



Commission Meeting of November 16, 2016

Brookhaven Town Hall, Farmingville, NY

Present: Ms. Gallagher (for New York State), Mr. Freleng (for Suffolk County),
Supervisor Walter (for Riverhead Town), Mr. Collins (for Southampton Town),
Supervisor Romaine (for Brookhaven Town)

Final Resolution on NUTOP, LLC

SCTM#: 200-357-1-1.4

Whereas, NUTOP, LLC (“Nutop”) owns a 5.72 acre parcel of land located in Manorville, in the Town of Brookhaven designated as Suffolk County Tax Map Number 200-357-1-1.004 (the “Nutop Parcel”). The Nutop Parcel is located in the Core Preservation Area of the Central Pine Barrens as defined by the Long Island Pine Barrens Protection Act of 1993 (the “Act”).

Carrie Meek Gallagher
Chairwoman

Steven Bellone
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

Sean M. Walter
Member

I. The Act, the Commission and the Pine Barrens Credit Program

Whereas, in 1993 the New York State Legislature passed the Long Island Pine Barrens Protection Act (the “Act”) which was codified in Article 57 of the Environmental Conservation Law. The Act created the Central Pine Barrens Joint Planning and Policy Commission (the “Commission”) to, among other things, oversee land use activities within the specially designated Central Pine Barrens Area, and

Whereas, in furtherance of its mission and in compliance with the directives set forth in the Act, the Commission drafted the Central Pine Barrens Comprehensive Land Use Plan (the “Plan”), which was officially adopted on June 28, 1995, and

Whereas, Chapter 6 of the Plan, the “Pine Barrens Credit Program,” established the Pine Barrens Credit Program and the Pine Barrens Credit Clearinghouse, and

Whereas, the Pine Barrens Credit Program is a transferable development rights program whose primary purpose is to maintain value in land designated for protection under the Plan by providing for the allocation and use of transferable development rights known as Pine Barrens Credits, and

Whereas, Chapter 6 of the Plan sets forth the policies and procedures by which owners of property eligible to receive Pine Barrens Credits may apply for, be allocated, and receive Pine Barrens Credits, which as a first step requires the application for and receipt of a Letter of Interpretation, and

Whereas, a Letter of Interpretation contains the Commission’s determination of the number of Pine Barrens Credits an eligible parcel is entitled under the allocation formulae contained within the Plan, and

Whereas, the Commission has responsibility for implementing the Pine Barrens Credit Program through its Pine Barrens Credit Clearinghouse and is

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responsible for hearing and deciding appeals from landowners aggrieved by an allocation of Pine Barrens Credits contained within a Letter of Interpretation.

II. The Commission Allocation Formula for Property Zoned Other Than Residential

Whereas, by resolution dated August 7, 1996, the Commission adopted a formula for allocating Pine Barrens Credits to non-residentially zoned property and pursuant to such formula property in the J Business 3 District was eligible to receive 1.0 Pine Barrens Credit per acre, and

Whereas, on November 21, 2012 the Commission amended its Plan to include, for the first time, an allocation formula for property zoned for other than single family residential use, which was codified at Section 6.3.2 of the Plan and by this amendment the August 7, 1996 resolution is of no further force or effect, and

Whereas, under the Plan's allocation formula property within the J Business 3 District is allocated 0.20 Pine Barrens Credit per acre of property, and property zoned in the J Business 2 District is allocated 1.0 Pine Barrens Credit per acre of property.

III. Nutop Parcel, the Nutop Applications for Pine Barrens Credits and the Nutop Appeal

Whereas, on June 30, 1995, the Nutop Parcel was part of a larger parcel that contained 6.17 acres, and was within the J Business 3 District, and

Whereas, on March 30, 1998, the Pine Barrens Credit Clearinghouse issued to Nutop a Letter of Interpretation allocating 6.17 Pine Barrens Credits to the larger parcel and the Letter expired after one year pursuant to its terms, and

Whereas, in July 2002, Nutop caused the larger parcel to be divided into two lots, the Nutop Parcel and another lot. At the time of the lot division, the Nutop Parcel conformed to the lot area requirements of both the J Business 3 and J Business 2 Districts, and presently conforms to the lot area requirements of the J Business 2 District, and

Whereas, the Town of Brookhaven, in August 2003, eliminated the J Business 3 District and re-zoned the Nutop Parcel into the J Business 2 District, and

Whereas, Nutop, by application dated February 8, 2016 applied to the Central Pine Barrens Clearinghouse for a Letter of Interpretation for the Nutop Parcel, and on March 3, 2016, the Clearinghouse issued to Nutop a Letter of Interpretation allocating 1.15 Pine Barrens Credits to the Nutop Parcel utilizing the development yield factor for the J Business 3 District contained within the Plan based upon the Nutop Parcel's 1995 zoning, and

Whereas, by letter dated March 31, 2016, Nutop, by its attorneys Certilman Balin, appealed the allocation contained within the March 3 Letter of Interpretation seeking the issuance of 5.72 Pine Barrens Credits for the Nutop Parcel, and

Whereas, the Commission, on August 17, 2016, held a hearing on Nutop's appeal and a transcript of the hearing was made available to the Commission members.

IV. The Commission's Review of its December 20, 2006 Resolution and Plan Sections 6.3, 6.3.1, and 6.3.2

Whereas, the Commission notes the adoption of its December 20, 2006 resolution setting June 28, 1995 as the date on which a parcel must have existed to be eligible to receive an allocation of Pine Barrens Credits and as the date used for determining the zoning of a parcel for purpose of allocating Pine Barrens Credits and determines that resolution did not address unique circumstances presented in the Nutop appeal, and

Whereas, the Commission on its review of the Nutop appeal, its December 2006 Resolution and the Plan notes a difference between the Resolution and Sections 6.3.1. and 6.3.2 on how Pine Barrens Credits should be allocated to the Nutop Parcel given its unique circumstances, and

Whereas, Section 6.3.1, directs, in part, that Pine Barrens Credits be allocated for "each single family dwelling permitted on a residentially zoned parcel . . . based upon the development yield . . . under the zoning regulations in existence when this Plan is adopted in June, 1995," and

Whereas, Section 6.3.2 directs, in part, that using specified development yield factors, Pine Barrens Credits be allocated for property "zoned for other than single family residential use," without the qualifying language that appears in Section 6.3.1 concerning "zoning regulations in existence when this Plan is adopted in June, 1995," and

Whereas, the Commission observes that Figure 6-2 within Section 6.3.2 sets forth "development yield factors for property zoned other than single family residential use," is annotated with "Note: Although some of the following zoning classes are now obsolete, those have been retained here in the event that a parcel in a sending area had one of those zoning categories on its relevant record date listed in Section 6.3," and

Whereas, Section 6.3 defines a parcel of land as a separately assessed . . . [tax parcel that] existed on the . . . [Plan's] initial adoption date of June 28, 1995," and

Whereas, the Commission in reviewing the two sections, 6.3.1 and 6.3.2, in conjunction with each other, determines in allocating Pine Barrens Credits to residentially zoned property, the zoning of the parcel at the time of the Plan's adoption is used to determine the development yield factor as specifically set forth in Section 6.3.1, and

Whereas, the Commission further determines in allocating Pine Barrens Credits to property zoned for other than single family residential use, the zoning of the parcel at the time of the Letter of Interpretation application should be used to determine the development yield factor because the reference to Section 6.3 does not address a parcel's zoning but rather its date of existence, and

Whereas, the Commission interprets Section 6.3 and its December 2006 resolution to require when allocating Pine Barrens Credits to a lot which did not exist on June 28, 1995 to make such allocation on a case by case basis considering such factors the Commission deems

relevant, including whether the parcel that was partitioned conformed to the lot area requirements of its zoning district in effect at the time of the lot's creation, whether the newly created lot conforms to the lot area requirements of the zoning in effect at the time of its Letter of Interpretation allocation, and the benefits, if any, the newly created lot or the partitioned parcel or both received under the Plan, and

Whereas, the Commission determines that the Nutop Parcel, which did not exist as of June 28, 1995 is eligible to receive a Pine Barrens Credit allocation because the parcel from which the Nutop Parcel was partitioned conformed to the lot area requirement of the zoning district at the date of the Nutop Parcel's creation, the Nutop Parcel conformed to the J Business 3 District lot area requirements when the Nutop Parcel was created, and since the Nutop Parcel complies with the J Business 2 District lot area requirements when the Letter of Interpretation application was received by the Commission and the parcel from which it was partitioned has received no other benefits under the Plan.

V. Commission Determinations

Resolved, the above recitals set forth above are incorporated herein and made a part hereof as if fully set forth each as an individual resolved clauses, and be it further

Resolved, that the Commission has reviewed and considered the recitals and adopts them as its findings and directives, and be it further

Resolved, that the Commission finds that the Nutop Parcel which did not exist on June 28, 1995 is eligible to receive an allocation of Pine Barrens Credits and further finds that the Nutop Parcel is within the J Business 2 District and the Nutop Parcel's June 28, 1995 zoning classification is obsolete, and be it further,

Resolved, that the Commission finds Nutop should be issued a Letter of Interpretation allocating Pine Barrens Credits to the Nutop Parcel as the same existed on the date its Letter of Interpretation application was received because the parcel from which the Nutop Parcel was partitioned conformed with the J Business 3 District lot area requirements at the moment the Nutop Parcel was created, because the Nutop Parcel conformed with the area requirements of the J Business 3 District when it was created and because the Nutop Parcel conforms with the lot area requirements of the J Business 2 District, and be it further

Resolved, that the Commission finds that the Nutop Parcel's 1995 zoning is obsolete, and be it further

Resolved, the Commission directs that the development yield factor for the zoning district the Nutop Parcel was in at the date of the Letter of Interpretation application was received be utilized to determine the number of Credits to be allocated to the Nutop Parcel, and be it further

Resolved, that the Commission further directs the issuance of a Letter of Interpretation to Nutop in the amount of 5.72 Pine Barrens Credits for the Nutop Parcel for the reasons set forth above.

Motion by: Supervisor Romaine
Seconded: Supervisor Walter

Vote:

Yes: 4

Abstain: 1