

CENTRAL PINE BARRENS ADVISORY COMMITTEE

Stephen M. Jones, Chair
Richard L. Amper, Vice Chair

Meeting of Tuesday, May 9th, 2006

(Final Minutes - approved 11/14/06)

Suffolk County Water Authority Coram Training Center
2045 Route 112, Building 5, Coram, New York
8:30 am

Advisory Committee Members present:

- Open Space Council: Ms. Marilyn England,
- Brookhaven National Laboratory: Dr. Timothy Green,
- Peconic Land Trust: Mr. John Halsey, Ms. Dawn Haight,
- Long Island Board of Realtors: Mr. Robert Herrick,
- Long Island Builders Institute: Mr. Robert Wieboldt,
- The Nature Conservancy: Ms. Patricia Pelkowski,
- Long Island Greenbelt Trail Conference: Mr. Thomas Casey, Mr. Kim Darrow
- Long Island Pine Barrens Society: Mr. Richard Amper, Vice Chair, Ms. Susie Husted
- Long Island Farm Bureau: Joseph Gergela
- Long Island Association: Mitchell Pally
- Long Island Regional Planning Board: Dr. Lee Koppelman
- Regional Plan Association: Richard DeTurk
- Civic Representative for Brookhaven Town: Thomas Muller
- Suffolk Alliance of Sportsmen, Inc.: John Meringolo
- State University of New York at Stony Brook: Dr. Henry Bokuniewicz
- Environmental Defense: James Tripp
- Suffolk County Water Authority: Mr. Stephen Jones, Chair

Others Present:

- Commission / SCWA Staff: Ray Corwin, Judy Jakobsen, Robin Mills
- Town of Brookhaven: John Turner
- NYS DEC Staff: John Pavacic, Bill Spitz
- SASI: Robert Baumann

Mr. Jones called the meeting to order at 8:39 a.m. with a quorum present.

Approval of Minutes for 3/9/06:

Mr. Jones asked for a motion to approve the committee meeting minutes of March 9th, 2006. A motion was made by Mr. Herrick and seconded by Mr. Tripp. The motion was carried unanimously.

Briefing Items

Long Island's Last Stand Campaign

Mr. Jones said that the Long Island's Last Stand Campaign, a new open space land preservation initiative is run by The Nature Conservancy.

Mr. Amper said that the open space land preservation initiative is an extension of an effort to evaluate what has to be done between now and the final build out of Long Island. Organizations are trying to preserve 25,000 acres of open space and 10,000 acres of farmland before 2015. Funding would be from the State Environmental Protection Fund, the quarter penny sales tax and the community preservation funds for the five east end towns. Four thousand acres in Nassau County will be preserved through the Nassau County Bond Act. Long Island's Last Stand proposes to preserve half of the 70,000 acres through various funding sources.

Pending NYS Environmental Legislation Affecting the Pine Barrens

Mr. Amper discussed pending legislation which affect the environment. The Community Preservation Act would authorize any town to create its own community preservation fund by referendum. The Bottle Bill would extend the 5 cent bottle deposit to those originally not covered. The Wetlands Bill that would provide protection for wetlands smaller than 11 acres. The SEQRA Standing Bill would remove from consideration the requirement that a person who brings litigation under SEQRA must show they have been injured in a manner or degree greater than the public at large. The issue is who can sue under SEQRA. The Environmental Protection Fund is to be increased from 150 million to 200 million. Presently, the Senate Environmental Conservation Committee will not clear these bills for a vote.

Mr. Halsey gave an update on the tax credit for conservation easements. The Land Trust Alliance, the Land Trust Alliance New York Advisory Committee, the Peconic Land Trust and other land trusts and individuals throughout New York worked together to create an innovative tax incentive for conservation. The credit will be implemented in 2007. Landowners whose land is restricted by a conservation easement would receive a refundable state income tax credit equal to 25% of combined town, county, and school taxes paid on land in the previous year. There is no revenue loss to municipalities or school districts.

Natural Resources Damages funds/Northville Funds

Mr. Jones said Northville funds were loaned to the Pine Barrens Credit Clearinghouse to capitalize that group. The funds would be recaptured in 10 years. Mr. Scully asked to have the funds returned to the Natural Resources Damages Unit of NYS DEC in Albany.

Mr. Spitz said the Resource Replacement Plan dictated where all the proceeds from the Northville settlement would go. Twenty-five million in proceeds would be spent on acquisitions in South Setauket Woods for special groundwater protection areas. If none available, it provides for re-allocation of funds by the DEC Commissioner to be used in the core preservation area.

There was a discussion on retaining the viability of the receiving areas. Mr. Tripp said it would

have an effect on the Pine Barrens Clearinghouse in terms of reverse auctions.

Mr. Amper wants the Commission staff to revise a letter to land owners inviting them to participate in this program.

Mr. Herrick asked if TDRs can be sold throughout the county. Mr. Koppelman replied that school districts oppose them. Why should they take the extra density when they get no benefit? Mr. Herrick said school districts could be enhanced by building out on a higher density on a commercial property. This would mean no more taxes to the district and no additional children in the district.

Mr. Tripp said receiving towns need to have a program to accept those credits from another town. Some towns are not receptive to taking rights from another town because of the school district issue. They want to use their receiving areas to protect their own town. These kinds of intermunicipal transfers can happen now if both town boards approve it.

Mr. Jones feels that the towns have no right to object. The Health Department was flexible and allowed credits to go anywhere in Suffolk County as density credits for health department sanitary flow. These did not require any town approvals because these were applied in situations where the zoning and site plan requirements were undisturbed. This made it aware that the towns used the Health Department to throttle development instead of taking responsibility for themselves to do it through zoning and planning on the local level.

Mr. Pally said people are leaving Long Island because they can not afford to buy anything. Here is an opportunity to increase density without hurting anyone at lower cost.

Mr. Jones said the towns did object even though the zoning was not being disturbed and the Health Department was directed to back off and not allow density credits to move around without the approvals of the receiving towns.

Mr. Pally stated there is nothing that precludes a town outside the pine barrens from accepting density credits if they want to. If we want a town to accept them we could go to that town and ask them to pass a resolution to accept them.

Mr. Herrick said we are asking builders to give up 10% of their profits for affordable housing. Mr. Pally replied that is not true and that is not what the bill states. Every pine barrens credit should be transferrable anywhere in Suffolk County. The issue has been for the unwillingness of the towns to accept it.

A motion was made by Mr. Pally that the Advisory Committee recommend to the Commission that the towns outside the pine barrens accept pine barrens credits. Mr. Herrick seconded the motion.

Mr. Tripp offered an amendment to the pending motion that the three towns within the pine barrens maintain the viability of their receiving areas. There was no second.

There was discussion regarding the Town of Brookhaven and the current town policy to not restrict credit redemptions by school district.

Mr. Wieboldt said that the Long Island Builders Institute supports the county wide use of TDRs. A discussion followed regarding affordable housing and development rights.

Mr. Jones repeated Mr. Pally's motion that the Advisory Committee encourage all the towns in SC to accept pine barrens credits and not just the three towns.

Mr. Jones called for a vote on Mr. Pally's original motion. A vote was taken and all were in favor. The motion carried unanimously.

Mr. Corwin has seen the redemptions and there are none for affordable housing. The other request was on the county bond issue that specifies the severance of development rights and their use for affordable housing. Mr. Wieboldt said on that request it is important to determine when and to what extent the credits became available.

For Further Discussion and Possible Recommendations to Commission

Agricultural Exemptions and Land Clearing Issues

Mr. Jones gave background information on activities in the pine barrens in 1993 and 1994. Everyone agreed to concentrate on the passage of the Pine Barrens Act and not have defined development standards for agriculture activities. There is recent interest in the agricultural activities in both the compatible growth area and the core. The law defines development activities as a general matter. The legislation also defines non-development or activities that are exempt from the Commission. Agriculture is listed as an activity that does not constitute development.

There are legal arguments that can be made on both sides of the issue. If we can not decide what to do, then should we allow the courts to decide? Mr. Gergela from the Long Island Bureau has been actively involved with this issue. He has discussed this with the Long Island Farm Bureau and has suggestions for agricultural activities to be more defined in the compatible growth and core area.

Mr. Gergela distributed a handout with suggested criteria for new farm operations in the core area. He is concerned about people that may not be legitimate farmers. They should be utilizing the agriculture exemption for other purposes. The statute has conflicts in the way it is written in a general way and the specific exemptions.

Mr. Koppelman said the original intent of the pine barrens legislation was to preserve to the maximum two environmental features. First, the unique pine barrens forest and second the underlying groundwater. This was a compromise so the core would be preserved to the maximum and the compatible growth area was to recognize some limited development. Agriculture is not compatible with the first two objectives, however it is policy to save as much agriculture as possible. If you're going to strip the pine forest from the core area then what was the purpose of

the act in the first place. The purchase of the development rights within the compatible growth area has been the current policy of the town to protect agricultural interest in the CGA.

Mr. Amper said we want to ensure that the limited agriculture that existed in the pine barrens would be permitted to continue. While agriculture is a permitted activity, clearing is not. Clearing in the core was not intended by the Act.

A motion was made by Mr. Amper to recommend to the Commission that the Advisory Committee does not support clearing of pine barrens in the core for agricultural purposes. Mr. Koppelman seconded the motion.

Mr. Jones said we should look at this from a historical perspective. Farmers skipped over the pine barrens area. The law is clear about agriculture and states that it does not constitute development. The compatible growth area has the issue of residential or commercial/industrial clearing standard. Agriculture buildings are not considered buildings under the state building code but rather agriculture uses.

Mr. Koppelman replied that under the county purchase development rights program, properties acquired were for the prime use of agricultural soils and coverage by buildings was strictly prohibited at the initiative of the program.

Mr. Jones said there is history which shows the county has allowed for framed green houses. There are issues on the town level regarding blocking vistas. The issue is when you purchase development rights do you also purchase a scenic easement?

Mr. Jones asked about the motion advising the Commission regarding no additional clearing and regarding the agriculture activities in the core that existed prior to the Act.

Mr. Koppelman stated the county has already established policies on farms they purchased the development rights on and it would be a conflict for us to go against the existing policy.

Mr. Gergela is proposing a compromise that under certain conditions, if someone wants to farm and it does not work out then you put a bond the property and restore the property. We want the Commission to review the policy for the compatible growth area. He is concerned over the legal issues.

Mr. Jones said from 1993 to 1994 everyone envisioned allowing farms in the core to continue. His concern is that the Town of Brookhaven has a public policy that says they are willing to condemn the fee title to a piece of property in order to keep it in farming, while over here we do not want farming to occur at all.

Mr. Koppelman replied that the property was condemned by the town because there was a major public investment in the farms that surround it. It would be an incompatible use to have construction on that property. As a matter of policy, no one on the Town Open Space Committee was in favor of the general application or condemnation. It was unique and applied to this one

single piece of property. The general policy has been acquisition solely by negotiation.

Mr. Jones said that there is a motion that the Committee recommends to the Central Pine Barrens Commission that in the core area, no additional clearing be permitted for agricultural activities and no new farms be started up in the core that were not in existence prior to the Act and that there would be regulation by the Pine Barrens Commission of existing farm activities in the core preservation area.

Mr. Jones called for a vote on Mr. Amper's motion. All were in favor with one opposed: Mr. Gergela from the Long Island Farm Bureau and two abstentions: Mr. Herrick from the Long Island Board of Realtors and Mr. Wieboldt from the Long Island Builders Institute.

Mr. Jones opened a discussion on the compatible growth area and farming activities. Should the Commission have farming activities regulated under the underlying zoning clearing standard versus allowing farming to have a greater clearing percentage if the land owner is offering a donation in return.

A motion was made by Mr. Koppelman to have the Commission staff review in greater detail the method for determining clearing on agriculture zoned parcels in the cga based on land use versus underlying zoning.

Mr. Gergela said he is concerned with the issue request of John Kennedy to get an application to the Town of Brookhaven to start the cutting for the parcel. He asked how fast this issue can be cleared up.

Mr. Jones said if the PB Commission wants to revisit their decision from October 2005, that is up to them. Mr. Corwin replied that there is nothing pending before the Commission from Mr. Metz or Mr. Kennedy.

Mr. Gergela spoke to the farmer and asked for him to be patient to try and avoid litigation. Mr. Jones replied that maybe the farmer could ask the Commission to revisit the issue.

Mr. Jones said there is a motion for the Commission staff come up with suggestions as to standards and criteria and such in the cga for farming activities.

Mr. Gergela seconded Mr. Koppelman's motion. A vote was taken. All in favor. The motion carried.

Application Completeness

Mr. Jones met with Mr. Limolli to discuss various ways applicants apply for permission in the compatible growth and core area. There is extensive paperwork and there are references made that the Pine Barrens Commission is interpreting the statute. It is not clear when the clock starts and what constitutes a complete application. He suggested we recommend to the Commission as part of the Plan update that attention be given to what constitutes a complete application and ways that

the application process can be more predictable for applicants. The Commission needs to create an incentive to get the staff moving to get the applications reviewed in a timely fashion.

Mr. Wieboldt said on the approved minutes from March 9th, on page 3, one of the resolutions with an amendment stated that the Commission adopt a formal application statement of what constitutes a complete application.

Mr. Corwin replied that the Commission has applications forms for each of the compatible growth area and a core checklist. The staff uses a checklist to make sure everything is included. Letters are sent if the applications are not complete.

Mr. Wieboldt said unanimously, at the last meeting, the Advisory Committee recommended the Commission adopt formal regulations governing the application process and the hearing process.

Mr. Corwin said the Commission has formally adopted policies on application forms and what constitutes a complete application on hearing policy. They could be revisited and submitted to the Advisory Committee for review.

Southaven Park and Trap Skeet Range

Mr. Meringolo asked to address the issue of reopening the Trap and Skeet Range and the motion made by Mr. Wieboldt at the last meeting that we advise the Commission to oppose the reopening of the facility.

Mr. Meringolo made a motion that whoever the vendor would be in connection with that process implement a Best Management Practices Plan and take into consideration all of those items that are required under the Pine Barrens Plan and that this motion be substituted for the resolution from the previous Advisory Committee meeting.

Within the Plan itself, we recognize that the shooting sports as a passive activity even in the core on top of that we specifically said that we are going to have interaction between hikers and hunters and other recreational users in the Pine Barrens it makes good sense that those who are involved in the shooting sports have places to go and practice and become proficient in what they do.

Mr. Jones said everyone understood that the law says re-establishment of a use which has been abandoned for more than one year is a development activity. Therefore Mr. Meringolo will withdraw his motion and replace it with the following.

Mr. Meringolo said that rather than this body voting to oppose the reopening of the facility that we instead require that any prospective vendor that would take over that facility under a lease with the County, implement a Best Management Practices Plan. Mr. Herrick then seconded the motion.

Mr. Corwin said Mr. Foley came to the last Commission meeting and explained the County's past and current activities at Southaven and they are committed to reopening the facility. He also

indicated there are several remediation activities underway. Several environmental groups were present and have concerns over whether or not this constitutes development since it had been closed and is it considered abandonment. Mr. Scully thanked Mr. Foley for his attendance and there was no further action taken. There was concern when Mr. Milazzo, Commission Counsel, encouraged Mr. Foley to return for a jurisdictional determination, it was no clear whether the County intended to return for a jurisdictional determination.

Mr. Wieboldt is against the resolution and stated that when we make a decision we should not change it at the next meeting. There is an environmental justice issue here, Yaphank is an impacted area and one of the largest affordable housing projects. The Trap and Skeet Range will adversely impact the residential development because of the noise and traffic. If the resolution before said that, in the event that the Commission approves it, then let's do a Best Management Program. I would support that. If its just to rescind it because someone is not here than its nonsense. If in spite of our recommendation which we still stand on this is adopted then a Best Management Plan should be required with a full environmental assessment.

Mr. Jones suggested that instead of saying we are no longer opposed say that the Advisory Committee would like an opportunity to review the materials that are submitted to the Commission in the event that they are submitted to the Commission and make recommendations to the Commission about the reopening of the facility. Or we can leave the motion the way it is and take a vote on that.

Mr. Meringolo then made a motion to supplement the Committee's previous resolution by requesting of the Commission that, in the event that the Commission receives additional materials from Suffolk County on this matter, that the Commission submit to the Advisory Committee any such materials received with respect to the reopening of the facility. Mr. Weiboldt seconded the motion.

Mr. Meringolo said we should request that the County submit an application to the Commission so that the vital materials can be reviewed, otherwise we will review nothing. It is clear from minutes of the last meeting that the Commission counsel urged the Commissioner of Parks to return with documentation for a determination of jurisdiction.

It was unanimous. The motion carries.

The next Advisory Committee Meetings will be held on August 8th and November 14th at 8:30 a.m. at the SCWA Coram Training facility.

Adjournment

A motion was made by Lee Koppelman and seconded by Robert Herrick to adjourn the meeting. The motion was approved unanimously.

Attachments:

1. Attendance Sign In Sheets
2. Central Pine Barrens Advisory Committee Organizational Representatives
3. New York State first-in-the-nation tax credit
4. Criteria for New Farm Operation in Core Area of the Pine Barrens