



Commission Meeting of January 17, 2018
Riverhead Town Hall
200 Howell Avenue
Riverhead, New York

**Central Pine Barrens Joint Planning and Policy Commission
Final Adopted Resolution on Accepting the Written Decision on
the Letter of Interpretation Appeal of
Armand Gustave LLC and James Eagan for
Suffolk County Tax Map Number 900-279-4-13.001**

Carrie Meek Gallagher
Chairwoman

Steven Bellone
Member

Laura Jens-Smith
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

Present: Ms. Gallagher, for the Governor of the State of New York
Mr. Dale, for the Suffolk County Executive
Mr. Romaine, Brookhaven Town Supervisor
Ms. Jens-Smith, Riverhead Town Supervisor
Mr. Collins, for the Southampton Town Supervisor

Whereas, the Commission received a written request from Armand Gustave, LLC and James Eagan to appeal the Pine Barrens Credit allocation in the August 15, 2017 Letter of Interpretation for Suffolk County Tax Map Number 900-279-4-13.001, and

Whereas, on September 20, 2017, the Commission held a hearing on the Letter of Interpretation appeal, now, therefore, be it

Resolved, that the attached document constitutes the written decision for the Letter of Interpretation appeal for Suffolk County Tax Map Number 900-279-4-13.001 and be it further,

Resolved, that the Commission finds its decision is an unlisted action and it will not have a significant adverse impact on the environment as defined in the State Environmental Quality Review Act for the reasons set forth in the attached Short Environmental Assessment Form.

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Motion by: Kyle Collins

Second by: Dorian Dale

Ayes: Carrie Meek Gallagher, Dorian Dale, Edward Romaine, Laura Jens-Smith and Kyle Collins

Nays: None

Abstentions: None

Absent: None



Carrie Meek Gallagher
Chairwoman

Steven Bellone
Member

Laura Jens-Smith
Member

Edward Romaine
Member

Jay H. Schneiderman
Member

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Decision on the Letter of Interpretation Appeal of Armand Gustave LLC and James Eagan for Suffolk County Tax Map Number 900-279-4-13.001

Armand Gustave LLC and James P. Eagan (collectively “AGE”) each possess a 50% interest in a 20.88 acre parcel of land located in Westhampton in the Town of Southampton designated as Suffolk County Tax Map Number 900-279-4-13.001 (the “AGE Parcel”). The AGE 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”). AGE appeals a Pine Barrens Credit Clearinghouse determination not to allocate Pine Barrens Credits to the AGE Parcel. The AGE Parcel is entitled to be allocated Pine Barrens Credits and for reasons in this decision the Commission allocates 3.35 Pine Barrens Credits to it.

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

In 1993 the New York State Legislature passed the Act and it 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. 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 adopted on June 28, 1995.

Chapter 6 of the Plan, the “Pine Barrens Credit Program,” established the Pine Barrens Credit Program and the Pine Barrens Credit Clearinghouse. The 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 (“PBC”). Chapter 6 of the Plan sets forth the policies and procedures by which owners of property eligible to receive PBCs may apply for, be allocated, and receive PBCs, which as a first step requires the application for and receipt of a Letter of Interpretation (“LOI”). A LOI contains the Clearinghouse’s ministerial determination of the number of PBCs a parcel is entitled under the Plan’s allocation formulae. The Commission hears and decides LOI appeals from persons, such as AGE, who claim entitlement to more PBCs than they were allocated.

II. The Commission Pine Barrens Credit Allocation Formula

Section 6.3 of the CLUP provides, “[f]or the purpose of computing the allocation of PBCs, a parcel of land is defined as a separately assessed Suffolk County Real Property Tax Parcel which is within the Core Preservation Area and existed on the Central Pine Barrens Comprehensive Land Use Plan’s initial adoption date of June 28, 1995.” The Plan provides that one (1) Pine Barrens Credit shall be

allocated for each single family dwelling permitted on a residentially zoned parcel of land based upon the Plan's development yield factor. The factors estimate the number of residential units that could be constructed under conventional zoning regulations, taking into account necessary infrastructure such as roads, sidewalks, recharge basins or utilities. The factor for parcels within Southampton's Country Residence 200 zoning district is either 0.16 or 0.20 PBC depending on whether a parcel is in a Town designated Old Filed Map. Old Filed Map parcels receive a slightly higher allocation because they are already platted with infrastructure allowances.

Plan Section 6.7.6.6 provides for the minimum allocation of one PBC for certain parcels, "[c]onsisting of at least 4,000 square feet with frontage on an existing public improved road. Parcel frontage on the main lines (as opposed to any improved service roads) of Sunrise Highway (NY State Route 27), the Long Island Expressway (Interstate 495), and similarly limited access highways shall not qualify a parcel for such an allocation." In 2002, the Commission added the second sentence of this provision. Prior to the amendment, parcels on "main lines" may have qualified for an allocation of one PBC depending on the parcel's size.

III. AGE Parcel, the AGE Application for PBCs and the AGE Appeal

By a June 21, 2017 deed, AGE acquired ten separate Suffolk County Tax Map parcels from Joseph Polizzi, Marie Filingeri as surviving spouse of Peter Filingeri and Peter Trieoli, (the AGE Deed, Commission Exhibit H). AGE reported the consideration paid for its purchase as \$120,000 on the Suffolk County Recording and Endorsement Page recorded with the AGE Deed. (Commission Exhibit H). The ten parcels are shown on Commission Exhibit B. The parcels are all located on the Map of Westhampton Shores, an Old Filed Map, which was filed in the Office of the Clerk of Suffolk County on May 7, 1924. On the AGE Deed the parcels are described by reference to specific lots on the Map of Westhampton Shores. (Commission Exhibit H).

Each of the parcels AGE acquired had a unique Suffolk County Tax Map number as shown on the Recording and Endorsement Page. They were designated as parcels 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 within block 4 of section 279 in district 900 of the Tax Map. There were mapped but unopened roads, or "paper streets," between them. (Commission Exhibit B). Five parcels contained 1.5 acres each and the other five contained 1.6 acres each. (Commission Exhibit B). All are located in Southampton's Country Residence 200 zoning district.

Real Property Law §335 permits mapped roads that are neither opened, nor public highways, nor used by the public to be abandoned. AGE abandoned its interest in such roads that were between or adjacent to the AGE Parcel. AGE provided to the Commission a Suffolk County Real Property Tax Service RPTSA 101 Form dated August 2, 2017 which "Incorporated Certificate of Abandonment 6393," indicating that Tax Map parcel numbers 900-279-4-4 inc. 13 were "retired" and "replaced" by the AGE Parcel which was assigned the Tax Map number 900-279-4-13.001. (Commission Exhibit D). AGE also provided a Southampton document noting the Certificate that stated the AGE Parcel contained 20.88 acres more than five acres larger than the

total of the individuals tax parcels.¹ (Commission Exhibit E).

The AGE Parcel is bounded on the west by County owned property. (Commission Exhibits B and C). The County owned property is a parcel that includes the westerly half of the former Warren Street. The easterly half of Warren Street was abandoned by AGE. The evidence of County ownership is shown on Commission Exhibit B by the note “FOR PCL. NO. SEE SEC. NO. 332-03-030.2” which references another section of the Tax Map where Suffolk is identified as the owner of the parcel containing the westerly half of the former Warren Street adjacent to the AGE Parcel.

On August 4, 2017, AGE applied for a LOI for the AGE Parcel and a LOI dated August 15, 2017 was issued for the AGE Parcel. The LOI referenced Plan §6.3 stating, “[y]ou have indicated the [AGE Parcel] was created in 2017 as a result of the abandonment of the paper streets adjoining the parcel. On the basis of this information, it does not appear that the [AGE Parcel] existed on June 28, 1995. Therefore the Clearinghouse is unable to allocate PBCs to the [AGE Parcel].” (Commission Exhibit G). The LOI could be appealed within thirty (30) days and AGE by letter dated September 13, appealed, seeking 20.88 PBCs, “the same allocation as similarly situated parcels received in the Core of the Pine Barrens.” (Commission Exhibit A).

On September 20, the Commission held a hearing on AGE’s appeal. Commission staff and AGE made presentations on the matter to the Commission and each introduced exhibits into the record.² A transcript of the hearing was provided to the Commission members.

IV. AGE’s Appeal

At the September hearing, AGE’s attorney Peter D. Baron, stated that AGE sought “one credit per acre or nondevelopment.” (Hearing Transcript at 12). Baron maintained that three prior Commission matters and two Commission letters supported AGE’s contentions.

Baron, without reference to any AGE Exhibit described the AGE Parcel and its physical attributes by stating it fronts Warren Street, which he stated is a “dirt road, it’s passable; it’s drivable; you can drive on it; you can turn around on it. There’s utilities there.” (Transcript at 13). Baron and AGE conceded that AGE abandoned the paper roads between the 10 tax parcels to create the AGE Parcel as Armand Eagan, a principal of AGE stated, “[a]ll we did was abandon the roads.” (Transcript at 24). In addressing the effect of the AGE’s abandonment, Baron stated, “abandonment of the road respectfully does not change the map designation. . . . [A]nd this should arguably have no effect on the Pine Barrens Clearinghouse in awarding

¹ The County Tax Map shows that the AGE Parcel contains 20.9 acres but the Southampton document and AGE indicates it contains 20.88 acres.

² The AGE Exhibits were marked numerically and the Commission Exhibits were marked alphabetically. Ten exhibits were introduced by AGE and eight by the Commission.

credits.” (Transcript at 14).

AGE introduced a September 19, 2007 letter from then Suffolk County Legislator Edward P. Romaine concerning a LOI appeal by Ringhoff Family LLC. Ringhoff sought additional PBCs for five parcels of land it owned, containing in total 151.08 acres, in Brookhaven’s A Residence 5 zoning district. Romaine wrote that the Ringhoff’s “should be granted the same one credit per acre allowance as other properties in the vicinity received.” (AGE Exhibit 3). Baron submitted the letter explaining, “I submit to you with the same [sic] that you applied to Ringhoff to us for this property, they [AGE] are entitled to one acre - - one Pine Barrens Credit per acre” and that the Exhibit was offered to establish the Commission “must follow precedent in prior decisions.” (Transcript at 16).

Baron, as did Ringhoff in part, argued that the Commission’s 2001 Joseph F. Gazza LOI appeal decision supported AGE’s request. AGE introduced its Exhibit 4 containing documents related to the Gazza matter.³ AGE stated that the Gazza received one PBC because it “was buildable under the Suffolk County Health Code.” (Transcript at 17).⁴

Both AGE and Ringhoff also relied upon the Commission’s 2001 Alberto, Sipala and Sipala LOI appeal decision. Alberto involved six parcels containing 3.52 acres in Brookhaven’s A-5 Residence district. The Commission increased the PBC allocation from 0.75 to 3.52.

The third Pine Barrens Credit matter AGE points to is the “AVR matter.” AGE included as its Exhibit 7 an undated aerial, a “Zoning Map #4,” the first two pages of a Conservation Easement dated February 28, 2005 from Rose-Breslin Associates LLC⁵ to the Commission for Suffolk County Tax Map parcel 200-504-21-7.002 and one page of the minutes of the Commission’s May 19, 2004 meeting during which the Commission discussed the AVR parcel. Baron summarized the AVR matter as:

Pine Barrens Credit awarded a formula of one credit of 40,000 square feet or a buildable acre on an approved dirt road. [] It was a dirt road, it was not paved and it was similar to ours and was sand lined. We are in same hydrological zone. We believe we are

³ AGE also included a second Exhibit, its Exhibit 8, containing one page of the minutes of the Commission’s July 21, 2004 meeting during which the Commission discussed a different Gazza appeal. No reference was made to this Exhibit during AGE’s presentation. The 2004 Gazza appeal involved a Southampton maintained improved dirt road that ran in a north-south direction. To the south of the Gazza parcel were houses and on the north side was a horse farm. The Commission found the road was an existing public improved road.

⁴ AGE introduced two pages of the Suffolk County Sanitary Code Article 6 Realty Subdivisions, Developments and Other Construction Projects dated 6/28/1995 as its Exhibit 6.

⁵ AVR was Rose-Breslin LLC predecessor in title and they are used interchangeably.

entitled to one credit per one acre.

(Transcript at 19-20).

AGE asserts that their entitlement is independent of the abandonment, “if we didn’t abandon this, we still would be here based on the fact that each parcel is entitled to one credit per one acre as you have given. [Based on the] three exhibits we presented.” (Transcript at 25). AGE stated:

Under Article 6 you gave everybody else one credit per acre. You gave the three exhibits we presented, one credit per acre. We are asking for the same for our 20.88 acres, which exists currently today. All we are asking for nondevelopment based on the fact that it meets current zoning and we can go to the town because it meets current zoning like you have allowed other applicants to you said. The Pine Barrens is no jurisdiction. It currently 20.88 acres, meets current zoning or we want one credit per 40,000 square feet like you gave the other applicants.

(Transcript at 29-30).

Thus AGE sought one PBC for each of its 20.88 acres, or 20.88 PBCs, or a Commission determination of non-development allowing AGE to construct houses on the AGE Parcel without further Commission review.

V. Commission Findings and Determinations

The Commission finds that the AGE Parcel is a single Suffolk County Tax Map Parcel that did not exist on the 1995 Suffolk County Tax map. It is undisputed that AGE abandoned the unopen paper roads within its holdings and the easterly half of Warren Street. Following this the AGE Parcel was assigned a new tax map number.

The Commission determines, based upon its review of the aerial photograph introduced as Commission Exhibit C and the testimony of Commission staff, that the AGE Parcel does not have frontage on an existing improved public road. No improved roads are shown on the Commission aerial. Commission Staff described the AGE Parcel as being “southwest of Exit 63 on Sunrise Highway.” (Transcript at 3). In response to the question, “[c]an you give us an idea where in Westhampton” the AGE Parcel is, Commission Staff replied, “[i]t’s just southwest off Exit 63 on Sunrise in the middle of grids.” (Transcript at 4).

AGE’s argument that Warren Street merits treatment as an existing improved public road is inconsistent with the Commission’s aerial photograph, Commission Staff’s testimony and the fact that the westerly half of Warren Street is owned by Suffolk County. Since the AGE Parcel doesn’t have frontage on an existing improved road, it does not qualify for an allocation of a minimum of one PBC under Plan §6.7.6.6. Unlike the Gazza appeal discussed in footnote 3, the Commission’s aerial doesn’t depict any structures in the vicinity of the AGE Parcel.

The Commission also finds that AGE's argument that the Commission is obligated to increase its Pine Barrens Credit allocation based on the prior Commission decisions is unavailing.

Ringhoff owned five parcels of land in the Core Preservation Area in Brookhaven containing a combined 151.258 acres of area in proximity to County Road 51. The parcels were actively farmed. All of the parcels were in Brookhaven's A Residence 5 zoning district which has a development yield factor of 0.16 PBCs per acre. The Clearinghouse issued to Ringhoff five Letters of Interpretation for the parcels allocating in total 24.22 PBCs. Each Letter allocated PBCs using the Plan's 0.16 development yield factor.

Ringhoff claimed three of the parcels, the "Triangular Lots," fronted on an existing improved road, and under Plan Section 6.7.6.6 and Gazza, each parcel was entitled to one PBC. For the other two parcels, containing 140.56 acres, Ringhoff sought either 0.50 or one PBC per acre because all of its parcels could be subdivided and developed achieving an economy of scale given their collective size, that the cost of developing the parcels would be reduced because the parcels were already cleared, utilities existed along County Road 51, there was available drainage capacity in the area of the parcels. These were the factors considered by the Commission in its Alberto decision. Ringhoff noted that development of its parcels could have been clustered. Ringhoff argued that the Commission was obligated to increase its PBC allocations based on prior LOI appeal decisions for Gazza and Alberto among others.

The Commission denied Ringhoff's appeal. In rejecting Ringhoff's argument for the Triangular Lots, the Commission found that the Triangular Lots did not front existing improved roads. The Commission further noted that no fewer than three Pine Barrens Credit appeals decided after the 2001 Gazza decision, the Commission rejected appeals for parcels which weren't on existing improved roads (McDonnell, February 6, 2002, Joseph Zachary Gazza, December 11, 2002 and Joseph Gazza, April 19, 2006) and in so doing disavowed its April 4, 2001 Gazza decision. In each of these the Commission didn't find a parcel on less than an existing improved road deserved an allocation under Plan §6.7.6.6.

The Commission denied allocating additional PBCs to either of other two Ringhoff parcels, Lots 17 and 18, writing in part, Lot 17 "is not similar to the parcels in the Alberto/Sipala [] appeals because Lot 17 was created by the merger of numbers old filed map lots." (Ringhoff June 18, 2008). Ringhoff like AGE, abandoned mapped but unopened roads to create a larger intact parcel.

The Commission denied Ringhoff's appeal for Lots 17 and 18 based on its prior decisions in the appeals of Ciardullo and Heinlein, Heatherwood Communities, LLC, and Walton-Hampton Bays Associates. Ciardullo and Heinlein argued PBCs should have been allocated using the standards contained in the Suffolk County Department of Health Standards and not the Plan's development yield factors. The Commission on May 14, 1997, denied the appeal stating the Plan "allocates PBCs on the basis of a parcel's zoning" and its development yield factor. To the extent AGE makes a similar argument, it is similarly rejected.

The Commission did not extend its Alberto rationale to Ringhoff's Triangular Lots because they didn't front on an existing improved road but were approximately 250 feet away from one. According to its Ringhoff decision, the Triangular Lots were similar to two parcels involved in its March 29, 2000 denial of a LOI appeal of John Anderson and in its October 2, 1996 denial of a LOI appeal of George Nicholson. The AGE Parcel doesn't front on an existing improved road but rather is in the "middle of grids" and is thus similar to the Triangular Lots, the other Ringhoff parcels and the other Commission precedents cited in Ringhoff.⁶ Ringhoff challenged the Commission decision and it was upheld in *In the Matter of the Ringhoff Family LLC #1 v. Central Pine Barrens Joint Planning and Policy Commission*, Index No. 08-26992.⁷

In its April 1, 1998 Walton-Hampton Bays decision the Commission denied a LOI Appeal, finding that PBCs are allocated to existing tax lots and the potential to reconfigure such tax map parcel into smaller parcels is misplaced because the new parcels would not be existing parcels. AGE may be making a similar argument when it states that the AGE Parcel is "exactly the same in 2017, as it was in 1978, as it was in 1995." This argument is rejected, the AGE Parcel differs from the parcels that existed on the 1995 map.

The Gazza decision cited by AGE is further isolated and of limited precedential value because the Commission subsequently amended Plan §6.7.6.6 to exclude parcels like the Gazza parcel from receiving one PBC due to frontage along the mainline of Sunrise Highway or a proposed but not yet improved service road. The Commission in its April 4, 2001 decision included the frontage on a proposed Sunrise Highway service road as a factor it considered in granting Gazza's appeal.⁸ The AGE Parcel has neither and if it did the AGE Parcel would not automatically qualify for an allocation under Plan §6.7.6.6 due its post Gazza amendment.

The Commission determines that the AVR decision doesn't provide precedent for allocating one Pine Barrens per acre to the AGE Parcel. The AVR parcel was in the A Residence

⁶ See also the Commission denial of LOI appeal of Joseph Zachary Gazza decided June 16, 2010 in which the Commission found that a parcel on a gravel road, that was not in close proximity (less than 50 feet) from an existing improved road didn't merit an allocation of PBC and did not have frontage on an existing improved road.

⁷ The Commission issued two decisions in the Ringhoff matter. The first was issued on June 18, 2008 and the second on August 19, 2009. The second resulted from a remand from the Court and was limited to determining whether a Ringhoff parcel fronted on an existing improved road. The Commission found that the parcel did not but rather fronted property owned by the County as does the AGE Parcel. This decision wasn't challenged.

⁸ The April 4, 2001 Commission meeting minutes are available at <https://pb.state.ny.us/>. AGE did not include them.

1 zoning district not within the A Residence 5 district as AGE alleges.⁹ The development yield factor for parcels within the A Residence 1 district is 0.80 PBC per acre, thus AVR's 80.68 acre parcel was properly allocated 64.55 PBCs. The AVR parcel was not allocated one PBC per acre as AGE claims - it was allocated PBCs using the 0.80 development yield factor.

AGE's assertion that development of the AGE Parcel with houses is outside the Commission jurisdiction because it would constitute nondevelopment needn't be addressed by the Commission. AGE appealed its PBC allocation and not a Commission jurisdictional determination. Thus this decision is limited to the issues raised in the LOI appeal and it is unnecessary to determine whether the AGE Parcel could be developed. The two letter precedents AGE cited for this proposition involved development of parcels created by subdivisions that occurred prior to the passage of the Pine Barrens Protection Act and conformed to their then current lot area requirement. Section 57-0107(13) of the Act exempts such activity from the Commission's jurisdiction. Here, AGE acquired 10 parcels after the adoption of the Act and then merged them into one parcel. The Commission doesn't determine whether these actions constitute development or nondevelopment under the Act as such determination would need be made in the context of a jurisdictional inquiry.¹⁰ The Commission does note that the AGE Parcel was created after the Act and that none of the 10 parcels AGE acquired by the AGE Deed conformed to their current lot area requirements.

Therefore, the Commission finds that AGE's arguments for an allocation of 20.88 PBCs are inconsistent with the Commission's prior decisions for the reasons set forth above.

VI. Allocation of Pine Barrens Credits to the AGE Parcel

PBCs should be allocated to the AGE Parcel and the Commission finds it has two options to do so that would be consistent with its prior practices. Under the first, the Commission would recognize the abandonment and merger that led to the creation of the AGE Parcel and allocate PBCs to the AGE Parcel as it exists today. The other option is to consider the underlying parcels as they existed at the time of AGE's purchase and allocate PBCs to them.

In its 2017 Nutop LLC Pine Barrens Credit appeal decision the Commission wrote in part:

[W]hen allocating PBCs 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

⁹ Page 2 of the Easement included within AGE's Exhibit 7 references AVR's December 3, 2004 LOI which states that the AVR parcel was in the A Residence 1 district.

¹⁰ See *In the Matter of Equine Facility, LLC et al. v. John Pavacic*, decided November 29, 2017.

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.

Considering these factors, PBCs are allocated to the AGE Parcel under its current configuration. AGE did not partition the AGE Parcel, the AGE Parcel conforms to the area requirements of the Country Residence 200 zoning district and the AGE Parcel has not received any benefits under the Plan. Therefore the appropriate development yield factor allocates 0.16 PBCs to each acre of the AGE Parcel for a total of 3.3408 PBCs and under the Plan's rounding rules, 3.35 PBCs. This recognizes that the impact of the abandonment and allocates PBCs to all of that AGE owns including five acres of former paper roads. This allocation is consistent with the Pine Barrens Credit allocation in the Ringhoff, Ciardullo, Walton, the 2010 Joseph Z. Gazza and AVR matters by applying the development yield factor to the AGE Parcel. It recognizes that the AGE Parcel as merged no longer has infrastructure allowances.

The option, which the Commission doesn't adopt, would have allocated to the 10 tax parcels as they existed on the date they were acquired by AGE and as Old Filed Map parcels. This would have happened if, prior to the abandonment and merger, 10 Letters of Interpretation were issued to them. It also would have resulted in fewer Pine Barrens Credits being allocated. Each of the 5 parcels containing 1.5 acres each would have received 1.5×0.20 or 0.3 PBCs, for a total of 1.5 PBCs. Each of the 6 parcels containing 1.6 acres would have received 1.6×0.20 or 0.32 PBCs each, for a total of 1.6 PBCs. In sum, the 10 parcels would have received 3.1 PBCs.

Accepting, arguendo, that Warren Street was an existing improved road, the AGE Parcel would have received no fewer than one Pine Barrens Credit under the provisions of Section 6.7.6.6. Under such hypothetical, the allocation would still be 3.35 Pine Barrens under the methodology adopted by the Commission. Section 6.7.6.6 ensures that a parcel that qualifies for an allocation under its special rules is allocated no less than one PBC. For the reasons set forth above, the AGE Parcel should be allocated more than one PBC and thus doesn't require treatment under Section 6.7.6.6.

For the reasons set forth in this decision, the Commission allocates 3.35 Pine Barrens Credits to the AGE Parcel.

Dated: January 17, 2018