

**Pine Barrens Credit Appeal
of Expressway 60 Patent and Bernard Meyer**

Contents:

- Excerpt from 5/15/96 Clearinghouse minutes, with initial approval
- Written appeal decision adopted 7/9/96

Central Pine Barrens Joint Planning and Policy Commission

Robert J. Gaffney, *Chair*
Felix J. Grucci, Jr., *Vice Chair*
Vincent Cannuscio, *Member*
Ray E. Cowen, *Member*
James R. Stark, *Member*

P.O. Box 587
3525 Sunrise Highway, 2nd Floor
Great River, New York 11739-0587
516-563-0385 / Fax 516-277-4097

Commission and PBC Clearinghouse Meeting Summary (FINAL) for May 15, 1996 (Approved by the Clearinghouse Board 7/9/96 and by the Commission 7/10/96)

Joint Meeting with Pine Barrens Credit Clearinghouse Board of Advisors Brookhaven Town offices, Building 4, Medford / 2:00 pm

Present: Mr. Dragotta (for Suffolk County), Mr. Girandola and Ms. Wiplush (for Brookhaven), Ms. Filmanski (for Riverhead), Mr. Freleng (for Southampton) and Mr. Cowen (for New York State).

General counsel was Ms. Roth. Staff members from the Commission and other agencies included Mr. Corwin, Ms. Trezza, Ms. Plunkett, Mr. Milazzo, Mr. Hopkins (from the Commission), Mr. Spitz (from the NYS Department of Environmental Conservation), Mr. Cochrane (Suffolk County Treasurer), Mr. Tripp, Mr. Grecco, Mr. Hanley, Mr. Pally (from the Pine Barrens Credit Clearinghouse Board of Advisors; present at the times indicated), and Mr. Moran (from the Suffolk County Department of Health Services). Additional attendees are shown on the attached sign-in sheet.

! Expressway 60 Patent and Bernard Meyer / Manorville: credit appeal decisions (5/15 deadline)

Summary: Mr. Tripp noted that single and separate status is not necessarily a basis for a full credit being allocated to a parcel, however, the Plan does acknowledge the significance of certain roadfront parcels in the core area. He also discussed the State Wild, Scenic and Recreational Rivers Act regulations, and announced that those constraints will not be applied in deciding this appeal. Mr. Grecco also noted that the County's Health Code Article 6 was considered as well. It was decided to issue a total of 21.8 credits for all 37 parcels involved in the appeal. A motion was then made by Mr. Hanley and seconded by Mr. Grecco to issue a total of 21.8 credits for these 37 parcels involved in the appeal. The motion was approved by the Clearinghouse Board by a vote of 4-0.

PINE BARRENS CREDIT CLEARINGHOUSE

AMES 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*

Appeal Decision July 9, 1996

In the Matter of the Appeal of Expressway 60 Patent and Bernard Meyer of the Allocation of Pine Barrens Credits Concerning SCTM 200-411-5-3.1; 3.2; 3.3; 3.4; 3.6; 3.7; 3.8; 4.1; 4.2; 4.3; 4.4; 4.6; 4.7; 4.8; 9.1; 9.2; 9.3; 9.4; 9.6; 9.7; 9.8; 10.2; 10.3; 10.4; 10.6; 10.7; 10.8; 15.2; 15.3; 15.4; 15.5; 15.6; 16.2; 17.1; 17.2; 17.3; and 17.4.

The applicants own a 44 lot subdivision north of Concourse Road in the hamlet of Manorville. All of the lots are within the Core Preservation Area of the Central Pine Barrens as defined in the Long Island Pine Barrens Protection Act of 1993. In addition, the lots are within Groundwater Management Zone III, as established by the Suffolk County Department of Health Services. A subdivision map was filed in 1926 and created the lots of approximately one-half acre each. Roads were mapped for the subdivision, but were not developed. Terrence Meyer owns one lot, Bernard Meyer owns 21 lots and Expressway 60 Patent, a partnership, owns 22 lots. Both Terrence Meyer and Bernard Meyer are partners in Expressway 60 Patent.

Seven lots with frontage on Concourse Road were allocated one Pine Barrens Credit per lot pursuant to Section 6.7.7.6 of the *Central Pine Barrens Comprehensive Land Use Plan* (the *Plan*). The interior 37 lots with no frontages on existing improved roads were allocated 0.10 Pine Barrens Credit per lot pursuant to the minimum allocation formula of the *Plan*. Bernard Meyer owns 18 of these lots. Expressway 60 Patent owns 19 interior lots. The applicants argue that each of the 37 interior lots is "single and separate" as defined in the Brookhaven Town Code and therefore each lot is entitled to one (1) Pine Barrens Credit. The applicants did not appeal the allocation of one (1) Pine Barrens Credit to the seven lots with frontage on Concourse Road.

The Town of Brookhaven Code contains a single and separate provision. The record contains a letter from an Assistant Town Attorney of the Town of Brookhaven explaining the administrative procedure created by the Town Code for determining whether a lot is "single and separate." In order to establish that a lot is single and separate the Town Attorney's office must perform a single and separate search and then confirm the results. This procedure was not followed by the applicants.

The New York Court of Appeals in *Khan v. Zoning Board of Appeals of the Village of Irvington* 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. (639

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N.Y.S. 2d 302). Assuming arguendo that applicants could prove that their lots are single and separate under the Town Code, under the holding of *Khan* no special rights are created for purposes of the Long Island Pine Barrens Protection Act of 1993.

In addition to the Town's regulations, Article 6 of the Suffolk County Sanitary Code "Realty Subdivisions, Developments and Other Construction Projects" may affect the development of a lot. These regulations require that development of any lot less than 40,000 square feet in size in Groundwater Management Zone III must have a community sewage system and a community water system. However, the regulations do not apply to "density requirements for one-family residences on parcels which appeared as separately assessed on the Suffolk County Tax Map as of January 1, 1981, which presently constitutes a buildable parcel under applicable municipal zoning ordinances and which met the Department requirements in effect on January 1, 1981. *No automatic waiver of these requirements of this Article shall be granted where five (5) or more of such parcels are owned by a developer.*" (Suffolk County Sanitary Code §760-609(B)(5). A developer is defined as:

any person or group of persons, or any legally cognizable entity or entities or any combination of the foregoing, who:

1. is undertaking or participating in the establishment of a realty subdivision or other construction project:
 - a. either individually, or
 - b. pursuant to a common scheme, plan or venture

(Suffolk County Sanitary Code §760-601(F)).

Indicia of a common scheme or venture include the fact that the 44 lot subdivision was owned by two brothers and a partnership in which the brothers were partners. The applicants were represented by the same attorney. A history of conveyances of the lots among the same individuals exists in what appears to be an attempt to establish single and separate status. Applicants did not prove that they would be exempt from the Article 6 of the Sanitary Code. The Clearinghouse finds that the applicants would be a developer under Article 6 and there would be no automatic waiver of the Article 6 requirements.

In evaluating the arguments raised on appeal by the applicant's attorney, the Clearinghouse determines that the unique features of the 37 lots are their proximity to an existing improved road, their ability to be developed in an economically justifiable manner and the nature of the applicant's holdings. The Clearinghouse finds while the 37 lots are not immediately adjacent to an existing road, they are proximate to parcels that are immediately adjacent. For this reason, the Clearinghouse believes that the development of the 37 lots would be economically sustainable. Economies of scale could be created because the applicants own or control the 44 lots of the subdivision. Infrastructure improvement costs could be distributed among the 44 lots

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allowing the applicants to recoup these costs as the lots were sold. This development scenario varies significantly from the cost of developing a single lot or a small number of lots that are a greater distance from an improved road. In those instances, the entire cost of the infrastructure improvement would be borne by the individual lot or a small number of lots.

For the foregoing reasons, the allocation to the 37 lots is increased from 0.10 Pine Barrens Credits per lot to 0.4 Pine Barrens Credits per lot for a total allocation of 21.8 Pine Barrens Credits for the 44 lot subdivision. The allocation of 0.4 Pine Barrens Credit per lot reflects the fact that the lots are back from an existing road. This allocation results in a total rated sewage flow that is slightly less than if the subdivision was built pursuant to Article 6.

State Environmental Quality Review Act

NEGATIVE DECLARATION

Notice of Determination of Non-Significance

July 9, 1996

*Appeal to
decision*

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 Pine Barrens Credit Allocation contained in 37 Letters of Interpretation issued to Bernard Meyer and Expressway 60 Patent, a partnership on December 26, 1995.

APPLICANTS: Bernard Meyer and Expressway 60 Patent

SEQRA STATUS: Unlisted Action

LOCATION: North of Concourse Road
Manorville, Town of Brookhaven, New York.

SUFFOLK COUNTY TAX #: 200-411-5-3.1; 3.2; 3.3; 3.4; 3.6; 3.7; 3.8; 4.1; 4.2; 4.3; 4.4;
4.6; 4.7; 4.8; 9.1; 9.2; 9.3; 9.4; 9.6; 9.7; 9.8; 10.2; 10.3;
10.4; 10.6; 10.7; 10.8; 15.2; 15.3; 15.4; 15.5; 15.6; 16.2;
17.1; 17.2; 17.3; and 17.4.

DESCRIPTION OF ACTION:

The applicants are appealing the allocations contained in Letters of Interpretation issued on December 26, 1995. The Pine Barrens Credit Clearinghouse allocated to 37 lots, 0.10 Pine Barrens Credits per lot. Pursuant to Section 6.7.3.4 of the Central Pine Barrens Comprehensive Land Use Plan, the applicants appealed this allocation. Applicants sought to have one (1) full Pine Barrens Credit allocated for each of their 37 lots. Applicant's appeal was heard at a public hearing on February 28, 1996, and continued on March 26 and April 23. The Clearinghouse is proposing to increase the allocation per lot from 0.10 Pine Barrens Credits to 0.40 Pine Barrens Credit.

REASONS SUPPORTING THIS DETERMINATION:

The subject parcels are within the Core Preservation Area of the Central Pine Barrens as defined by the Long Island Pine Barrens Protection Act of 1993. 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 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 1,650 Pine Barrens Credits from the portion of the Core Preservation Area in the Town of Brookhaven 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 1,650. It has been estimated that parcels which could have generated 400 Pine Barrens Credits have been acquired. The increased allocation of 11.1 Pine Credits to 14.8 from the originally allocated 3.7 is still well within the parameters analyzed under the SEQRA process. Therefore the potential environmental impacts associated with the increased allocation are within the scope of the impacts previously analyzed.

A further reason supporting this determination is that the subject lots are within the Core Preservation Area of the Central Pine Barrens as defined by Article 57 of the Environmental Conservation Law as well as Groundwater Management Zone III as defined by the Suffolk County Department of Health. Article 6 of the Suffolk County Sanitary Code governs "Realty Subdivisions, Developments and Other Construction Projects." These regulations require that any development of any parcel less than 40,000 square in Groundwater Management Zone III must have a community sewage system and a community water system. Although waivers to this requirement exist, there is no automatic waiver where five (5) or more of such parcels are owned by a developer. The applicants would be defined as a developer. Therefore, given that applicants owned 37 lots in total each with approximately one-half acre of land area, if developed pursuant to Article 6, the lots could have generated 5,550 gallons of sanitary flow. A Pine Barrens Credit entitles the bearer to increase the permissible sewage flow of one acre of land (40,000 square feet) from 300 to 600 gallons per day in Zone III. Therefore, the allocation of 14.8 Pine Barrens Credits which is equivalent to 4,440 gallons of sanitary flow is less than what could have been generated had the applicant developed his parcels pursuant to 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
Bernard Meyer, Terrence Meyer c/o Philip Sanderman, Esq.