

**COPY**

**Supreme Court of the State of New York  
IAS Part 23 - County of Suffolk**

**PRESENT: Hon. Vincent J. Martorana**

**In the Matter of the Application of**

**EQUINE FACILITY LLC,**

**Petitioner.**

**For an Order Pursuant to Article 78 of the Civil Practice Law and Rules,**

**- against-**

**CARRIE MEEK GALLAGHER, EDWARD ROMAINÉ, STEVEN BELLONE, LAURA JENS-SMITH AND JAY SCHNEIDERMAN, in their capacity as Members of the Central Pine Barrens Joint Planning Policy Commission, and the CENTRAL PINE BARRENS JOINT PLANNING & POLICY COMMISSION, BASIL SEGGOS, ACTING COMMISSIONER, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, and the STATE OF NEW YORK,**

**Respondents.**

**ORIG. RETURN DATE: 9/17/18  
ADJOURNED DATE: 11/29/18  
MOTION SEQ. NO.: 001 - MD**

**PLTF'S/PET'S ATTY:  
WILLIAM D. WEXLER, ESQ.  
816 Deer Park Avenue  
North Babylon, NY 11703**

**DEFT'S/RESP'S ATTY:  
BARBARA D. UNDERWOOD, Attorney General  
28 Liberty Street  
New York, NY 10005**

Upon the following papers read on this Article 78 petition: Notice of Petition and supporting papers by petitioner dated August 14, 2018; Notice of Cross-Motion and supporting papers Answer and Affirmation in opposition and supporting papers with memorandum and administrative record by respondent dated November 2, 2018 Affirmation/affidavit in reply with memorandum and supporting papers by petitioner dated November 26, 2018; it is:

**ORDERED** that Petitioner's petition seeking a determination that the Central Pine Barrens Joint Planning & Policy Commission's decision regarding the allocation of Pine Barrens Credits to property owned by Petitioner was arbitrary and capricious and an abuse of discretion and further seeking annulment of such decision is denied.

The Long Island Central Pine Barrens Protection Act was enacted in 1993, creating the Central Pine Barrens Joint Planning & Policy Commission which was tasked with preparing and implementing a Comprehensive Land Use Plan ("Plan"); such Plan was adopted in 1995 and amended in 2012. As part of the Plan, certain restrictions were put on land use within the subject area with the purpose of protecting groundwater and certain plant and animal species. A system was also put in place for the transfer of development rights through Pine Barrens Credits. The Plan also created the Clearinghouse. The Clearinghouse issues Letters of Interpretation ("LOI") upon request

of a landowner with respect to a particular parcel. The LOI will set forth the number of Pine Barrens Credits to which a parcel is entitled based upon a formula and in consideration of the features of a given parcel. A landowner then may request a Pine Barrens Credit Certificate. Upon confirmation of clear title, the landowner executes a conservation easement in favor of the Commission. After the easement is recorded with the Suffolk County Clerk, a Credit Certificate is issued to the landowner. A Pine Barrens Credit Certificate indicates the number of credits to which a landowner is entitled, attests that the development rights are severed from the land by recording of a conservation easement and that such rights are available for sale or use. At issue in this proceeding is whether or not the determination by the Commission on July 18, 2018 as to the number of Pine Barrens Credits to which the subject Property was entitled was arbitrary and capricious.

The within special proceeding was commenced by filing of a petition with notice seeking a determination that the Central Pine Barrens Joint Planning & Policy Commission's ("Commission") decision regarding the allocation of Pine Barrens Credits ("PBC") to property owned by Petitioner was arbitrary and capricious and an abuse of discretion and further seeking annulment of such decision. Petitioner avers that it is entitled to have its allocated number of credits determined using the application of an A Residence District zoning standard rather than the "All Other Districts" standard applied to the Horse Farm Residence District. The subject property at issue, a 34.22 acre parcel designated tax map number 200-460-1-5 ("Property") located in the Central Pine Barrens Core in the Town of Brookhaven, is zoned as a Horse Farm Residence and is subject to recorded covenants and restrictions limiting the use of the property to uses associated with a "...business connected with the ownership, training teaching and boarding of horses, and immediately allied purposes." The Brookhaven Town Code provides a ten acre zoning requirement for single-family residence construction on Horse Farm Residence ("HF") properties. Properties designated HF are permitted to be used for all permitted A Residence uses, except that A Residence properties have a 30,000 square foot lot size zoning requirement per single-family residence. HF designations are floating designations that may apply to a property that is within an A Residence District, for example, while neighbors may be zoned A Residence (or another type of designation). There are approximately fourteen HF designated properties within the Town of Brookhaven but only one is in the Core Preservation Area of the Central Pine Barrens. Petitioner argues that support for its argument that the A Residence lot size should apply for PBC calculation purposes lies in the fact that the Commission erroneously believed a neighboring property ("Cavalli property") to be in the HF District when it was not, and upon that assumption in 1997, ruled that the development yield factor to be applied to determine the number of PBCs was 1.2 per acre. The Commission later corrected its assessment because the Cavalli property was not in the HF District, it was in the A Residence 5 District. The Commission therefore used a different measurement which reduced the allocation, then adjusted the allocation upward from the new figure due to the fact that the Cavalli property owners had relied upon the prior assessment and negotiated the sale of the PBCs. Around the time that the appeal of the Cavalli determination was decided, the Commission met to consider which development yield factor should be applied to the Harrick Horse Farm, the prior owner of the Property here at issue. These considerations took place over two meetings in February and March of 1998, then the opinion of outside counsel was sought. A report was provided to the Clearinghouse which issued a Letter of Interpretation determining that the appropriate development yield factor to be applied to the Property was 0.16 PBCs per acre. One PBC was deducted for the existing residence; 4.48 PBCs were allocated. The Letter of Intent ("LOI") with this determination was dated April 30, 1998. It was not appealed. The Property was then purchased by subsequent owners (Petitioner's predecessor) by deed dated May 1, 1998. The new ownership effected a nullification of the prior LOI. Upon request for an LOI by the new owners and after a staff visit to the property, the Clearinghouse decided that additional deductions might have to be made for the presence of apartments and additional bathrooms on the Property. The new owners were directed to submit a Certificate of Occupancy from the Town of Brookhaven for the parcel. The requested information was not sent and a new LOI for the property did not issue. Petitioner herein then purchased the Property in 2004 and in 2013 Petitioner applied for a LOI. However,

in 2012, the Plan was amended to include development yield factors for parcels in districts that were not strictly residential. Residential properties in Brookhaven are generally governed by Article XIV of the Town of Brookhaven Municipal Code. IIF properties are governed by Article XVII of the Code. The 2012 determination was that the yield factor for properties which were not strictly residential would be 0.10 PBCs per acre. Upon application for an LOI, the Clearinghouse applied a 0.1 development yield factor. A reduction of the allocation was applied due to the improvements existing on the Property, resulting in a negative number. Therefore, the allocation of PBCs was designated as zero. In 2016, Petitioner applied for another LOI. The Clearinghouse determined a PBC allocation of zero using the same analysis applied in 2013. Petitioner appealed, initially arguing entitlement to 49.68 PBCs due to the estimate of a real estate appraiser as to the value of the Property if divided into multiple single family lots and alternately arguing that allocation should be made using an A Residence District analysis with allocation of 1.2 PBC per acre. The Commission determined that the 0.1 IIF yield factor was appropriate because the analysis is based upon the permitted lot sizes, not permitted uses. The fact that the A Residence District principal uses were all permissible on the Property does not alter the fact that ten acre lot size applies to the IIF District Property, therefore allocation of PBCs was determined on this basis. Upon hearing of the Petitioner's appeal of the Clearinghouse's LOI determination, the Commission found in July of 2018 that the allocation of zero was proper; however, the Commission elected to allocate 4.48 PBCs because it had previously erroneously designated this number prior to Petitioner's purchase of the property and consideration was given to the fact that Petitioner may have relied upon this allocation when it purchased the Property.

The standard of review in an Article 78 proceeding brought challenging a determination such as the one here at issue is "...whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion..." (CPLR§ 7803(3); see also *Perry v. Brennan*, 153 AD3d 522, 524-25, 60 NYS3d 214, 217 [2d Dept. 2017]; *Suffolk Cty. Ass'n of Mun. Employees, Inc. v. Levy*, 133 AD3d 674, 675, 19 NYS3d 563, 565 [2d Dept 2015]; *Zupa v. Bd. of Trustees of Town of Southold*, 54 AD3d 957, 957, 864 NYS2d 142, 143 [2d Dept 2008]). A decision is arbitrary and capricious when it is taken without regard to the facts or without reasonable basis (*Ward v. City of Long Beach*, 20 NY3d 1042, 1043, 985 NE.2d 898, 898-99 [2013]). If the determination has a rational basis, it will be sustained, even if an alternate result would be reasonable (*Ward, supra*; *Peckham v. Calogero*, 12 NY3d 424, 430-31, 911 NE2d 813 [2009]).

Here, the Commission reviewed the Clearinghouse's LOI determination in the context of precedent regarding the Property at issue, the Brookhaven Town Municipal Zoning Code and requirements that apply to the subject property, the 2012 amendment to the Plan and determinations made regarding other properties. Upon review of the facts and circumstances, the Commission determined an allocation of zero PBCs to be correct. The Commission then considered the possibility that Petitioner may have relied upon the PBC determination that was made prior to its purchase of the subject property and allocated 4.48 PBCs, even though an allocation of zero was found to be appropriate.

Based upon the foregoing, the Court finds that the decision by the Commission had a rational basis, was supported by substantial evidence and that it was neither illegal nor arbitrary and capricious nor an abuse of discretion. Accordingly, Petitioners' petition is denied in all respects.

**Dated: Riverhead, New York**  
**April 11, 2019**

  
\_\_\_\_\_  
**VINCENT J. MARTORANA, J.S.C.**

CHECK ONE:      XX   FINAL DISPOSITION           NON-FINAL DISPOSITION