

Pine Barrens Credit Clearinghouse

James T.B. Tripp, Esq., Chairman
Andrew P. Freleng, AICP, Vice Chairman
Richard W. Hanley, Member
Mitchell H. Pally, Esq., Member
Robert Anrig, Member

Pine Barrens Credit Clearinghouse Board of Advisors Meeting Summary for March 14, 2006 (FINAL-APPROVED 6/5/06) Commission Office, Great River, New York 4:00 P.M.

Present: Board members: Mr. James Tripp (representing the Town of Brookhaven); Mr. Andrew Freleng (representing the County of Suffolk); Mr. Mitchell Pally (representing the State of New York); Mr. Rick Hanley (representing the Town of Riverhead); Mr. Robert Anrig (representing the Town of Southampton); also in attendance were Mr. John Milazzo (Staff Counsel to the Commission); and Mr. Ray Corwin, Ms. Judy Jakobsen, Mr. Tony Limoli (all from the Commission); and Mr. Nicolazzi, Mr. Gazza, and Mr. Spitz.

Public Comment

There were no public comments.

1. Administrative

The meeting was chaired by Mr. Tripp and called to order at 5:10 p.m.

Ratification of meeting summary of April 20, 2005

Mr. Tripp referred to page 4 of the April 20th minutes, subtitled section Reverse Auction of PBCs. He asked the Board for their approval in removing the word “do” in the last sentence of the last paragraph and everyone agreed.

Mr. Freleng made motion to adopt the April 20th meeting summary, Mr. Pally seconded, and they were unanimously approved.

County Treasurer’s Report

Ms. Christina Cooke could not attend the meeting. Faxed copies of the Pine Barrens Credit Program financial report were distributed for the month of October, November and December of 2005, and January and February of 2006. The ending balance as of February 28, 2006 was \$7,931,782.36. There were no disbursements or deposits during this period. The total interest earned (rate adjusts every Tuesday) is \$140,905.43(detailed in financial report).

Mr. Tripp addressed the issue of the request by the DEC for the Commission to return the five million dollars *that was loaned as* capital to the Clearinghouse bank 10 years ago. Mr. Tripp wrote a memo to Mr. Peter Scully dated February 14, 2006 and copies were handed out. He raised issues and discussed different alternatives on how to proceed in returning the money. He suggested that the Clearinghouse return 2.9 million dollars at this time and the remainder in two or more years. The Commission will be addressing this issue at the next Commission meeting.

The money was to be returned to the State to purchase land in the South Setauket Woods after 10 years from the date it was provided to the Clearinghouse. It has yet to be determined as to whether there is any undeveloped and unprotected land in that area that could be acquired. A discussion ensued regarding the prospects of there being land available for purchase. Mr. Freleng stated his understanding of the matter is that there may be available land in the South Setuaket Woods but there are no willing sellers.

Mr. Corwin and Mr. Freleng concurred that it is true that the restoration agreement states the money would be used to acquire land in the Central Pine Barrens if it isn't used in the South Setauket woods area.

Mr. Tripp asked if the members agree with his recommendations in the memo to the Commission. Mr. Freleng agreed and referred to the paragraph in the memo which states that the courts rely on the commission to have back funding since the Clearinghouse is always the purchaser of last resort if a landowner believes he has a regulatory taking. Two million alone may not be adequate for these types of purchases. Mr. Freleng feels we need to advise the Commission on the action and supports the memo.

As attorney for the Clearinghouse Mr. Milazzo suggested going into a closed session as the issues to be discussed could be matters of potential litigation.

Mr. Freleng asked for public comment prior to going into a closed session. Mr. Tripp stated they could have a discussion in public on a conceptual level. He explained what the issues are involved in giving the money back and a discussion ensued. Mr. Pally stated there is language in the memo that needs to be discussed during executive session.

Mr. Nicolozzi questioned the viability of the credit program and stated that he was concerned that the Clearinghouse may not have enough funds to back up the credits that are currently available. He stated that the Towns are not pushing the purchase of credits and the developers are not completely aware of the program.

Mr. Corwin responded that the Clearinghouse would still retain \$3 million for the purchase of these credits if the funds are returned as per the NYS DEC letter. A further discussion ensued regarding the amount of credits available that may need Clearinghouse support. Mr. Gazza talked about the flooding of the market with Credits. He stated that the Town of Southampton purchased 25 credits from Milwest owners with Community Preservation funds in an attempt to support the program. Mr. Anrig stated that the credits couldn't be resold if they are purchased with Community Preservation Funds.

2. Credit Certificates and the "Thousandth" error

Mr. Corwin discussed the issue of Credit certificates that had been issued in amounts to the thousandth of a credit. He stated that this was not formerly done and the policy is to issue 10ths and 100ths of a credit, the smallest unit being 1/100th. As an example he use credit certificate 142 issued in April, 2004. It was partially redeemed in June, 2004 with the Southampton Town Planning Board. They redeemed 0.304 credits out of 0.9 credits leaving 0.596 credits unused.

Mr. Tripp asked what the ramifications of this problem are and Mr. Corwin responded that after a second partial sale there is now a certificate issued to New Age Builders number 180 in

the amount of 0.296 credits. Mr. Corwin said that they should recommend to the Commission a method of adjusting this type of error that would be equitable to both the public and the program.

Mr. Tripp moved that we convert the credit allocation to 0.30. Mr. Freleng seconded the motion and it was unanimously passed.

A discussion ensued about rounding up and Clearinghouse policy. Mr. Corwin suggested that the mathematical rule of rounding be applied to acreage on tax bills and that credit allocations should be rounded to the nearest hundredth as per the Central Pine Barrens Plan and everyone agreed.

3. Letters of Interpretation (LOIs) and Initial Credit Allocations

Mr. Corwin asked Ms. Jakobsen to explain the issue of what acreage sources should be used to determine credit allocations. Judy created a table with data to illustrate the problem and handed out copies. Judy explained that the Clearinghouse uses the acreage on the tax bill to determine credit allocations. However, Joe Gazza has nine parcels that he is appealing on the Commission level to change the credit allocations to reflect the town assessor's acreage amounts that differ from the tax bill's acreage. The assessor's calculations take the decimal points beyond the 100ths decimal point, therefore increasing the size of the parcel, which in turn increases the credit allocation. Ms. Jakobsen explained that the staff would have a difficult time using the tax map books to calculate acreage, as the parcels are not always rectangular in shape. Mr. Tripp asked if the Clearinghouse always used the tax bill. Ms. Jakobsen then stated that if the owner provided a survey, that would be used over the tax bill. A discussion ensued regarding what data sources for acreage would be the most appropriate to use in the credit allocation formula.

Mr. Corwin explained that Mr. Gazza's research makes it necessary for the Clearinghouse to form a clear policy on which documents present the most accurate acreage. Mr. Tripp asked if the nine parcels Mr. Gazza is appealing, needs to be addressed by the Clearinghouse Board or the Commission. The parcels are to be addressed as an appeal before the Commission.

A further discussion ensued regarding the general principle and correct methods of determining acreage. Mr. Milazzo stated that on a day to day basis the Credit Clearinghouse has to determine credit allocations and a standard policy needs to be established on what documents should be used to reflect the true acreage. Mr. Milazzo stated that the policy should be established at this meeting so that the Commission can make its decision on Mr. Gazza's nine parcels using current Clearinghouse policy.

A discussion ensued surrounding the relevance and use of surveys older than 20 years. Mr. Anrig and Mr. Milazzo agreed that we needed to come up with an age limit on surveys if they are to supersede the tax bill in acreage determination. Surveys that are older than 20 years have overlap problems and are not necessarily accurate methods to calculate acreage. Everyone agreed that surveys prepared within the last ten years would be accurate enough for use by the Clearinghouse.

Mr. Corwin introduced Mr. Gazza and allowed him to present his concerns to the Board regarding this issue. Mr. Gazza used the example of two parcels that he owns being the same exact size according to the official Suffolk County tax map. Everything about the two parcels

is identical according to the tax map. Mr. Gazza received two LOIs on each parcel, but the credit allocations differed by 1/100th of a decimal point. His argument is that the credit allocations should be the same. He mentioned that Ken Born, Ms. Jakobsen's predecessor as the Credit Clearinghouse staff, told him that the problem was a mathematical problem between the Town Assessor's office and Suffolk County Real Property tax office. According to Mr. Gazza, Ken said they needed to resolve the correct acreage so the tax bill can be corrected. Mr. Gazza presented the problem to each office and the correct acreage was determined and agreed upon. The correct value will be reflected in next year's tax bill.

Mr. Tripp summed up by saying that unless the owner produces a current survey, the tax bill would be used to determine the acreage used in the credit allocation formula. It was also stated that if the owner took issue with the acreage reflected on his bill and there was no survey provided he would then need to go to the town assessor's office and have them correct the tax bill. Mr. Milazzo stated that the owner would need to present a certified letter from the assessor stating that next year's tax bill would be corrected to reflect the adjusted acreage, and the credit allocation process would go ahead using the corrected acreage amount.

Mr. Tripp made a motion that the Credit Clearinghouse would use the tax bill, which is public information, to establish the acreage amount to be used in the formula determining credit allocation. If a current survey made in the last 10 years is presented for use instead of the tax bill the acreage for the formula would come from the survey. If the survey reflects less acreage than the tax bill the survey would still supersede the tax bill. Mr. Freleng seconded the motion that passed unanimously.

4. Core Preservation Area general LOI issuance proposal

Mr. Milazzo wanted to clarify with the Board, the policy of determining a parcel owner's rights to get an LOI for credit allocation on developed parcels. He stated that if an owner has a parcel in an area with 80,000 sf zoning and they own 90,000 square feet, they would not get an LOI (no credit allocation). However, if they have 160,000 square feet in an 80,000-zoned area they would get an LOI credit allocation value of 1.0 credit. Mr. Pally clarified this by stating the policy should be twice the minimum lot size required by zoning. Mr. Milazzo added that the easement would cover the entire lot size for enforcement purposes.

Mr. Freleng made motion that LOI's can only be given to partially developed lots when the size of the parcel is twice the minimum zoning for that area. Mr Anrig seconded, and the motion was unanimously approved.

A date for the next meeting was set for June 5, 2006 at 9:00 am.

Before going into executive session Mr. Milazzo asked if the Clearinghouse should consider issuing everyone in the Core an LOI informing them of their rights to credits. This would give anyone the information on how many credits each owner is entitled to by way of the registry, which is published and available to the public. Anyone not wishing to be on the registry would be taken off before publication. The registry has been successful to date in matching potential sellers with buyers. This might increase buying and selling activity in the Credit Program. It was decided to hold off on this until the funding of the clearinghouse bank was settled. The Reverse Auction is still an outstanding issue and everyone agreed to address the question of doing one at a future time.

A motion was made to close the general meeting by Mr. Anrig and seconded by Mr. Freleng. Mr. Tripp asked for a motion to go into executive session to receive legal advice from counsel, the motion was made by Mr. Pally and seconded by Mr. Freleng. The motions were unanimously approved.

The Board resumed public session.

A motion was made by Mr. Pally that was seconded by Mr. Freleng to send a revised letter concerning the Clearinghouse funding to the Commission. The motion was unanimously approved.

A motion was made by Mr. Pally, that was seconded by Mr. Freleng, to adjourn the meeting. This was unanimously approved.

Pine Barrens Credit Clearinghouse

James T.B. Tripp, Esq., Chairman
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Mitchell H. Pally, Esq., Member
Robert Anrig, Member

Pine Barrens Credit Clearinghouse Board of Advisors Meeting Summary for June 5, 2006 (FINAL – Approved 9/11/06) Commission Office, Great River, New York 9:30 A.M.

Present: Board members: Mr. James Tripp (representing the Town of Brookhaven); Mr. Andrew Freleng (representing the County of Suffolk); Mr. Mitchell Pally (representing the State of New York); Mr. Rick Hanley (representing the Town of Riverhead); Mr. Robert Anrig (representing the Town of Southampton); also in attendance were Mr. John Milazzo (Staff Counsel to the Commission); and Mr. Ray Corwin, Ms. Judy Jakobsen, (all from the Commission); and Mr. Stephen Costa (representing SCDHS), Mr. Walter Hilbert (representing SCDHS), Mr. Fred Meyer (representing Bide-A-Wee) Mr. Spitz (representing the NYS DEC) and Mr. Dominick Nicolazzi.

Public Comment

There were no public comments.

1. Administrative

The meeting was chaired by Mr. Tripp and called to order at 9:30 a.m.

Ratification of meeting summary of April 20, 2005

Mr. Tripp asked if there were any comments on the April 20th meeting minutes. Mr. Milazzo responded he had a couple of technical corrections which he then provided. He requested that certain unnecessary language in a paragraph regarding the owner's decision to use the tax survey over the tax bill be deleted. He suggested that if the survey reflects less acreage than the tax bill, the survey would supersede the tax bill. Mr. Corwin then added that the survey always governs and the owner always has the opportunity to appeal. The last change was in wording regarding an owner right to an LOI on improved parcels.

Mr. Freleng made motion to adopt the March 14th meeting summary, Mr. Anrig seconded, and they were unanimously approved.

2. County Treasurer's Report

Ms. Christina Cooke could not attend the meeting. Faxed copies of the Pine Barrens Credit Program financial report were distributed for the months of March, April and May of 2006. The ending balance as of May 31st is \$3,022,114.39. Interest earned during that period is \$90,352.03. A disbursement of \$5,000,000.00 to NYS was made to return money loaned by the State to fund the Credit Clearinghouse bank as per the Natural Resource Damages Restoration and Replacement Project agreement. Mr. Tripp stated it

speaks well of the fiscal management of the Clearinghouse that despite the return of \$5,000,000.00 there is \$3,000,000.00 remaining in the bank.

3. Credit Certificates and Easements

Mr. Tripp referred to item 3 of the agenda, regarding the redemption of credits by the Suffolk County Department of Health Services (SCDHS). Ms. Jakobsen discussed the recent redemption that was made by a new certificate owner who went right to the SCDHS to redeem his newly acquired credits without having the certificate changed to his name. This was not compliant with the proper process the Clearinghouse put in place for credit conveyances and redemptions. Ms. Jakobsen described how she corrected the situation by informing the new owner that he needed to pick up a new certificate to replace the purchased certificate redeemed in error. Ms. Jakobsen stated that SCDHS representatives were present and this would be a good opportunity for the PBC Board members and the SCDHS representatives to discuss any issues with credit conveyances and redemptions.

Mr. Tripp asked Mr. Costa for his comments and perceptions regarding the use of the TDR program. He asked if Mr. Costa gets inquiries from commercial developers and individuals interested in benefiting from the program. Mr. Costa stated that the health department determines Pine Barrens credit requirements at the Board of Review and at that time the landowners seem to want to comply with the TDR program requirements, however, a short time afterwards he usually receives calls from attorneys asking if the land owner or developer can do a land area trade off instead of using the TDR program because they do not understand the program or how to obtain credits. He mentioned that most of the credits redeemed are partial credits.

Mr. Costa discussed how when a decision is made to use Pine Barrens Credits, if they have not been specifically proposed, he will write a decision that says, “we will accept pine barrens credits or an equivalent transfer of development rights”. The details of the redemptions are handled in Walter Dawydiak’s office. The SCDHS review engineer for the project is typically the one who handles the redemption of credits to make sure all the paper work is completed for the project to move forward.

Mr. Tripp asked Mr. Costa what he meant by “equivalent”. Mr. Costa responded that Article 6 density requirements state when building in certain hydrogeologic zones; for example zones 3, 5 and 6, in order to use septic systems you have to have a population density equivalent of one dwelling unit per 40,000 sq. ft. In other zones it’s 20,000 sq. ft. If a project exceeds that density and the developer wants to use individual septic systems instead of a sewage treatment plant, he can sterilize land somewhere else to increase the overall land area of the project or participate in the Pine Barrens Credit program. The project cannot exceed double the density.

A discussion ensued regarding the source areas of the credits and whether they are in the same school district. Mr. Costa stated that most of the time it’s within the same town. The towns would be asked to sign off on credit redemptions involving credits from another town.

Mr. Costa stated that the SCDHS would not accept property owned in the core area of the Pine Barrens to satisfy density requirements.

A discussion ensued regarding developers preference to purchase land over Pine Barrens Credits and it was determined that the cost to the developer is the motivating factor most often. Mr. Corwin interjected that “if time is money” the developer may opt to purchase the credits at a higher expense in order to expedite the project.

A further discussion ensued relating to the certificate that was conveyed and redeemed by the health department while still in the name of the original owner. Ms. Jakobsen discussed there may be confusion on the part of the buyers and sellers as to who is responsible to make sure a new certificate is reissued to the buyer. A discussion ensued regarding changing the language on the back of the certificate to clarify the conveyance and redemption requirements. It was suggested that a written brochure be developed that outlines the procedure to sell and redeem certificates.

A discussion ensued regarding alternative ways a developer could circumvent purchasing credits in the Pine Barrens in order to meet Health Department variance requirements for density on their projects and whether changes could be made to Article 6 to mandate the use of credits.

Mr. Pally advised that if the Health Department is going to mandate developers to participate in the Pine Barrens Credit Program, the Clearinghouse better make sure they have an affordable supply of credits available for purchase. A discussion ensued concerning the consequences of a mandated program.

Situations where an applicant opts to offer public benefits instead of using credits were discussed. The Clearinghouse needs to discuss with the towns their policies on zone changes in receiving areas without retiring Pine Barrens Credits. These situations need to be brought to the Commission’s attention to ensure that the ratio of sending areas to receiving areas is monitored and maintained at the two and half to one ratio. A discussion ensued regarding town level redemptions as opposed to health department redemptions.

A further discussion ensued regarding the developers going to the towns and saying they can’t find credits to purchase and if the towns are accepting that representation. Mr. Tripp commented the towns might be more aggressive in requiring developers to participate in the Pine Barrens Credit program if there was a larger inventory of credits available. A discussion ensued regarding the possibility of the Clearinghouse conducting a reverse auction so that there would be more of an inventory. Mr. Pally suggested that a reverse auction might only make the credits more valuable for the seller to hold on to as opposed to stimulating the TDR program. Mr. Nicolazzi interjected that there should be more of an effort by the Clearinghouse to focus on credits already in certificate form. Mr. Nicolazzi said the Clearinghouse should try to buy credits from the individuals that currently hold certificates in lieu of doing a reverse auction. A discussion ensued regarding Clearinghouse goals for the TDR program.

4. Evaluation of the Remaining Number of Potential credits Available

Mr. Tripp asked about the status of the amount of credits still available and if there is complete information available on parcel owners in the Core. Ms. Jakobsen said she is currently working on contacting the towns to get databases that list parcel owners and sending area parcels. Mr. Corwin stated our records are several years old and need to be updated for parcel owners eligible for Pine Barrens Credits. A discussion ensued regarding the best methods of collecting this information.

Mr. Nicolozzi strongly stated that the effort on the part of the Clearinghouse should be in encouraging redemption of established credits and educating the public on the use of the TDR program. Mr. Freleng suggested the Clearinghouse might need to participate in work sessions with the Town Boards since it is the Boards that ultimately make the decisions relating to these issues.

Mr. Tripp asked how the Clearinghouse could find out about zone changes made by the towns in receiving areas. Mr. Corwin replied that the Clearinghouse does not have enough information on land use or zone changes in the CGA. It was decided receiving area information should also be requested from the Towns in order to evaluate the ratio of sending to receiving areas.

A discussion ensued regarding the TDR program and the use of farmland to be sterilized. The point was made that because of the nitrogen component in farmland, the health department would not consider it for the TDR program.

Mr. Tripp summed up that we are reaching out to the three towns to gather information regarding sending area sites and receiving area sites. He suggested that meetings be set up with each town planning director to start the process of data collection. This information will lead up to a proposal as to whether there is any need to reach out to existing credit holders or to others eligible for credits to participate in the program. Mr. Spitz made the comment that in Southampton the bulk of credits available may be in the title overlap area. Mr. Tripp replied that the Commission should have a clear policy as to how to handle title overlap problems. A discussion ensued regarding overlap issues. Mr. Tripp stated that he would send out a cover memo to the Commission representatives to let them know of the intentions on the part of the Clearinghouse to assemble information previously discussed with the rationale for why it is being done.

Mr. Freleng made a motion that Mr. Tripp send a memo to the Commission and Planning Boards requesting data for the TDR program sending areas and receiving areas. Mr Pally seconded the motion and it was unanimously approved.

Mr Tripp asked Mr. Hilbert if there was anything else the Clearinghouse could provide the SCDHS to aid them in educating developers about the credit program. Mr. Corwin replied a fact sheet could be provided to the SCDHS that they could handout to the public when they come to the Health Department with their projects.

5. Letters of Interpretation (LOIs) and Initial Credit Allocations – Bide-A-Wee.

Ms. Jakobsen introduced Mr. Meyers representing Bide-A-Wee. Bide-A-Wee had started the LOI process last year, prior to the Boards resolution that requires a survey less than 10 years old. An issue with the eleven-year-old survey is the area included 4 separate tax lot numbers, but the town has since consolidated the 4 parcels into one tax lot. A discussion ensued regarding the amount of acreage in question and it was determined that the LOI is for the 84 acres in the Core. As a not for profit organization Mr. Meyers told the Board, they are trying to get the maximum amount of credits allowable. Ms. Jakobsen added that the amount of credits would be about 14. Mr. Tripp asked the Clearinghouse staff if there is any reason to believe that the survey may not be accurate. Mr. Milazzo stated that the survey is as good as the day it was done and not thereafter.

Mr. Pally made the motion to accept the 11-year-old survey for Bide-A-Wee since it was a not for-profit organization. Mr. Freleng seconded the motion and it was unanimously approved.

A discussion ensued regarding how much of the Bide-A-Wee land in the Compatible Growth Area can be cleared if the Core portion has a Credit Program easement.

6. Owner's Representation on parcels allocated <= 1 Pine Barren's Credit

Mr. Milazzo introduced the subject of representations of credit applicants on parcels that are entitled to less than one credit. The Clearinghouse does not get title reports and insurance on those parcels which is consistence with a policy the Clearinghouse board established years ago. The rational was to make it easier for small parcel owners to take advantage of the credit program. The question now is whether prudent measures have been taken by the Clearinghouse to protect the legal rights of everyone concerned. Mr. Milazzo recommended a standard affidavit be obtained from the applicant stating they are the only person who has title and add an indemnity clause to hold the Clearinghouse harmless if someone challenges the title.

Mr. Pally made a motion to approve the addition of an affidavit to the easement concerning rendering the Clearinghouse harmless in cases where a person taking any interest from a person whom the parcel was acquired, contests deed ownership. The motion was seconded by Mr. Anrig and it was unanimously approved.

A motion was made by Mr. Freleng, which was seconded by Mr. Hanley, to adjourn the meeting. This was unanimously approved.

Next meeting – September 11, 2006, 9:00am at the Commissions Office in Great River.

Pine Barrens Credit Clearinghouse

James T.B. Tripp, Esq., Chairman
Andrew P. Freleng, AICP, Vice Chairman
Richard W. Hanley, Member
Mitchell H. Pally, Esq., Member
Robert Anrig, Member

Pine Barrens Credit Clearinghouse Board of Advisors Meeting Summary for September 11, 2006 (Final – Approved 9/6/07) Commission Office, Great River, New York 9:00 A.M.

Present: Board members: Mr. James Tripp (representing the Town of Brookhaven); Mr. Andrew Freleng (representing the County of Suffolk); Mr. Mitchell Pally (representing the State of New York); Mr. Robert Anrig (representing the Town of Southampton). Also in attendance were Mr. John Milazzo (Staff Counsel to the Commission); and Mr. Anthony Limoli, Ms. Judy Jakobsen (all from the Commission); Mr. Spitz (representing the NYS DEC); Mr. James Rigano (attorney representing Boy Scouts of America); Mr. Eric Anderson (representing BSA); Mr. Edward McLaughlin (representing BSA); Mr. Ray Greenspan (representing BSA) and Mr. Dominic Nicolazzi (representing himself).

Public Comment

There were no public comments.

1. Administrative

Mr. Andrew Freleng called the meeting to order at 9:15 a.m. since Mr. Tripp was delayed.

Ratification of meeting summary of June 5, 2006

Mr. Freleng asked if there were any comments on the June 5th meeting minutes. No comments were offered by any of the Board Members.

Mr. Freleng made motion to adopt the June 5th meeting summary, Mr. Anrig seconded, and they were unanimously approved.

2. County Treasurer's Report

Ms. Christina Cooke could not attend the meeting. Faxed copies of the Pine Barrens Credit Program financial report were distributed for the months of June, July and August of 2006. The ending balance as of August 31st is \$3,062,422.54. Interest earned during that period is \$40,306.15.

3. Credit Certificates and Easements

Mr. Freleng skipped to item#5 on the agenda; **Request for Parcel Information from Towns – Status.** Ms. Jakobsen sent out a letter to the Towns requesting parcel information. Ms. Jakobsen spoke with Marty Shea from Town of Southampton who informed her the personnel that would assemble that information were currently working on town assessments and therefore not able to gather the information at this time. The other towns had not yet replied to her letter. Mr. Tripp and Mr. Milazzo arrived at 9:20.

Mr. Tripp stated that the reason for the letter to the Towns was to obtain data on parcel owners in the Core Preservation Area in order to reach out to them with LOIs for their parcels. Mr. Milazzo stated that he would call the towns, specifically mentioning Mr. Turner of Brookhaven, in an effort to obtain the status of the requested data.

Mr. Tripp referred back to item#3 on the agenda and Ms. Jakobsen discussed the situation of an existing FAA Easement on SCTM#900-3203-1-6 owned by Joseph Zachary Gazza. The easement was discovered during the title search done by Donna Waide. It was also found to affect other parcels in the area. Mr. Milazzo explained that the easement was placed on these parcels to restrict building heights for runway access to the airport, which is nearby. He stated this is the first time that Credit Program staff had to consider this issue and whether a Clearinghouse conservation easement could be placed on a parcel with this type of government easement. Mr. Milazzo does not think this is a significant title problem and therefore would not be a reason to deny Mr. Gazza his credits. Mr. Milazzo wanted the Clearinghouse to be aware of the situation and a discussion ensued.

Mr. Tripp moved that the FAA easement and subsequent height restrictions do not interfere with the Clearinghouse's policy in granting credits. Mr. Pally made motion and Mr. Freleng seconded, the resolution was unanimously approved.

Mr. Milazzo addressed the next issue regarding SCTM# 900-243-3-42 parcel owned by Joseph Frederick Gazza. Mr. Gazza purchased the parcel from the estate of Mr. Marx. Mr. Milazzo commented that the purchase by Mr. Gazza is a reflection on the vitality of the credit program. Suffolk County acquired the parcel from a tax default prior to 1965 and sold it to Mr. Marx along with adjacent parcels under the old file map numbers. Mr. Milazzo stated that Mr. Gazza has been purchasing Core property to obtain the credits and then donates the underlying residual to the County of Suffolk, and that this is what he intends to do with this parcel.

Under Mr. Marx's ownership the parcels were lots 32 through 36, but due to an error by the County, lot 32 was included in a deed for another landowner; a Mr. Messing. Mr. Milazzo explained that now lot 32 is described in two separate deeds one being from a landowner that didn't own the parcel to the county, and one from Mr. Marx to Mr. Gazza. Mr. Milazzo suggested that the Clearinghouse accept an easement from Mr. Gazza for lot 32-36 (the old file map numbers). If in the future, ownership of lot 32 was in dispute a good title searcher will discover the error made by the County. It would be discovered that the parcel was conveyed to Mr. Marx through the County, and not to Mr. Messing, which gives Mr. Gazza clear title on the parcel. Mr. Milazzo also explained that if lot 32 was taken out of Mr. Gazza's allocation he still would be entitled to one tenth of a credit, so it would not affect his original allocation.

Mr. Milazzo explained that the matter has to be addressed by the Clearinghouse if in the future the County were to claim ownership of lot 32. At that time an investigation would reveal the County's ownership is not good because the source of title contained a Scribner's error. Another point Mr. Milazzo made was that if the Clearinghouse includes Mr. Gazza's lot 32 in this easement, it would prevent anyone in the future from obtaining an additional tenth of a credit on the same old file lot number.

Mr. Pally moved that Mr. Gazza's ownership of lot 32 is good and that it should be included in his easement, granting him the tenth of a credit. Mr. Freleng seconded the motion and a resolution was unanimously approved.

4. Letters of Interpretation (LOIs) and Initial Credit Allocations

Mr. Milazzo described the issues involved in the Boy Scouts of America LOI allocation on their 403-acre parcel. Mr. Rigano, the attorney that represents the Boy Scouts, made the argument that the Clearinghouse should reduce the allocation based on the number of buildings on the property, which he believes is consistent with Clearinghouse policy to date, but, then increase credit allocation based on the number of days of use, which was described as being 25% of the year, this reduces the sewage flow to one quarter of that which the current allocation and formula reflect. Mr. Milazzo stated the Clearinghouse should justify the credit allocation by the number of buildings on the property, since it cannot enforce the number of days of use. A discussion ensued regarding the actual issue and the difference between the actual LOI credit allocation and the amount of credits Mr. Rigano is asking for. Mr. Milazzo stated the difference was 10 credits; the Clearinghouse would likely issue about 87 credits. Mr. Rigano's argument would allow for 10 more.

Mr. Rigano introduced his clients Ray Greenspan and Eric Anderson Executive Board members representing the BSA and Ed McGlaughlin the Scout Executive and owner of the property. A discussion ensued regarding the actual sewage flow on the property, which was well below the amount allowed by Suffolk County Dept of Health Services (SCDHS). Mr. Rigano stated there would be some limited future development they would ask to exempt from the conservation easement and/or maybe subject to a future hardship application. These additions were shown on a site plan. Additional sewage flow is not expected from these additions. Mr. Freleng asked if there were SCDHS permits on the cafeterias and other buildings. Mr. Rigano applied for the permits but the SCDHS determined that the sewage flow was so low that permits were not required. A discussion ensued regarding the Commission's ability to enforce the restrictions on number of days of use in an easement.

Mr. Pally suggested this might be a precedence since this would be the first time the Clearinghouse would increase the credit allocation due to number of days of use. Mr. Milazzo stated that there were two previous instances where credit applicants did not present this type of argument for increasing credit allocations due to limited days of use. He specifically cited the Peconic Rivers Sportsmans Club, which is mostly weekend use.

Mr. Spitz stated the opinion that the courts and the statute clearly state that scouting activities are considered a non-development use and should be exempt. Mr. Milazzo suggested the Clearinghouse go into executive session to seek legal counsel since the discussion is leading to a debate on what is considered development and non-development. A short discussion ensued about why the Clearinghouse should discuss the development verses non-development issues regarding the BSA parcel and the meeting moved into a closed session.

The executive session took place at 10:05 to 10:30. When the open meeting reconvened, Mr. Tripp stated that the Clearinghouse decided only one credit would be deducted from the credit allocation. The one credit deducted would represent the single family home that is

currently on the property. The cafeterias, camping areas and cabins are non-development as the Clearinghouse interprets the law, since they are activities of an accredited scouting operation. The easement would be worded to reflect a permanent and perpetual restriction on the use of the cafeterias, camping areas and cabins for scouting purposes.

Mr. Milazzo stated that the survey needs to be dated within the last ten years, which is consistent with Clearinghouse policy, and Mr. Rigano agreed to provide an updated survey.

Mr. Anrig made a motion to deduct only one Pine Barren Credit from the BSA credit application for the one family home. Mr. Pally seconded the motion. Mr. Freleng asked for clarification of the motion. Mr. Milazzo responded that the resolution would allocate 97 credits to the BSA of Theodore Roosevelt Nassau County Council for this property. The resolution will state the reason there is a reduction of one credit is due to the house used by a ranger year long, all the other facilities on the property are used for scouting activities. The Clearinghouse is saying that scouting activities under a nationally accredited scouting group is non-development and therefore there is no reduction due to sanitary flow associated with those structures.

Mr. Milazzo calculated the actual amount of credits to be 99.75 subject to clear title. Mr. Tripp asked if there was any further discussion regarding the resolution. He asked if all were in favor and Mr. Freleng abstained for two reasons. The first reason being that the Clearinghouse would be granting more credits than the applicant asked for and the second reason not withstanding the fact that this use is non-development, he cannot ignore the fact that the applicant has provided information on discharge flows to the ground water table and their charge is to protect ground water.

The resolution was passed with Mr. Freleng abstaining.

5. Draft Pine Barrens Credit Program brochure – “PBCs 1-2-3, How to Get Pine Barrens Credits for Your Project” – comments/acceptance from Clearinghouse Board

Ms. Jakobsen handed out a copy of a credit program pamphlet she created for the SCDHS to provide to their applicants that explained the Credit Program.

Mr. Tripp referred back to the boy scouts resolution and wanted it reflected in the minutes that the Boy Scout representatives asked that the Clearinghouse recognize temporal restrictions of use. He stated that would be highly inappropriate and against the tenant of the law. All members agreed with his statement.

Next meeting – Tuesday-November 21, 2006, 9:00am at the Commissions Office in Great River.

Mr. Pally made motion to adjourn the meeting, Mr. Anrig seconded, and it was unanimously approved.

Pine Barrens Credit Clearinghouse

James T.B. Tripp, Esq., Chairman
Andrew P. Freleng, AICP, Vice Chairman
Richard W. Hanley, Member
Mitchell H. Pally, Esq., Member
Robert Anrig, Member

Pine Barrens Credit Clearinghouse Board of Advisors Meeting Summary for December 18, 2006 (Final-Approved 9/6/07) Commission Office, Great River, New York 9:00 A.M.

Present: Board members: Mr. Andrew Freleng (representing the County of Suffolk); Mr. Mitchell Pally (representing the State of New York); Mr. Robert Anrig (representing the Town of Southampton); also in attendance were Mr. John Milazzo (Staff Counsel to the Commission); and Ms. Judy Jakobsen, Mr. Ray Corwin (all from the Commission); Mr. Spitz (representing the NYS DEC); and Mr. Dominic Nicolazzi (representing himself).

Public Comment

There were no public comments.

- **Administrative**

The meeting began without a quorum present at 9:30 am.

Ratification of meeting summary of September 11th

The minutes were not approved, as there was no quorum present.

1. County Treasurer's Report

Ms. Christina Cooke could not attend the meeting. Faxed copies of the Pine Barrens Credit Program financial report were distributed for the months of September, October and November of 2006. The ending balance as of November 30th is \$3,103,068.66. Interest earned during that period is \$40,646.12.

2. Credit Certificates language update

Ms. Jakobsen reviewed some of the changes and additions she is making to the language written on the back of the credit certificates. Under the redemptions column she is adding language that will more clearly define the type of redemption being made and if the redemption is being made for residential or commercial uses.

3. Request for Parcel Information from Towns - STATUS

Ms. Jakobsen has requested information from all 3 Towns regarding the status of parcels in the receiving areas and the number of credits available for transfer from the core preservation area. The purpose of compiling the information will help analyze the ratio of core parcels to receiving area parcels.

The information needs to be reviewed for the completion of the revisions on chapter 6 of the Plan. Mr. Milazzo suggested that the County might have the core parcel information on a database that could be obtained to complete the analysis.

4. Discussion of Comprehensive Land Use Update and Pine Barrens Credit Program

Mr. Milazzo stated that to date the AC has worked on Chapters 4 and 5 of the Plan. He continued by describing chapter 4 that details the Commissions jurisdiction. Chapter 5 sets forth the standards developers have to meet when land use proposals are made in the CGA. Chapter 6 will not have major rewriting, but there will be certain changes. A specific change will be in how to allocate credits to parcels that are partially improved. Another change that should be made would be defining a tax parcel, specifically the date that is used to determine the actual parcel subject to allocation. In some instances the County has divided parcels enabling an owner to apply for a higher allocation than he would have received upon his original ownership of the parcel. Mr. Milazzo recommends that parcels are eligible for credits as of their status in 1995 and not thereafter. Therefore any subdivisions after that date would not be recognized in terms of credit allocations, unless brought before the Commission for appeal. This would prevent anyone from dividing up a parcel into smaller parcels for the purpose of obtaining more credits.

Other changes are typographical in nature or having to do with rounding of numbers and issues with tables.

Mr. Milazzo and Mr. Corwin went on to discuss other proposed changes to the Plan such as defining standards of Hamlet Centers specifically in the Town of Brookhaven. A discussion ensued and Mr. Corwin explained the purpose of Hamlet Centers in promoting compact and orderly development rather than to provide receiving areas for credits. Finishing the Plan revision is dependent on the redefining of Critical Resource Areas, Hamlet Centers, Developments of Regional Significance, and balancing ratios for the Commissions Transfer of Development Rights program. A discussion ensued.

Mr. Corwin went on to talk about the issue of the Towns requiring credit redemptions for projects. There has been a problem with the Towns communicating Town board or Planning board resolutions regarding the TDR program to the Commission. A discussion ensued.

5. Letters of Interpretation (LOIs) and Initial Credit Allocations

Mr. Milazzo provided each Board members with a copy of his correspondence describing the situation of the Westhampton Ministorage request for a letter of interpretation on a 52.3-acre parcel. The parcel is partially developed and has received two hardship exemptions. He discusses two options in determining the eligibility of the parcel to receive credits. The first explores the fact that value has been maintained on the parcel by the granting of two hardship exemptions. The rationale being that the primary purpose of the Pine Barrens Credit program is to maintain property value in the core preservation area, and not allocating credits would be appropriate in this situation.

The second option would be to grant 13.86 credits to the parcel based on the amount of the parcel that may still be eligible for development according to Town zoning formulas. The handout showed the formulas and the portion of the parcel that would be eligible for development based on the percentage in use. The question of how the Clearinghouse determines the actual percentage in use was discussed using an aerial survey of the property. It was determined that the aerial survey shows that 20% of the property is in use which would not

allow for credits to be allocated. At this point Mr. Tripp joined the meeting via a conference call. Mr. Corwin explained that the Board had discussed the usage and was leaning toward option 1 because it appears that more than 20% is in use. A discussion ensued.

A resolution was made that, Mr. Tuccio, the applicant would receive an LOI reflecting a 0 allocation based on the fact that the property is fully developed within Town code. Mr. Anrig made the motion, which was seconded by Mr. Pally, and all were in favor.

A further discussion ensued regarding Mr. Tuccio's hardship exemptions and the fact that they did not preclude him from getting a 0 credit allocation. The allocation was determined based only on the property being fully developed within the Town code.

The meeting was adjourned at 10:00 with no future meeting date set.