

# Central Pine Barrens Joint Planning and Policy Commission

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## **Commission Meeting Summary (FINAL) for April 1, 1998 (Approved 5/13/98) Park Police Headquarters, Southaven Park, Victory Avenue, Yaphank, 2:00 pm**

Commission members present: Mr. Proios (for Suffolk County), Mr. Girandola and Ms. Wiplush (for Brookhaven; Mr. Girandola voting), Mr. Vilella (for Riverhead), Mr. Shea (for Southampton) and Mr. Cowen (for New York State).

Others present: General counsel was Ms. Roth. Staff members from the Commission and other agencies included Mr. Corwin, Ms. Trezza, Ms. Plunkett, Mr. Milazzo, and Ms. Jakobsen (from the Commission), Mr. Grecco (from the Suffolk County Department of Law and Vice Chair of the Pine Barrens Credit Clearinghouse), and Mr. Spitz (from the NYS Department of Environmental Conservation). Additional attendees are shown on the attached sign-in sheet.

The meeting was called to order at approximately 2:09 pm by Mr. Proios, with a four member quorum present consisting of Mr. Proios, Mr. Girandola, Mr. Shea and Mr. Cowen.

### **Administrative**

! Public comments

Summary: *There were no speakers at this time.*

! Draft meeting summary for 3/11/98: changes and approval

Summary: *The following changes to the 3/11/98 draft meeting summary were suggested: (1) under "Results of the 3/10/98 Advisory Committee meeting", the second paragraph, fifth sentence should read, in part: "..., exclusive recreational uses on public lands within the pine barrens, if deemed appropriate, to the Protected Lands Council"; (2) under the same section and paragraph, the last sentence should read, in part: "Mr. Girandola noted that the Town has been working with the NYS DEC regarding the DEC's jurisdiction with respect to the issue of lead, ..."; (3) under "Oaks / Ridge", the summary should read as follows:*

*"Mr. Grecco reviewed this application from a family of four members for Pine Barrens Credits. The parcel at issue, Suffolk County Tax Map number 200-294-4-25, was originally owned by four tenants in common, all family members. Three are still alive, and are willing to sign the conservation easement necessary to obtain credits. The fourth original*

owner, who lived in Oregon, has passed away without a will. His interest has passed to his wife and two minor children. The surviving wife has reportedly sent a letter saying that she is not interested in any proceeds from the parcel, and that the other original three owners can have the parcel's credits and proceeds. The issue then becomes the disposition of the children's interests in the parcel. Given the number of PBCs allocated, private title insurance is required for this transaction.

Mr. Grecco has spoken with a title insurance company, and reported that the company is willing to insure the Commission's easement. Mr. Grecco made a distinction between insurable and marketable title. In this instance, the title, although not marketable, is insurable. The title company will require that the release of the deceased owner's heirs' interests be attached to the easement. It has also been reported that the PBCs to be allocated are under contract.

Mr. Milazzo then explained that the issue is before the Commission today due to its prior deliberation that all known parties of ownership must consent. After a brief discussion, the Commission asked counsel for his opinion, and Mr. Rigano recommended that the Commission proceed with accepting the easement.

**A motion was then made by Mr. Cowen and seconded by Mr. Villella to accept the Oaks credit application and to authorize the Clearinghouse to proceed with the acceptance of the easement from the three owners as described above. The motion was approved by a 4-1 vote, with the dissenting vote cast by Mr. Girandola.”;**

and (4) under “Walton-Hampton Bays Associates-1”, the second paragraph should read as follows:

“A discussion ensued over the basis for the additional allocation, including Mr. Balin’s description of 44 proposed roadfront lots within the overall core area sending parcel, and the jurisdictions of the Commission and the agencies within Southampton Town. Mr. Balin said that, if his client needs additional credits, then the basis for that appeal will be both the use variance criteria and his client’s alleged inability to achieve a reasonable return based upon the property’s current zoning. Mr. Balin also reported that the County had once made an offer to purchase his client’s core property, but that the owner had rejected the offer. Mr. Balin also reported that there have not been any recent appraisals of the core property.”

**A motion was then made by Mr. Shea and seconded by Mr. Cowen to approve the summary of the 3/11/98 meeting with these changes. The motion was approved by a 4-0 vote.**

! Commission - Suffolk County Water Authority 1998-99 contract: draft

*Summary:* Ms. Roth discussed the attached draft contract extension, which was distributed at that time, between the Commission and the Suffolk County Water Authority (SCWA). The contract addresses the provision of staff services for the Commission by the SCWA, and she noted that the contract can only refer to the Commission's requested 1998-99 NY State budget allocation, since the State Legislature has not yet approved a 1998-99 state budget. This draft will be placed on the Commission's 4/22/98 agenda for approval.

## **Pine Barrens Credit Program**

- ! Riverhead receiving area appraisal: status of work

*Summary:* Mr. Milazzo reported that the contract for this work has been signed by both parties, and the appraisals can now begin.

Mr. Villella arrived during the following discussion, and a five person quorum was present for the remainder of the meeting. Mr. Grecco also arrived during this discussion.

- ! Harrick / Manorville: counsel's opinion re allocation factor (from 3/11)

*Summary:* Mr. Milazzo showed an aerial photograph of this parcel in Manorville in Brookhaven Town, currently used as a horse farm. At the Commission's 3/11/98 meeting, the issue of what development yield factor should be used to compute the initial credit allocation was referred to counsel, since the current zoning of the parcel, HF (for Horse Farm), is not addressed in the Central Pine Barrens Plan.

Ms. Roth then noted two points of significance: (1) The HF zone appears to be a residential zone, in her opinion, since it provides for residential uses. She also noted specifically that this use does not appear to qualify as a "nonresidential" zone, which the Plan does address. (2) Under the Brookhaven Town code for an HF zone, the minimum lot size for a parcel to qualify for this zoning category is 10 acres. Thus, one possible interpretation of the code applied to this site is that the 34 acres within the subject parcel could be viewed as able to accommodate one home on ten acres, and the remainder could be used under the Town code for horses at the rate of 2 horses per acre. This level of activity could then be translated into a credit allocation.

Ms. Roth also observed that the Commission could examine the surrounding properties' lot area requirements to assist in determining a development yield for purposes of allocating credits. Finally, she noted that there are no other core area parcels with this zoning category, so there are no Pine Barrens Credit Program precedents with this zone to assist the Commission.

A discussion then ensued regarding the date of that parcel's zoning, the upzoning of the larger area in which it lies, the amount of clearing already present on the parcel, and what the typical PBC Program conservation easement would allow on the parcel. Mr. Cowen noted that the zoning provisions reflect that it is essentially a 10 acre zone, and that the allocation

*should be based upon that, with a standard reduction for the existing dwelling. Mr. Girandola recommended that Ms. Roth's report be forwarded to the Clearinghouse Board for their consideration. It was noted during this discussion that the Commission may see this parcel during a credit allocation appeal, and that the Clearinghouse should be asked to make the initial decision. It was agreed that Ms. Roth's report would be forwarded to the Clearinghouse Board.*

! Rodick Construction Company / Ridge: general release

*Summary: Ms. Roth explained that she has been in contact with the Rodick Construction Company regarding a parcel of land that they originally owned (but which they have since sold) which is on the south side of the Suffolk County Pine Trail Nature Preserve in Ridge in Brookhaven Town. The parcel is partially within the core area and partially within the Compatible Growth Area (CGA), and was offered for inclusion in the Pine barrens Credit Program.*

*The resulting easement inadvertently covered the entire parcel, and Ms. Roth has since reached an agreement with the owner at that time (Rodick Construction) to pay the difference in value, \$11,000, for the CGA portion of the property. In exchange, Rodick Construction has agreed to sign a general release waiving all future claims in this matter. **A motion was then made by Mr. Shea and seconded by Mr. Vilella to approve the general release in this matter and to pay Rodick Construction Company the sum of \$11,000. The motion was approved by a 5-0 vote.***

! Warner / Riverhead: correspondence

*Summary: Mr. Milazzo distributed and discussed the attached correspondence regarding a proposed subdivision of the Olin Warner property in Riverhead Town which is now part of the Pine Barrens Credit Program and protected by a conservation easement under that program. Mr. Milazzo noted that the easement is tailored to his property, prohibits any future duck farming, and requires that Mr. Warner maintain sufficient liability insurance with the Commission as the insured party, and an indemnification clause for any future environmental remediation which may be required at the site. In March 1998, Mr. Warner filed a request for a minor subdivision of the property into three lots, with one lot encompassing the existing residence.*

*Ms. Roth reported that she has examined the easement and that the proposed subdivision itself does not violate the easement. The Commission agreed that Ms. Roth would write a letter to this effect.*

! Walton-Hampton Bays Assoc / H. Bays: consideration of decision postponement and determination of appeal (decision date currently 3/11)

*Summary: Mr. Milazzo distributed the attached letter from Mr. Herbert Balin extending the Commission's time to make a decision on this credit allocation appeal until 4/22/98. **A motion was then made by Mr. Shea and seconded by Mr. Vilella to deny the Walton-Hampton Bays Associates credit allocation appeal. The motion was approved by a 5-0 vote.***

## Plan implementation

- ! Protected Lands Council: status of plan; Global ReLeaf tree planting project  
*Summary: Mr. Corwin explained that the Protected Lands Council will be assisting with a tree planting program on 4/17/98 at the NYS Rocky Point Natural Resources Management Area. The project is part of a three year grant which the Eastern Campus of Suffolk Community College has received from American Forests, a national nonprofit organization. The grant provides for tree seedlings for reforestation. A two week plus schedule of plantings is planned, and the attached schedule was made available at the meeting.*

- ! Law Enforcement Council: current projects  
*Summary: Mr. Corwin reported that the Suffolk County Park Police will be moving into the building where today's meeting is being held, and that the site will also serve as an interagency law enforcement center.*

*He also noted that the Council's work in airlifting bridge building materials for the reconstruction of the Ogden's Brook bridge in Montauk Point State Park will be acknowledged during a dedication ceremony on April 25 at the bridge site.*

*The Council has also continued to work on the revision of the old Suffolk County all terrain vehicle law, which the County Executive will introduce into the Suffolk County Legislature.*

*With regard to the abandoned vehicle removal program, there are now believed to be 26 more vehicles to be removed from core area public lands. This quantity is in addition to the 33 which have already been airlifted out, as well as several others which have been removed by ground transport.*

*The Law Enforcement Council and the Wildfire Task Force have begun to coordinate a joint effort to provide air operations training (especially helicopter water bucket training) to both the air and ground crews from the various agencies and fire departments concerned with both the pine barrens and other areas. As part of this effort, an initial demonstration session will be held for NYS Department of Environmental Conservation Commissioner John Cahill and NY National Guard Deputy Adjutant General William Martin on 4/16/98 at Wildwood Lake. The actual on-the-lake session will take approximately 90 minutes.*

- ! Wildfire Task Force: status of plan development  
*Summary: Mr. Corwin explained that the Task Force is completing a revision of the draft fire plan, and will be meeting soon with the Suffolk County fire departments and fire districts to discuss it.*

## **Core Preservation Area**

- ! Suff County Dept. of Public Works / Manorville / bridge improvements: determination of jurisdiction

*Summary:* Ms. Plunkett distributed and discussed the attached letter from the Suffolk County department of Public Works regarding the proposed rehabilitation of bridges on Country Road 111 in Manorville in Brookhaven Town. The Commission agreed that this project was nondevelopment pursuant to the pine barrens law.

- ! Davis / Riverhead / dairy farm proposal: determination of jurisdiction

*Summary:* Ms. Plunkett distributed and discussed the attached letter from Mr. Lester Davis regarding a proposal for a dairy farm and associated retail operation on the south side of County Road 51 in Eastport in Southampton Town. The site is currently used for agriculture, and is protected under the Southampton Town agricultural development rights purchase program; an easement exists on the property, and is held by the Town. This easement and the subject parcel are not part of the Pine Barrens Credit Program. The question before the Commission is whether this proposal would be within the Commission's jurisdiction.

Mr. Davis was present, and discussed the history of dairy farms in parts of Suffolk County, the current extent of such farms, and the specifics of his proposed operation. He would like to see the project become a tourist stop, have a completely closed waste processing system, and have the facility use solar energy. The Commission agreed that the general proposal as presented would not fall within their jurisdiction, and the staff will write a letter to that effect.

- ! Gazza / Westhampton: counsel's opinion on boundary letter (from 3/11)

*Summary:* Ms. Roth distributed and discussed the attached letter from Mr. Joseph Gazza regarding his proposed alteration of the core area boundary along the west side of County Road 31 in Westhampton in Southampton Town. She discussed the pine barrens law's provision regarding the Commission's ability to alter the boundary, and then expressed the opinion that the boundary in this location cannot be moved from its current location. This is based upon the law's restrictions on moving the core boundary where the boundary is defined by certain highways. The discussion which followed focused upon the Commission's ability to move this section of the core boundary, and not upon the merits of Mr. Gazza's specific request. Specifically, the discussion centered upon the interpretation of the word "beyond" in the restrictions noted, and it was finally agreed that the Commission did have the authority to perform the type of request which Mr. Gazza has proposed. Mr. Gazza will submit a separate letter and map to the Commission in support of his request.

- ! Southampton Tradespersons Center / Westhampton: inquiry from Mr. Gazza (not on the original agenda)

*Summary:* Mr. Gazza noted that he had submitted an Internal Revenue Service form to the Commission counsel along with a request that it be signed by her or a Commission representative to verify the value of the conservation easement which is to be placed on a portion of that project's site. He noted that Ms. Roth had replied that the Commission would not sign that document. A brief discussion followed, and the Commission agreed with counsel's initial reply to

Mr. Gazza. During that discussion, it was noted that the area under the easement was serving to satisfy Suffolk County Health Department requirements. Mr. Cowen also requested that today's meeting record reflect the fact that the easement had nothing to do with the Commission's decision to grant a permit for this project.

! Tossini Service Station / Calverton: new application

Summary: Ms. Plunkett summarized this proposal for a gasoline station and convenience store at the northwest corner of the Long Island Expressway and Edwards Avenue in Calverton in Brookhaven Town, along the westbound Expressway entrance ramp at Exit 71. The one acre site, which previously contained a service station, is zoned for J5 Commercial. The prior use on the site did not contain a convenience store, and the prior service station has been closed for more than one year, possibly for remediation work. The question before the Commission is whether the new proposal constitutes development, and, specifically, whether the dormancy of the site qualifies as "abandoned" under the development definition provisions of the state pine barrens law.

A discussion then ensued regarding the reason for the station being closed, the length of time, the possibility that it was closed for remediation of groundwater contamination and whether that affects its classification as abandoned or not under the pine barrens law, and the question of whether the addition of the convenience store in the new proposal is a change in use as per the pine barrens law definition of development. It was decided that, if the station was closed for remediation of groundwater contamination and if the convenience store is a permitted use in the J5 district, then the new proposal would be considered nondevelopment. The staff will review the code and write an appropriate letter to the applicant.

! Hot Water St and Toppings Path / Manorville: status

Summary: Mr. Proios summarized the prior Commission discussions regarding the possible transfer of Hot Water Street and Toppings Path in the Manorville area of Brookhaven Town from Brookhaven Town to Suffolk County. He noted that the Town has forwarded a letter, also previously discussed at a Commission meeting, offering to do so. Mr. Proios reported that the County Executive wants to see that transfer occur, and Mr. Proios suggested that a resolution of support from the Commission, although not required to effect the transfer, would be useful in effecting that transfer.

**A motion was then made by Mr. Proios and seconded by Mr. Girandola to recommend that Hot Water Street and Toppings Path, currently owned by Brookhaven Town, be transferred to Suffolk County. The motion was approved by a 5-0 vote.**

## Compatible Growth Area

! Medford Apartments / Medford / site plan: scheduling of public hearing

Summary: Ms. Plunkett summarized this new CGA hardship application for a 10 acre parcel on the east side of NYS Route 112, north of the Brookhaven Town Hall in Medford in Brookhaven Town. The application is before the Commission due to its nonconformance with the native vegetation clearing standard. Brookhaven Town has issued a negative declaration for this project. **A motion was then made by Mr. Cowen and seconded by Mr. Shea to schedule a public hearing on this application at 4:00 pm at the next Commission meeting date of 4/22/98. The motion was approved by a 5-0 vote.**

#### **Closed Session**

Summary: **A motion was made by Mr. Shea and seconded by Mr. Vilella to enter into executive session for the purpose of receiving legal advice from counsel. The motion was approved by a 5-0 vote, and the Commission entered into closed session from approximately 4:09 pm to 4:23 pm.**

The meeting was then adjourned without any further business.

#### **Attachments (in order of discussion):**

1. Attendance list (1 page)
2. Speaker list (1 page)
3. Draft Commission-SCWA contract for 1998-99 (undated; 5 pages)
4. Letter and attachments from Mr. Danowski re Warner property (3/23/98; 3 pages)
5. Letter from Mr. Balin extending credit appeal decision date (3/30/98; 1 page)
6. Global ReLeaf tree planting schedule (undated; 3 pages)
7. Letter from SC DPW re bridge work in core area (3/11/98; 1 page)
8. Letter from Mr. Davis re dairy farm proposal (3/9/98; 1 page)
9. Letter from Mr. Gazza re proposed core boundary change (3/19/98; 1 page)