

PINE BARRENS

CREDIT CLEARINGHOUSE

In the Matter of the
Public Hearing on the Appeals of
BERNARD MEYER
and
EXPRESSWAY 60 PATENT.

3525 Sunrise Highway
Great River, New York 11739

March 26, 1996
3:43 p.m.

PUBLIC HEARING

* * * *

A P P E A R A N C E S:

BOARD OF ADVISORS

JAMES TRIPP - Chairman

JACK HANLEY - Member

ROBERT DUFFY - Member

MITCHELL PALLY - Member

JOHN MILAZZO - Attorney

TIMOTHY HOPKINS - Attorney

DORIS ROTH- General Counsel

WILLIAM SPITZ- DEC

ALSO PRESENT:

LORRAINE TREZZA

DONNA PLUNKETT

1
2 MR. TRIPP: Let's reopen this
3 matter.

4 MR. MILAZZO: On March 22, I
5 received a letter which I faxed to
6 you yesterday from Mr. Sanderman
7 accepting the pertinent languages
8 we will be willing to consent to a
9 thirty day extension time for the
10 Pine Barrens Credit for this
11 matter. Yesterday afternoon I
12 received another letter concerning
13 the appeal which presented just a
14 response to some of the questions
15 that we had at the last meeting
16 concerning the full apprised value
17 of the property, the tax bills
18 which he says he enclosed but I
19 didn't get a copy of them, and some
20 other numbers.

21 I am going to submit these
22 for the record. I believe they are
23 numbers -- they will marked as
24 Numbers 5 and 6; the letter from
25 March 22 will be Number 5, and the

1
2 letter from March 25 will be Number
3 6.

4 Last evening I faxed to Mr.
5 Sanderman a copy, a letter we will
6 mark as Number 7. I will give each
7 member a copy stating that I wasn't
8 clear that the Clearinghouse will
9 accept the exception, the
10 Clearinghouse may vote on the
11 matter today, and I encouraged him
12 to attend the meeting if he wanted
13 to state anything more for the
14 record.

15 I talked to Mr. Sanderman
16 yesterday and he stated he won't be
17 in town, he was in Garden City this
18 afternoon so he wasn't going to be
19 able to attend. This morning while
20 I was out of the office Mr.
21 Sanderman faxed to us at 11:39
22 another letter, again, in light of
23 a proposed moratorium to the Town
24 of Brookhaven code, a new chapter
25 7, a moratorium.

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He requested again that the extension be granted on this application. And I have not had a chance to provide this because I just got it right before the meeting, so if you want I am giving you the proposed moratorium and also the letter from Mr. Sanderman. And we will mark those Numbers 8 and nine.

That is all the correspondence we have received to date from Mr. Sanderman on this matter. He asked for an extension twice. The first time I responded the with the letter I showed you. The second one came in this morning and it was based on the consideration of the proposed moratorium.

Off the record.

(Whereupon, an off-the-record discussion was held.)

MR. TRIPP: The first

1
2 question for us to decide is
3 whether we wish to render a
4 decision in this matter today. We
5 put this down at our last meeting,
6 Mr. Sanderman has in various pieces
7 of correspondence; one, I think the
8 one that came out two days ago he
9 said he would consent to an
10 extension without any indication
11 that we were inclined to think
12 about an extension. In that letter,
13 I think is that Exhibit 5 or 6, he
14 says that he is talking to the
15 Brookhaven Town Board about a deal.

16 MR. PALLY: He didn't say
17 that.

18 MR. TRIPP: What is his exact
19 language?

20 MR. PALLY: He didn't use
21 those terms.

22 MR. TRIPP: Let me be
23 accurate. Do we have a copy of
24 that?

25 MR. MILAZZO: Yes, I have

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this.

MR. PALLY: A Land Use
Proposal --

MR. MILAZZO: That is Exhibit
5.

MR. TRIPP: "Please be
advised that at this time my client
is attempting to develop a Land Use
Proposal which would offer a
compromise on the matter of Pine
Barrens credit allocation to
subject parcels." So that is what
he says.

The staff and I have thought
about this matter. I think that we
are prepared to discuss with the
Board a proposal for dealing with
this in a way which is consistent
with the provisions of the Plan and
our concept of fairness. But I
think the judicial question is:
Are we going to put this off
another month?

MR. MILAZZO: If I may. In

1
2 Exhibit 8 which is the letter dated
3 today, on Page 2, let me just read
4 the language. Request is made for a
5 30 day extension of time so we
6 maybe able to fully support it's
7 impact of the proposed moratorium,
8 as well as the Draft Economic
9 Analysis recently completed. So in
10 that it is a little more explicit
11 that he is, in fact, requesting an
12 extension. I just want to make that
13 clear.

14 MR. HOPKINS: For the record,
15 I checked the fax machine at a
16 quarter to four and there are no
17 further faxes.

18 MR. TRIPP: Does anyone have
19 any comments or thoughts? From my
20 point of view, you know, thinking
21 about this, I think there is merit
22 to have decisions made. I think
23 there are a number of other people
24 who may be interested in this
25 decision. I don't think there is

1
2 any particular merit in the grounds
3 that he has given for requesting an
4 extension.

5 At least my view, so long as
6 the Clearinghouse continues to have
7 this authority to make these kinds
8 of decisions, I guess I don't think
9 it is appropriate for an applicant
10 in this kind of a situation to go
11 to the Town Planning Board or the
12 Town Board and workout some kind of
13 arrangement and then come back to
14 this body and say this is what we
15 would like to do. I think these
16 kind of appeals have to be made on
17 a basis of some set of principals
18 which can be understood. You can
19 apply it in other situations.

20 It's unclear to me, if we
21 should come to this later on after
22 this hearing how the proposed
23 moratorium in Brookhaven would
24 impact on any decision we would
25 make. It may, Brookhaven could take

1
2 some kind of an action that it
3 would affect Receiving Areas but I
4 don't see how anything that
5 Brookhaven does do would affect
6 what we may decide to do in terms
7 of allocation. I guess, I say the
8 same with respect to Dr. Nicholas'
9 report. So, those are sort of my
10 own views but I am amenable to what
11 anyone else wants to do.

12 Do you have any thoughts on
13 this matter?

14 MR. PALLY: My feeling is we
15 should make a decision. Assuming we
16 have enough information to make a
17 decision we should make a decision.
18 If we don't think we have enough
19 information we shouldn't. He has
20 provided all the information, we
21 had a hearing. Whatever the Town of
22 Brookhaven decides to do is up to
23 the Town of Brookhaven after our
24 situation is determined. And then
25 we can go from there.

1
2 MR. TRIPP: Do you have any
3 different view one way or the
4 other?

5 MR. DUFFY: I am not sure
6 whether this moratorium is new
7 information. Mr. Sanderman has
8 asked for another extension but
9 again, Jim, I think you have put it
10 very well. I think we have
11 probably all the information we
12 need to make a decision at least at
13 this point. I think we can proceed
14 if the Clearinghouse decides to do
15 that.

16 MS. ROTH: May I say
17 something. I would simply like to
18 point out that these deadlines that
19 are imposed such as your decision
20 deadline, are imposed for the
21 protection of the applicant so he
22 can be assured that the
23 administrative body will not be
24 sitting on his application
25 indefinitely. Because they are

1
2 pressed for his protection he is
3 able to waive a certain protection
4 that he has for a certain period of
5 time. I just want you to be aware
6 of that.

7 MR. TRIPP: So, your feeling
8 is that we should --

9 MS. ROTH: From a due process
10 perspective you would be inclined
11 to give him some additional time.

12 MR. PALLY: Why?

13 MS. ROTH: He has indicated
14 that there is a change in
15 circumstance that may have an
16 impact on his application and
17 perhaps would like more time to
18 develop this.

19 MR. DUFFY: This is the first
20 extension?

21 MS. ROTH: Yes.

22 MR. SPITZ: Could you render
23 a decision without prejudice that
24 he might re-apply at some time in
25 the future, whenever he decides it

1
2 is convenient and has all the facts
3 so this doesn't re-appear on your
4 plate once a month?

5 MR. TRIPP: I think he could
6 withdraw his appeal and I think he
7 could have done that today for that
8 matter. Or, if we decide to put
9 this over to our next meeting prior
10 to that he will withdraw his
11 appeal. If he no longer has an
12 appeal before us we will no longer
13 deal with the man.

14 My own view is I think that
15 is the procedure that one should
16 follow, otherwise this is kind of a
17 waist of resources. We hold a
18 hearing, we consider this matter,
19 we read additional material, we
20 thought about it as we are bound to
21 do and then the applicant comes in
22 and says well, you know, wait.

23 MR. SPITZ: I think it is
24 unfair to other applicants, at
25 least it will be if you get three

1
2 or four of these running at the
3 same time.

4 MR. HOPKINS: He is not
5 requesting additional time so he
6 can request additional information,
7 I think we should point that out.

8 MR. TRIPP: Are you ready to
9 proceed?

10 MR. PALLY: If Doris believes
11 that we have a due process problem
12 then we should probably not, if she
13 doesn't I am ready to take action.

14 I don't want to in any way,
15 you know, put us in a situation
16 where we take a position or take
17 action which is later found to be
18 in violation of due process.

19 If you believe from that
20 standpoint we should wait, we
21 should wait.

22 MS. ROTH: I think it would
23 be more prudent but you could at
24 the same time fix a more definite
25 time and this will be the one and

1
2 only extension that we will grant
3 and that will be notice.

4 MR. TRIPP: Why don't we do
5 that. We will put it over to our
6 next meeting, our April 23 meeting,
7 and at that time this matter will
8 be decided. In the meantime, if he
9 decides to withdraw an appeal so be
10 it and then he could start the
11 process over again.

12 MR. HOPKINS: He is seeking a
13 delay in the decision.

14 MS. ROTH: A delay in the
15 decision.

16 MR. PALLY: I would close the
17 record then, close the hearing.

18 MS. ROTH: If you close the
19 record you should not submit him an
20 opportunity to submit anything
21 more.

22 MR. PALLY: Why don't we just
23 move to close the hearing?

24 MS. ROTH: The public portion
25 of the hearing.

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MR. PALLY: Thanks.

MR. TRIPP: And we will fix a date of April 23 and I think what we should do is take this matter up probably at 3:30 and then have the other matter.

MR. HOPKINS: Is the applicant paying for the court reporter services?

MS. PLUNKETT: Yes.

MS. TREZZA: They did not adopt a policy like that.

MR. HOPKINS: Why don't we make it subject to him paying for the court reporter services. He is not even here.

MR. PALLY: I think the question is if we had scheduled the hearing today no matter what, so the court reporter had to be here. I think if we did it another time because of the request then I could agree with your statement. But, we agreed that we would extend the

1
2 hearing until today, that was a
3 decision the Clearinghouse made.

4 It would seem to me that it
5 is appropriate if we did not change
6 the policy before that, we
7 shouldn't change it now. This
8 however -- that's why I move to
9 close the hearing. If we are going
10 to leave the hearing open and the
11 court reporter had to come back,
12 and that was a direct result of a
13 request by the applicant, then I
14 think your point should be made.

15 I think the Clearinghouse
16 should pay for it in this case,
17 close the hearing and then that's
18 done with it.

19 MR. TRIPP: Does the
20 stenographer have to be here when
21 we render a decision?

22 MS. ROTH: No. The public
23 portion is closed so there is no
24 more transcript. You might also
25 submit a time in which he wants to

1
2 submit whatever else he wants to
3 submit.

4 MR. TRIPP: Just for material
5 and writing?

6 MS. ROTH: Yes.

7 MR. HANLEY: I think we
8 should make a fair policy on both
9 sides of the fence on anything else
10 going forward to get all of this
11 correspondence within two days of
12 today is ridiculous.

13 MR. TRIPP: I think we should
14 set a deadline for any additional
15 submittals two weeks from today.

16 MR. HANLEY: I think we
17 should have a general policy for
18 all situations like this to be fair
19 to both sides at least ten days
20 prior to the meeting or something
21 like that.

22 MR. TRIPP: Did we set a date
23 when we expected the others?

24 MR. MILAZZO: No.

25 MR. PALLY: Let's close the

1
2 hearing here first and then we can
3 take whatever policies, those
4 policies are going to be generic
5 decisions.

6 MR. TRIPP: Do I hear a
7 motion to close the hearing?

8 MR. PALLY: So moved.

9 MR. HANLEY: Favor.

10 MS. ROTH: Then you need a
11 motion to extend the decision.

12 MR. PALLY: Move to extend
13 the decision for the Clearinghouse
14 until April 23.

15 MS. ROTH: With a deadline to
16 submit any additional information
17 by April 13.

18 MR. TRIPP: I would say by
19 the Friday, April 12.

20 MR. SPITZ: I suggest you
21 make it, you extend the period to
22 your next meeting in case you had
23 to change that date for some reason
24 you will be restraining yourselves,
25 you had to change the date

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occasionally.

MR. TRIPP: The deadline for this particular matter for submitting any additional material will be Friday April 12.

Make a motion?

MR. PALLY: So moved.

MR. TRIPP: Second it? To grant the extension to April 23 and next meeting any additional materials from Mr. Sanderman is due here by Friday, April 12.

MR. PALLY: Or anyone else.

MR. MILAZZO: On this application.

MS. ROTH: Whichever is easier, on the 23rd or this next meeting whichever occurs first.

(A letter, dated March 22, 1996, from Mr. Sanderman, was marked as Exhibit 5 for identification, as of this date.)

(A letter, dated March 25, 1996, from Mr. Sanderman,

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was marked as Exhibit 6 for
identification, as of this date.)

(A letter, dated March 25,
1996, from Mr. Milazzo, was marked
as Exhibit 7 for identification, as
of this date.)

(A letter, dated March
26, 1996, from Mr. Sanderman,
was marked as Exhibit 8 for
identification, as of this date.)

(A Moratorium, was marked as
Exhibit 9 for identification, as of
this date.)

(Time noted: 4:00 p.m.)

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I N D E X

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* * * *

CERTIFICATION

I, KRISTINA SINGROSSI, a Notary Public in
and for the State of New York, do hereby certify
that:

THAT the within transcript is a true record
of the testimony.

IN WITNESS WHEREOF, I have hereunto set my
hand this 9th day of April, 1996.

Kristina Singrossi

KRISTINA SINGROSSI

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