

Adopted March 27, 2012

**Pinelands Development Credit Bank Board
15C Springfield Road
New Lisbon, NJ 08064**

MINUTES

February 16, 2012

2:00 p.m.

Board Members Present:

Christopher Hughes, Dept. of Banking & Insurance Designee

Susan Payne, Department of Agriculture Designee

Fawn McGee, Department of Environmental Protection Designee

Helene Chudzik representing Kevin Auerbacher, Department of Law & Public
Safety Designee

Candace McKee Ashmun, Pinelands Commission Designee

Edward McGlinchey, At Large Member

Robert Shinn, At Large Member

Others Present:

Susan R. Grogan, Executive Director, PDC Bank

DAG Mark Collier, Board Counsel

Betsy Piner, Recording Secretary for PDC Bank Board

1. Call to Order

Chairman Hughes called the meeting to order at 2:28 p.m. and thanked the Commission for hosting today's and future meetings of the PDC Bank. He read the Open Public Meetings Act Statement.

All present pledged allegiance to the Flag.

2. Adoption of Minutes of May 5, 2011 and September 7, 2011 meetings.

Mr. McGlinchey moved the adoption of the minutes of the May 5, 2011 Board meeting.

Ms. McGee seconded and the minutes were adopted with all voting in favor except Ms. Payne who abstained.

Ms. Payne moved the adoption of the minutes of the (special) September 7, 2012 Board meeting. Mr. McGlinchey seconded and all voted in favor.

3. Executive Director's Report

Executive Director Grogan reviewed the documents distributed prior to the meeting's commencement. She said that the *PDC Bank Annual Report for Fiscal Year 2011* would be posted on the Bank's web site shortly. (Note: posted February 17, 2012 at <http://www.nj.gov/pinelands/pdcbank/reports/PDC%20Bank%20Annual%20Report%20FY2011.pdf>).

She said that this report looks similar to the reports of past years and suggested that future reports might be formatted somewhat differently and include more narrative. She said that the Report shows how little activity has occurred because of market conditions and that the price of PDCs continues to drop. For example, the average price per right has dropped from ~\$15,000 in 2010 to \$11,000 in 2011.

Ms. Grogan said that the *PDCs Sales Report (7/1/2011 – 2/15/2011)* reflects the sales processed by Pinelands Commission staff since undertaking the Bank responsibilities. She noted that sales had ranged from \$6,000 to \$12,000 per right. In addition staff has processed the transfer of some 130 rights in preparation for upcoming sales as well as fielding a number of questions and updating the web site. She said that she anticipated more activity as a number of developers were seeking for PDCs for their projects. Also, the Pinelands Commission staff has received a considerable increase in applications for Letters of Interpretation (LOI) in recent weeks.

In response to a question from Ms. Ashmun, Ms. Grogan said that these were requests for new LOIs, not renewals.

In response to a question from Ms. Payne regarding the table on page 1 of the Annual Report and the PDCs listed on the “sellers list” vs. those not on the “sellers list”, Ms. Grogan said that some owners of certificates prefer not to have their contact information posted. That is their prerogative.

4. Continued discussion of request by the Burlington County Board of Chosen Freeholders to amend a filed PDC deed restriction on a parcel in Southampton Township

Chairman Hughes said that today’s agenda would continue a discussion going back to 2008 regarding a Burlington County road widening project along deed restricted lands on Route 530 in Southampton Township.

Mr. Carl Buck, Burlington County Senior Assistant Solicitor, introduced his colleagues who have been working on this project. They included Ms. Carol Thomas (Principal Transportation Planner), Mr. Joseph Brickley (County Engineer), Mr. Michael Nei (County Traffic Engineer), and Mr. Darren Riegler and Mr. Robert Bevilacqua with Michael Baker Corporation (the County’s consultant on the project). He thanked the Board for the invitation, noting that the project had begun in 1998.

Mr. Nei provided a PowerPoint presentation on the project and Mr. Buck directed the Board to various maps related to the road widening project. Mr. Buck said that the 3.2 mile stretch of Route 530 from Route 206 to Pemberton Borough carries the second highest volume of any County road at ~22,000 vehicles per day. He said that, due to the compelling safety needs (17 deaths in the past 20 years; 600 motor vehicle collisions in the last 8 years and 5 accidents in just the past week), the County needs to widen the 40’ wide cartway to 74’. This will allow a widening of the existing 11’ lanes to safer 14’ lanes with no increase in the number of travel lanes. Additionally, it will provide for shoulders and left-hand turn lanes where none exist now as well as stormwater basins. Typically, the Department of Transportation requires 8’ wide shoulders but is willing to grant an accommodation of 6’

shoulders for this project. The widening will impact 125 properties, 20 of which will be total takings subject to relocation assistance.

Mr. Buck directed the Board's attention to a map of the Katona property, the deed restricted farm property on the south side of Route 530 that is included in this road widening project. This is a parcel of 801.365 acres with some 3,000 feet of road frontage. The County needs to acquire 3.497 acres (or 0.43% of the entire farm) to accommodate the project.

Mr. Buck cited a letter to Mr. Charles Horner, Director of Regulatory Programs, from a DOT consultant concluding that the widening of the road on the south side of Route 530 was the only feasible alternative to meet the needs of the County. He said that he was here today to receive direction from the Bank as to the offset that will be required.

In response to a question from Ms. Ashmun regarding stormwater improvements, Mr. Buck shared with the Board diagrams showing the proposed stormwater facilities and noted that they could not be accommodated on the northern side of the road. The widening on the south side will vary from 30' to 70' at the widest point to accommodate these stormwater facilities.

Mr. McGlinchey stated that he believed that the Board was meeting to discuss IF the deed restriction were to be lifted.

Mr. Brickley responded the Pinelands Commission has stated that it deferred to the decision of the PDC Bank Board and he understood that the Board had already agreed to the lifting of the easement.

Ms. Grogan said that the Board has not yet voted to lift the restriction and furthermore has information showing that the County owns the restriction.

In response to Ms. Payne's question if the land would be acquired by eminent domain, Mr. Buck said that the County is not that far along in their negotiations with the landowner but his recommendation was that eminent domain is used only if there were no other option.

Mr. Darren Riegler discussed details regarding the Pinelands application, noting the measures the County had taken to reduce the encroachment on the property, particularly related to the stormwater basins.

In response to questions from Ms. Payne, regarding the access of farm equipment to the property, Mr. Brickley said that there would be no drainage structures at the driveway and no impact on its access.

Mr. Buck said that the funding was not completely in place but there was \$15 million in Federal funds for the project.

Ms. Grogan suggested that the Board hear from Commission staff.

Mr. Horner provided a review of the project, noting that a February 17, 2009 letter from former PDC Bank Executive Director, Guil Vivas, to the Pinelands Commission initiated the Commission's involvement in determining an alternative to expanding the roadway onto the preserved Katona property. He said that staff was concerned with the encroachment while

recognizing its own limited expertise and had asked the Department of Transportation (DOT) to review the project. The DOT engineer concurred with the County that the proposal was the only feasible alternative as the north side of Route 530 had wetlands and topographic limitations. He said that, at this time, the Commission has a complete application but is concerned with moving forward without a determination on lifting the deed restriction.

Ms. Payne said that, as this is a public health and safety issue, she was comfortable in deferring to Commission staff regarding the minimal impact on these PDC preserved lands. She said that the County has presented evidence that the landowner would still be able to continue the existing agricultural use with no impact to access, drainage, etc., so her next question is who has the power to release the easement. Who is releasing what?

Mr. Buck responded that whether it is the State, County of the PDC Bank, that issue can be dealt with administratively. The County needs the Bank Board to authorize the offset. To whom the offset is provided can be addressed by staff.

Ms. Ashmun said that she did not want to lift the easement if the property owner did not agree.

Mr. Buck responded that an appraisal had been done several years ago but there have been no negotiations with the property owner. The County must secure an independent appraiser; the goal is a negotiated agreement with the landowner, not condemnation through eminent domain.

Ms. Ashmun said that if the Board were to release the easement, she felt it should do so only under three conditions:

- that the County reach a negotiated agreement with the landowner
- that it is lifted specifically to address a public safety issue
- that mitigation is requested and provided

Mr. McGlinchey moved that the Board lift the deed restriction so that it could then engage in a discussion of the offset. However, he was not concerned with Ms. Ashmun's issue that there is a negotiated agreement with the property owners.

Ms. McGee noted that the DEP Commissioner must also authorize the release of the deed restriction.

Ms. Grogan added that a public hearing must be conducted and a report written prior to that step. If the Board were amenable, an offset could be discussed today.

Mr. Brickley said that the County could not negotiate with any property owner until it received the approval from the Board to move forward.

Ms. Ashmun seconded Mr. McGlinchey's motion and asked for a roll call vote.

All voted in the affirmative with the exception of Mr. Shinn who abstained as he had been involved with the deed restriction of the parcel.

Ms. Grogan said that Ms. Roth was here today to present the Pinelands Commission staff recommendation for an offset. She added that she herself had not been involved with any discussions regarding the mitigation.

Ms. Roth distributed and reviewed her memo dated February 15, 2012 (Attachment A) recommending an offset of the purchase of 5.25 PDCs (21 rights). She said that the Commission recognized that this was a serious safety issue but that the lifting of the PDC deed restriction was a precedent setting proposal. There is substantial road frontage on PDC restricted lands throughout the Pinelands. Any mitigation should be severe enough to prevent future requests for the lifting of easements on PDC deed restricted lands elsewhere.

Mr. McGlinchey said that he liked the concept and at \$10,000 per right, the cost would be \$210,000.

Ms. Roth said that there is a process to lift the easement as the DEP Commissioner must consent.

Ms. Chudzik said that the DEP Commissioner has the ability to accept the recommendation to lift or not lift the easement but cannot change the terms of the offset.

Mr. Buck said that he appreciated Ms. Roth's efforts but the County could not respond at this time. He said that the land was deed restricted at roughly 0.37 credits per acre and the County was anticipating an offset for 3.5 acres of roughly 0.13 credits. This was a 40:1 offset. The County had reviewed the concept of open space, not credits and was looking for an offset of acreage.

Mr. McGlinchey responded that the Board was not asking the County to agree.

Mr. Hughes said that he believed that the methodology was commendable. The Board saw itself as a steward of the land and he had no expectation of granting future releases of easements. He said that more weight would be given to the County than to a private property owner.

Ms. Ashmun moved that the Board agree to a mitigation of 5.25 PDCs.

Ms. Payne said that she felt that the Board needed to know who owns the easement, before proceeding. She said that she did not want the Board to do anything that is not legally defensible.

DAG Collier said that the deed has the County as the holder of the easement. He said that he had no information indicating that the easement had been transferred to the PDC Bank.

Ms. Payne said that the County had sold credits to the PDC Bank and asked if the easements remain held by the County.

Ms. Grogan said that this deed restriction pre-dates the PDC Bank. It occurred before the PDC Bank was established but she believed that there is a State interest.

Ms. Payne stated that the Burlington County Credit Bank bought credits and then sold them to the PDC Bank.

Mr. Shinn stated that the purchase was done by transferring the credits to a development company. Katona, the current owners, purchased the property with the deed restriction in place.

Mr. McGlinchey said that, if the Board has the authority to do so, he would second Ms. Ashmun's motion for 5.25 PDCs as an offset.

Mr. Brickley said that the County did not anticipate an offset of this magnitude. The application process has been costly. He said that the Board needed to consider that the County was protecting safety, health and welfare through this project. He said that the County was in a position to consider a Green Acres 2:1 offset, which Ms. Roth had clarified in her presentation, was actually a 3:1 offset.

Mr. McGlinchey stated that he felt that \$210,000 was a small portion of a \$15 million project, and that not all the accidents described on this road could be attributed to traffic design.

Mr. Buck stated that the County believes it still owns the credits and had done a number of title searches. He stated that he wanted the discussion accelerated.

Chairman Hughes moved that the discussion of an offset be tabled pending a clarification of the status of the ownership of the easement. Ms. Payne seconded. Mr. Hughes, Ms. Payne, Ms. Chudzik, and Ms. McGee voted in favor of tabling the motion to impose a 5.25 PDC offset. Mr. McGlinchey voted no and Mr. Shinn abstained. The motion to table was upheld.

The Committee agreed to meet in a month to review the status of the easement further and determined that a meeting would be convened on Thursday, March 15, 2012.

5. Review of 2012 meeting schedule

The Committee agreed with the proposed meeting schedule for the remainder of 2012 as provided in the packet. PDC Bank Board meetings will be conducted on May 17, August 16 and November 15 in addition to the March 15 meeting to continue discussion of the Route 530 widening matter.

6. Public comment

Mr. Chris Jage, with the New Jersey Conservation Foundation, questioned where the authority lay to lift the deed restriction on the Katona Farm. He stated that he believed that the purchase of PDCs is not compensation to benefit the citizens of New Jersey. Finally Mr. Jage also continued a discussion from a previous Bank Board meeting regarding the need for a mechanism to monitor deed restricted lands and prevent violations. He said that there are very specific restrictions and that there are violations beyond such issues as constructing sheds, e.g., clearing vegetation and use of all-terrain vehicles.

Ms. Theresa Lettman, with the Pinelands Preservation Alliance, quoted a portion of a letter from the County Engineer that she had read to the Pinelands Commission. She said that the letter is evidence that the county recognizes that road improvements on the north side would be more expensive than directing them to the south side. She also said that she believed that there should be a compensation of land, not the purchase of PDCs.

Mr. Buck responded that subsequent analysis by the independent engineer at the Department of Transportation (*September 16, 2009 memo from David Ahdout to Charles Horner, Pinelands Commission*) indicated that relocation of the stormwater facilities to the northern side of the road would not work due to incorrect grading, seasonal high water table and wetlands constraints.

7. Other Items of Interest

Mr. Shinn noted that, now that there appears to be some economic recovery, he wanted to focus on marketing PDCs.

Chairman Hughes said that a Committee had been established and he hoped that it would be able to meet prior to the May 17, 2012 Board meeting.

The meeting adjourned at 4:27 p.m. on a motion by Mr. McGlinchey, seconded by Ms. Payne, and a unanimous affirmative vote.

Prepared by Betsy Piner, PDC Bank Recording Secretary