC program puts everyone on an equal footing.

Mr. Mounier said the PDC program is mandatory for Pinelands landowners as there is no other way to get the value out of the land except by participating in the PDC program. On the other hand, for the builders, this has been a voluntary program as they continue to build at less than maximum density and avoid using PDCs. He noted that there are some municipalities in Ocean County for which no PDCs have been used. He said changes to the program are needed.

Seeing no additional requests for public comment and no further comment from the Board, Ms. Chudzik called for the adjournment of the meeting.

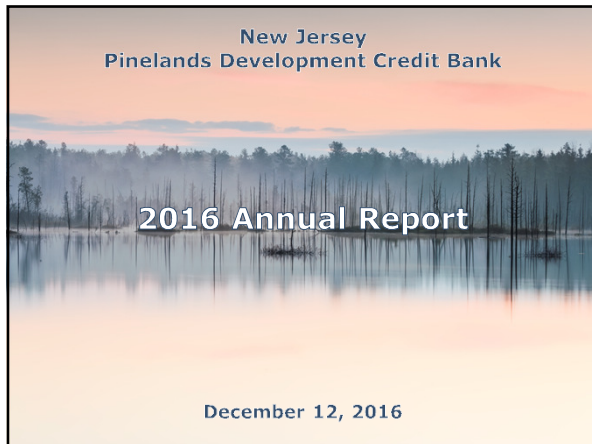
At 3:20 p.m., Ms. Payne moved the adjournment of the meeting. Mr. Shinn seconded the motion and all voted in favor.

Certified as true and correct



Date: February 14, 2017

Betsy Piner, Recording Secretary



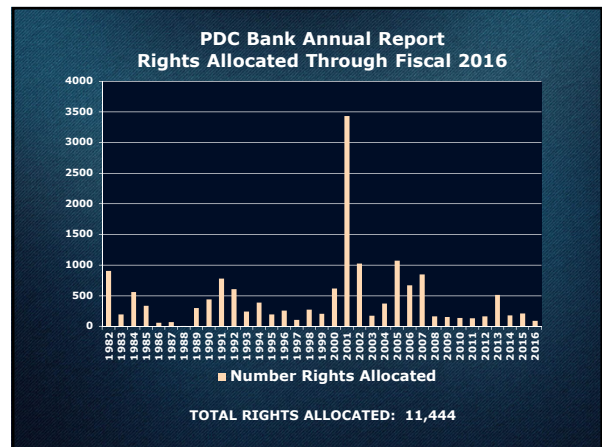
PDC Bank Annual Report Fiscal Year 2016

	PDCs	Rights
PDCs Allocated to Date	2,861.00	11,444
PDCs Severed to Date	1,505.75	6,023
PDCs Sold to Date		
Private Sales	1,102.25	4,409
PDCs Sold to Date		
Public Sales	775.25	3,101

PDC Bank Annual Report Fiscal Year 2016

	PDCs	Rights
PDCs Available for Purchase		
On "Sellers List"	228.00	912
Not on "Sellers List"	159.25	637
Total*	387.25	1,549
PDCs Redeemed		
	855.75	3,423

* Includes 23.75 PDCs owned by the PDC Bank



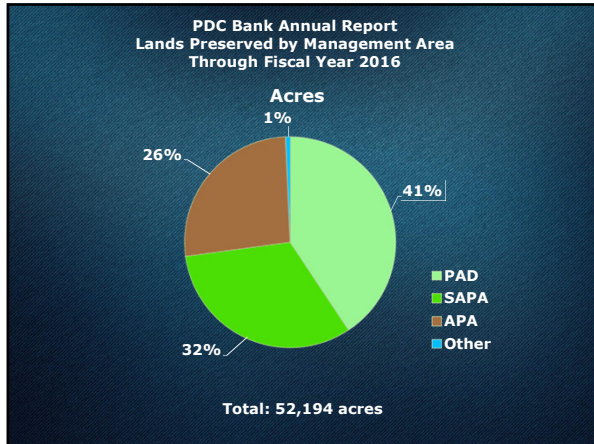
PDC Bank Annual Report Severance Activity Through Fiscal Year 2016

Severance Date	PDCs Severed	Rights Severed	Acres Preserved	Management Area	Town
10/13/2015	0.50	2	14.95	APA	Mullica
10/29/2015	0.25	1	2.78	PAD	Barnegat
10/30/2015	0.50	2	2.95	RGA	Medford Twp.
5/23/2016	1.00	4	38.53	PAD	Tabernacle
5/23/2016	0.75	3	64.55	PAD	Woodland
5/23/2016	1.00	5	143.53	PAD	Woodland

TOTAL PDCS SEVERED: 4.00
TOTAL RIGHTS SEVERED: 16
TOTAL ACRES PRESERVED: 267.29

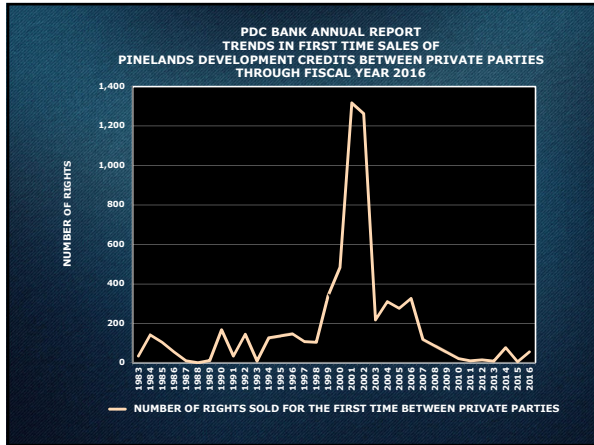
PDC Bank Annual Report Acres Preserved Through Fiscal Year 2016

Management Area	Acres Preserved
Preservation Area District	21,216
Agricultural Production Area	13,797
Special Ag Production Area	16,814
Other	368
Total	52,194



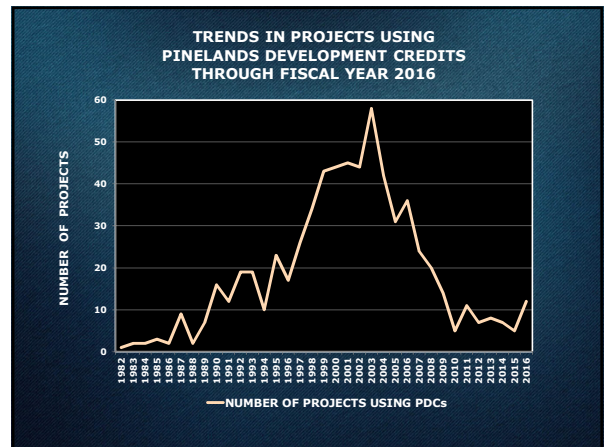
PDC Bank Annual Report: Sales Fiscal Year 2016

PDCs Sold:	14.00
Rights Sold:	56
Average Sales Price Per Right:	\$8,326.00



PDC Bank Annual Report: Redemptions Fiscal Year 2016

PDCs Redeemed	12.75
Rights Redeemed	51
Applications Redeeming PDCs	11
Barnegat Egg Harbor Manchester Medford Twp. Stafford Waterford	



**PDC Program
Supply and Demand Estimates**

	SUPPLY	DEMAND
Immediate (FY2016)	1,549 rights	831 rights
Future (2016 estimate)	6,750 rights	2,000 rights
Proposed Rules	6,750 rights	7,200 rights

- PDC Enhancements
NJBA November 2016 Comments**
- PDC Bank reform
 - Affordable Housing
 - Municipal ordinance standards

- PDC Bank Reform**
- Enable the Bank to serve as a “clearinghouse” for PDCs
 - Authorize the Bank to buy and sell PDCs at an annually established price
 - Formally relocate the Bank from DOBI to the Pinelands Commission
 - Restructure PDC Bank Board membership and appointment process

- PDC Bank Reform**
- Adoption of amendments to the PDC Bank Act by the State Legislature
 - Funding secured for initial PDC purchase and increased administrative responsibilities
 - Adoption of amendments to the PDC Bank’s regulations by the PDC Bank