

PINE BARRENS CREDIT CLEARINGHOUSE

JAMES T.B. TRIPP, ESQ., *CHAIRMAN*
ALLAN D. GRECCO, ESQ., *VICE CHAIRMAN*
ANDREW P. FRELENG, A.I.C.P., *MEMBER*
JOHN F. HANLEY, *MEMBER*
MITCHELL H. PALLY, ESQ., *MEMBER*

Pine Barrens Credit Clearinghouse Board of Advisors
Meeting Summary for September 30, 1996 (FINAL)
Central Pine Barrens Joint Planning and Policy Commission Office
Great River, New York 3:00 p.m.

Present: Board members included Mr. Tripp (representing Brookhaven), Mr. Grecco (representing Suffolk County) Mr. Freleng (representing Southampton), Mr. Hanley, (representing Riverhead) and Mr. Pally (representing New York State). Also in attendance were Ms. Roth, General Counsel to the Commission. Staff members Ms. Trezza, Mr. Hopkins, Mr. Milazzo, and Ms. Plunkett. Additional attendees are shown on the attached sign-in sheet.

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• **Gazza Appeal**

Summary: Mr. Tripp reviewed the methodology for allocating credits to the parcels that were the subject of Mr. Gazza's appeal. A staff report discussing the appeal was distributed. Mr. Tripp then summarized a possible approach for the Clearinghouse to follow in deciding the appeal. The appeal will be broken into two groups, the Summit parcel and the College parcels. The allocation for the Summit Boulevard will not be revised. The College parcels' allocation will be increased from 2.21 PBCs to 13.4 PBCs. Mr. Tripp summarized the allocation. Pursuant to the prior Clearinghouse appeal the three interior parcels individual allocation will be increased to 0.8 PBCs respectively given their proximity to the parcel fronting on County Route 51 which is controlled by the applicant as well. Prior to applying for a Letter of Interpretation, the applicant sterilized 33 parcels in the Core Preservation Area by conveying 678,140/200,000 town residential development rights to the College Parcels. In light of this action, the Clearinghouse will allocate to the town residential development rights stored on the College parcels 3.4 PBCs. Subsequently to the sterilizing the 33 parcels, the applicant conveyed them to The Nature Conservancy. The Clearinghouse will allocate 6.6 PBCs for these conveyances. Mr. Freleng stated for the record that he objected to the allocation of PBCs for the conveyances.

Mr. Milazzo distributed a draft negative declaration for the Clearinghouse members review.

A motion was made by Mr. Pally and seconded by Mr. Grecco to issue a negative declaration on the Joseph Gazza appeal. The motion was carried unanimously.

A motion was made by Mr. Hanley and seconded by Mr. Pally not to revise the allocation to the Summit Parcel and to approve the allocation of 13.4 PBCs to the College Parcels as both are recommended in the staff report.. The motion was carried unanimously.

At this point Mr. Gazza raised the issue of donating the property instead of filing a Conservation Easement. A discussion ensued and it was decided that Counsel and staff should draft a policy to deal with this issue. It was also suggested that a Plan Amendment may be needed to accomplish this.

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Credit Appeal Decision

September 30, 1996

Tax Map Parcels: 900-212-1-17.8, 17.9, 17.10, 17.11 and 900-215.2-1-28
Applicant: Joseph Frederick Gazza

The applicant owns or represents the owners (members of his immediate family) of five parcels in the Town of Southampton which, collectively, are the subject of this appeal. Parcel (900-215.2-1-28) is located in an old filed map known as Vanderbilt Park which is southeast of the Hampton Hills Golf Course and west of the unimproved Summit Boulevard (the "Vanderbilt parcel"). The remaining four parcels (900-212-1-17.8, 17.9, 17.10, 17.11, (the "College parcels")) are located on or off of County Road 51 near the Suffolk County Community College.

A. Vanderbilt parcel

The Pine Barrens Credit Clearinghouse, in accordance with the *Central Pine Barrens Comprehensive Land Use Plan* (the *Plan*), issued a Letter of Interpretation of 0.24 Pine Barrens Credits for this parcel. Applicant argues that the parcel should receive an allocation of 1.0 Pine Barrens Credits (PBC) on the following grounds: (1) the parcel is "single and separate" under the Town of Southampton Code and (2) the parcel conforms to Article 6 of the Suffolk County Sanitary Code requirement that a parcel in Groundwater Management Zone III, absent provision of a community water and sewage system have at least one acre of area. This argument overlooks the cost associated with developing a single parcel which, by the applicant's own admission, is "in the middle of the woods." (July 9, 1996 hearing transcript at 6). The parcel is on the western end of a paper road which intersects the unimproved Summit Boulevard at a point approximately 5,000 feet north of the intersection of Summit Boulevard and Sunrise Highway. However, there is no access from Sunrise Highway to Summit Boulevard. The lot is 800 feet west of Summit Boulevard. The applicant supplied the Clearinghouse a single and separate search he performed for the parcel.

The New York Court of Appeals in *Khan v. Zoning Board of Appeals of the Village of Irvington* (639 N.Y.S. 2d 302, 87, N.Y. 2d 344 (1996)) stated that a single and separate clause contained in a zoning ordinance does not exempt a parcel so defined from other ordinances implemented for resource protection purposes. In *Khan*, the Village had adopted resource protection regulations to protect environmentally sensitive areas. The Village also had a single and separate provision in its zoning ordinance. The applicant owned two parcels which satisfied the single and separate requirements of the zoning code. However, application of the resource protection regulations prohibited development of the applicant's parcel. The applicant claimed that the parcel's single and separate status under the zoning code made it a buildable lot despite the resource protection regulations. The court rejected this argument. Rather it suggested that the applicant's remedy was to utilize the local provisions for seeking a variance from the resource protection provisions.

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Even if the applicant can establish that his lot is single and separate under the applicable sections of the Town's zoning code, under the holding of *Khan* no special rights are created for purposes of the Long Island Pine Barrens Protection Act of 1993. In considering Letters of Interpretation appeals, the Clearinghouse considers the unique features of a parcel. Among a parcel's unique features is the development potential of a parcel, its proximity to an improved road and its compliance with Article 6. While the Vanderbilt parcel may comply with Article 6, its extreme remoteness leads to the conclusion that the initial allocation is correct. Therefore the appeal of the allocation for the Vanderbilt parcel is denied.

B. College Parcels

The College parcels have a long and unique history. Applicant or members of his family owned seven old filed map parcels which were reconfigured into the four present parcels of 2+ acres each. However, the combined area of the seven parcels did not conform to zoning requirements. Under the Town Old Filed Map Overlay District Ordinance (Article XI, Town of Southampton Code), which is separate and distinct from the PBC program, applicant transferred Town residential development rights to the seven parcels in order to satisfy zoning area requirements. This ordinance allows certain old filed map parcels that did not conform to present zoning area requirements to receive Town residential development rights from other old filed map parcels. In order to comply with zoning area requirements, the total of the transferred Town residential development rights and the area of a parcel must equal the applicable zoning area requirement. It appears that the applicant is the only person to have used this Town program.

Applicant transferred the Town residential development rights, consisting of 678,140 square feet from 33 parcels in the Core Preservation Area to the seven old filed map parcels. The Town Planning Board approved these transfers by two declarations between the Town of Southampton and the applicant dated December 10, 1992. The declarations did not specify how many Town residential developments were allocated to each of the seven parcels; rather it granted the Town residential development rights to the parcels in total. Applicant then conveyed the 33 parcels to The Nature Conservancy. By transferring the square footage to the seven old filed map parcels, the resultant area was greater than the minimum required by the applicable zoning ordinances. It appears that in December of 1993 the applicant, by recorded deeds, reconfigured the seven old filed map parcels into the four College parcels. In February of 1996 applicant applied for Letters of Interpretation for the College parcels.

In its four Letters of Interpretation issued in April, 1996, the Clearinghouse allocated 1 Pine Barrens Credit to parcel 900-212-1-17.8 due to its location on an existing improved road, 0.36 Pine Barrens Credits to parcel 900-212-1-17.9, 0.38 Pine Barrens Credits to parcel 900-212-1-17.10 and 0.47 Pine Barrens Credit to parcel 900-212-1-17.11, for a total of 2.21 Pine Barrens Credits to the College parcels. This allocation was silent with respect to the Town Residential Development Rights stored on the College parcels. The applicant appealed these allocations and in his State Environmental Quality Review Act documents requested 24+ PBCs for the College parcels and the 33 parcels he sterilized and subsequently conveyed to The Nature Conservancy. The Clearinghouse will base its determination of this appeal on three grounds: an allocation to the parcels, an allocation to the Town residential development rights and an allocation to the 33 conveyances.

Applying the principles enunciated by the Clearinghouse in its July 9, 1996 appeal decision to the present facts yields an allocation of 3.4 PBCs for the College parcels. This allocation recognizes that, while three (3) of the College parcels are not immediately adjacent to an existing road, they are adjacent to a parcel

which is immediately adjacent to an existing improved road and which is owned or controlled by the same person or a member of his family. For this reason, the Clearinghouse believes, notwithstanding all other applicable provisions, that the development of the College parcels would be economically sustainable. In addition, the parcels as presently configured meet Article 6's requirement that a buildable parcel consists of at least 40,000 square feet absent the provision of a community water system or sewage system in Groundwater Management Zone III. For the foregoing reasons, the allocation of 1.21 PBCs to the three interior College parcels is increased to 2.4 PBCs or 0.8 PBC per lot.

In correspondence from Nancy Graboski, the Chairwoman of the Planning Board, the Planning Board supported the concept of allocating Pine Barrens credits for the Town residential development rights. The Chairwoman wrote that, "the Planning Board requests, that in the interest of providing the greatest flexibility to the property owner in this singular situation, the Clearinghouse issue Pine Barrens Credits for the Town [Residential] Development Rights on this parcel." (Graboski, Advisory Report 5/14/96). Town residential development rights may be converted to PBCs by determining the number of units permitted by zoning which are stored on the College parcels as Town residential development rights. Dividing 678,140 square feet by 200,000 yields 3.39 or 3.4 units stored on the four parcels. Allocating one (1) PBC per unit results in an allocation of 3.4 PBCs to the Town residential development rights. Allocation of PBCs to Town residential development rights is expressly conditioned on the applicant retiring the Town residential development rights. Absent such proof, PBC Certificates will not be issued for the Town residential development rights. Subject to this condition, the allocation to the College parcels is increased by 3.4 PBCs.

Lastly, the Clearinghouse has determined to allocate 6.6 Pine Barrens Credits for the conveyance of the 33 parcels to The Nature Conservancy or a per conveyance allocation of 0.20 PBCs per parcel. This allocation recognizes that conveyance of these parcels is consistent with the goals of the Long Island Pine Barrens Protection Act of 1993 to preserve and protect the ecological functions of the Core Preservation Area Property. The Clearinghouse wishes to reiterate, however, that the conveyance of fee ownership of property is not a prerequisite to participation in the Pine Barrens Credit Program, nor in general does the transfer of fee ownership automatically modify the Plan's allocation formula or procedure. This allocation scheme recognizes the unique and singular circumstances of the College parcels.

This allocation is expressly conditioned on the applicant retiring the Town residential development rights pursuant to Town procedures and submitting proof of the same to the Clearinghouse.

Revised Allocation to College Parcels

| Parcel | Parcel Allocation | Town Residential Development Allocation | Conveyance Allocation | Total Allocation |
|-----------------|-------------------|---|-----------------------|------------------|
| 900-212-1-17.8 | 1.0 PBCs | 0.85 PBCs | 1.65 PBCs | 3.5 PBCs |
| 900-212-1-17.9 | 0.8 PBCs | 0.85 PBCs | 1.65 PBCs | 3.3 PBCs |
| 900-212-1-17.10 | 0.8 PBCs | 0.85 PBCs | 1.65 PBCs | 3.3 PBCs |
| 900-212-1-17.11 | 0.8 PBCs | 0.85 PBCs | 1.65 PBCs | 3.3 PBCs |
| TOTAL | | | | 13.4 PBCs |

State Environmental Quality Review Act
NEGATIVE DECLARATION
Notice of Determination of Non-Significance
September 30, 1996

This notice is issued pursuant to Part 617 of 6 New York Code Rules and Regulations implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Pine Barrens Credit Clearinghouse, as lead agency, has determined that the proposed action described below will not have a significant effect on the environment and a Draft Environmental Impact Statement need not be prepared.

LEAD AGENCY: The Pine Barrens Credit Clearinghouse
P.O. Box 587
3525 Sunrise Highway, 2nd Floor
Great River, New York 11739

TITLE OF ACTION: Appeal of Joseph Gazza on Pine Barrens Credit Allocation contained in 5 Letters of Interpretation issued to Joseph Gazza and Irene Gazza on March 11, 1996 and April 2, 1996.

APPLICANT: Joseph Gazza

SEQRA STATUS: Unlisted Action

LOCATION: 1 Parcel east of Summit Boulevard and 4 parcels south of County Route 51

SUFFOLK COUNTY TAX #: 900-215.2-1-28; 900-212-1-17.8, 17.9, 17.10, and 17.11

DESCRIPTION OF ACTION:

The applicant is appealing the allocations contained in the above referenced Letters of Interpretation. The Pine Barrens Credit Clearinghouse allocated to 0.24 Pine Barrens Credits to parcel 900-215.2-1-28 and 2.21 Pine Barrens Credits to parcels 900-212-1-17.8, 17.9, 17.10, and 17.11. Pursuant to Section 6.7.3.4 of the Central Pine Barrens Comprehensive Land Use Plan (the "Plan"), the applicant appealed this allocation. Applicant sought to have one (1) full Pine Barrens Credit allocated to parcel 900-215.2-1-28. Applicant sought 24 Pine Barrens Credits for parcels 900-212-1-17.8, 17.9, 17.10, and 17.11. Pursuant to two Town of Southampton Planning Board Resolutions applicant stored 678,140/200,000 Town residential development rights on these parcels under the Town of Southampton Old Filed Map Overlay District ordinance (Article XI, Town of Southampton Code). These Town residential development rights were created by filing documents with the County Clerk which sterilized 33 parcels, which had in total 678,140 square feet of area, or 15.57 acres. The area of the 33 parcels was transferred to seven old filed map parcels which were later reconfigured into parcels 900-212-1-17.8, 17.9, 17.10, and 17.11. The applicant subsequently conveyed to The Nature Conservancy the fee title to the 33 parcels. Applicant's appeal was heard at a public hearing on April 23, 1996, and continued on July 9, 1996. The Clearinghouse is proposing to increase the allocation for parcels 900-212-1-17.8, 17.9, 17.10, and 17.11 to 13.4 Pine Barrens Credits.

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This allocation is expressly conditioned on the applicant retiring the Southampton Town residential development rights pursuant to Southampton Town procedures and submitting proof of the same to the Clearinghouse. The allocation for parcel 900-215.2-1-28 was not changed.

REASONS SUPPORTING THIS DETERMINATION:

The review of the Long Environmental Assessment Form, Article 6 of the Suffolk County Sanitary Code, the criteria in Part 617.7 of the regulations implementing ECL Article 8 and Article 57, the Long Island Pine Barrens Protection Act of 1993 reveals that the subject parcels are within the Core Preservation Area of the Central Pine Barrens. The Act required the preparation of a comprehensive land use plan for the Central Pine Barrens. A component of the Plan is the Pine Barrens Credit Program, a transferrable development rights program. The Plan and its SEQRA documents were adopted by the Central Pine Barrens Joint Planning and Policy Commission in June, 1995.

The Supplemental Generic Environmental Impact Statement analyzed the cumulative environmental impact of transferring 770 Pine Barrens Credits from the portion of the Core Preservation Area in the Town of Southampton to non-Core areas in the Town. However, due to State of New York and County of Suffolk land acquisitions which have occurred subsequent to that analysis the number of potential Pine Barrens Credits has decreased from 770. For example, the State acquired 216 acres of "Omnia" property subsequent to the ratification of the Plan. This property could have generated approximately 35 Pine Barrens Credits. Those credits were included in 770 Pine Barrens Credits analyzed in the Plan and its related documents. However, pursuant to the allocation provisions of the Plan, Pine Barrens Credits can not be allocated to this now State owned land. Thus the increased allocation from the originally allocated 2.21 to 13.4 Pine Barrens Credits for parcels 900-212-1-17.8, 17.9, 17.10, and 17.11 is still well within the parameters analyzed under the Plan's SEQRA process. Therefore the potential environmental impacts associated with the recommended allocation are within the scope of the impacts previously analyzed.

In addition, under Article 6 analysis, this allocation is a significant reduction in the amount of sanitary flow to be associated with these parcels. Article 6 would permit 300 gallons of sanitary flow per day per acre. This is the amount of sewage associated with one Pine Barrens Credit. Without violating Article 6 and notwithstanding state or local ordinance, the applicant could have generated roughly 7,670 gallons per day of sanitary flow given his control of 25 acres of land. However under the revised allocation only 4,020 gallons per day of sanitary flow can be generated upon redemption of the 13.4 Pine Barrens Credits. This allocation is a net reduction in the sanitary flow associated with the parcels as compared with that permitted under Article 6.

CONTACT PERSON: Raymond P. Corwin, Executive Director, Central Pine Barrens Joint Planning and Policy Commission

COPIES OF THIS NOTICE SENT TO: Central Pine Barrens Commission Members
Dennis Moran, Suffolk County Department of Health Services
Joseph Gazza, Esq.