

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING
PINDLANDS DEVELOPMENT CREDIT BANK

Pinelands Development Credit Bank Rules

Readoption with Amendments: N.J.A.C. 3:42

Proposed: June 2, 2008 at 40 N.J.R. 2622(a).

Adopted: October 16, 2008 by Pinelands Development Credit Bank Board, Steven M. Goldman, Chair.

Filed: October 17, 2008 as R.2008 d.348, without change.

Authority: N.J.S.A. 13:18A-30 et seq.

Effective Dates: October 17, 2008, Readoption;
November 17, 2008, Amendments.

Expiration Date: October 17, 2013

Summary of Public Comments and Agency Responses:

The Pinelands Development Credit Bank Board received written comments from the New Jersey Builders Association.

COMMENT: The commenter noted that they had reviewed the readoption of the rules over the last several readoption cycles and they again offer comments similar to those previously submitted.

RESPONSE: The Board thanks the commenter for their interest in the issues involved with the Pinelands Development Credit Bank.

COMMENT: The commenter stated that the Summary in the notice of proposal notes that the Pinelands Development Credit (PDC) Bank is attempting to facilitate the sales of Pinelands Development Credits (PDCs) but unfortunately, the procedures are very minimalist in concept and do little to facilitate the sale of PDCs or foster the patterns of development called for under the

Comprehensive Management Plan. The commenter noted that the PDC Bank functions as the last resort purchaser and seller of PDCs and provides purchasers with information as to who may have PDCs available for sale. The acquisition of PDCs needed for a specific development also often involves contracts with numerous purchasers of PDCs and a significant number of separate transactions to purchase the PDCs, which is a costly and time consuming process and does not encourage the use of PDCs. The commenter stated that the PDC Bank needs to go beyond providing a list of information and should function more as a broker of buyers and sellers of PDCs. The commenter stated that the PDC Bank could hold PDCs that owners want to sell at a particular price set by the owner and the purchaser would then be able to buy the PDCs if the price is acceptable, with the result that the PDC Bank would not own the PDCs but handle all of the transactions. The commenter noted that in order for the PDC Bank to function as the broker described above, the PDC Bank should not be in the position, except in extraordinary circumstances, of purchasing and then selling PDCs.

The commenter also stated that the rules should be made “user-friendly” to facilitate development in growth areas. The commenter believes that the PDC Bank should develop more smart growth relevant rules for the sale of PDCs that it holds and to facilitate private transactions.

RESPONSE: Upon review, the Board has determined that no rule changes are required. Pursuant to the statutory scheme established under N.J.S.A. 13:18A-30 et seq., the PDC Bank system for private transactions is structured so that buyers and sellers negotiate the purchase price of PDCs between themselves. The Board recognizes that this may require buyers shopping for the best purchase price to contact several sellers to ascertain whether they are receiving the best deal. In addition, buyers looking for a large number of PDCs may be required to contact several sellers in order to acquire the PDCs needed for a particular development. The Board believes that this system is fair and appropriate and continues to permit the price of PDCs to be established by private

contracts between buyers and sellers operating in the free market, rather than having the price potentially skewed. In addition, the Board notes that pursuant to N.J.A.C. 3:42-5 and 7, the Board may purchase and sell PDCs based on the condition of the private market to further the PDC program. Moreover, the PDC Bank has in the past assisted buyers experiencing difficulty finding sufficient PDCs and will continue to do so. The Board will continue to monitor this issue and will consider appropriate amendments to the rules if deemed necessary and appropriate to further the goals of the Pinelands Development Credit Bank Act, N.J.S.A. 13:18A-30 et seq.

COMMENT: The Summary statement notes that “The Department is also reviewing possible changes to the PDC bidding process....” The commenter strongly encourages changes to the Bank’s bidding process. The rules now provide that the price set for the sale at auction of all of the PDCs to be sold by the PDC Bank would be set by the highest bid price. A bid for a small number of PDCs or a fraction of a PDC could set an unrealistically high price for the remainder of the PDCs, negating potential sales. In fact, this very situation occurred. Instead, buyers should be able to purchase PDCs going from the highest bidder down the list, but not below the minimum list or “reserve” price.

RESPONSE: The Board appreciates the suggestions from the commenter. The revisions to the bidding process urged in the comment would constitute substantive changes to the rules, which cannot be made upon adoption. See N.J.A.C. 1:30-6.3(a). Consequently, the Board will make no rule changes at this time. The Board will await the results of its review of the bidding process referenced in the proposal and the suggestions by the commenter will be taken into consideration as part of that review.

COMMENT: The commenter stated that they would be willing to meet with PDC Bank staff or its board to further discuss the comments and recommendations it has put forward.

RESPONSE: The Board thanks the commenter for their offer. However, it notes that some of the suggestions would require a legislative amendment of the underlying statute.

Federal Standards Statement

The readopted rules and adopted amendments are not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 3:42.

Full text of the adopted amendments follows:

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