

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

In the Matter of the Application of

PLURALIS, LLC.,

Petitioner,

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

-against-

EDWARD P. ROMAINÉ, Supervisor,  
of the Town Board of the Town of  
Brookhaven, Steve Fiore-Rosenfield,  
Jane Bonner, Kathleen Walsh,  
Constance Kepert, Timothy Mazzei,  
and Daniel Panico, constituting of the  
Town Board of the Town of Brookhaven,  
and the TOWN BOARD, and  
VINCENT E. PASCALE, Chairman,  
TARA KAVANAGH, Deputy Chair,  
STEVEN J. WILUTIS, KAREN J. DUNNE,  
JOSEPH A. BETZ, PETER E. ZARCONE,  
M. CECILE FORTE, constituting of the  
PLANNING BOARD of the Town of Brookhaven,  
the PLANNING BOARD of the Town of Brookhaven,  
and the DEPARTMENT OF PLANNING,  
ENVIRONMENT AND LAND MANAGEMENT  
of the Town of Brookhaven, and DANIEL P.  
LOSQUADRO, Superintendent of Highways  
of the Town of Brookhaven, and the TOWN  
OF BROOKHAVEN, and Peter A. Scully,  
Edward Romaine, Steve Bellone, Sean M. Walter,  
and Anna E. Throne-Holst, as Members of and  
constituting the CENTRAL PINE BARRENS  
JOINT PLANNING AND POLICY COMMISSION,  
Created pursuant to the New York State Long Island  
Pine Barrens Protection Act of 1993 and codified  
in the New York Environmental Conservation Law  
Section 57,

Respondents.

SIRS:

NOTICE OF PETITION

Index No. 13-15979

Filed: 6-19-13

FILED

JUN 19 2013

COUNTY CLERK  
JUDITH A. PASCALE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

IN THE MATTER OF THE APPLICATION OF  
PLURALIS, LLC., PETITIONER,  
FOR AN ORDER PURSUANT TO ARTICLE 78 OF THE CPLR,  
-AGAINST-  
TOWN OF BROOKHAVEN, et al., RESPONDENTS.

Index No. 13-15979

AFFIDAVIT OF  
SERVICE OF,  
REQUEST FOR  
JUDICIAL INTERVENTION

STATE OF NEW YORK, COUNTY OF SUFFOLK  
party herein, is over 18 years of age and resides at 2906 PEBBLE BEACH PATH, RIVERHEAD, NY 11901.  
That on JUNE 19, 2013 at 10:15AM, at 1 INDEPENDENCE HILL, FARMINGVILLE, NY 11738  
deponent served the within REQUEST FOR JUDICIAL INTERVENTION UPON defendant therein named  
1.  by delivering a true copy of each to said defendant personally; deponent knew the person so served to be the person described as  
said defendant therein.  
2.  a MUNICIPAL corporation, by delivering thereto a true copy of each to LINDA SULLIVAN  
personally; deponent knew said corporation so served to be the corporation described in said summons as said defendant and  
knew said individual to be a CLERK thereof, AUTHORIZED TO ACCEPT SERVICE.  
3.  by delivering thereto a true copy of each to a person of suitable age  
and discretion. Said premises is defendant's—actual place of business—dwelling place—usual place of abode—within the state  
4.  by affixing a true copy of each to the door of said premises, which is defendant's—actual place of business—dwelling place—  
usual place of abode—within the state. Deponent was unable, with due diligence to find defendant or a person of suitable age  
and discretion thereat, having called there

MAILING TO  
RESIDENCE  
USE WITH 3 OR 4  
SA.   
MAILING TO  
BUSINESS  
USE WITH 2 OR 4  
SB.

Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a postpaid envelope properly addressed to  
defendant at defendant's last known residence, at and deposited  
said envelope in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State.  
Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a first class post paid envelope properly  
addressed to defendant at defendant's actual place of business, at  
in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State. The envelope bore  
the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the  
communication was from an attorney or concerned an action against the defendant.

DESCRIPTION  
USE WITH  
1, 2, OR 3

- Male  White Skin  Black Hair  White Hair  14-20 Yrs.  Under 5'  Under 100 Lbs.
- Female  Black Skin  Brown Hair  Balding  21-35 Yrs.  5'0"-5'3"  100-130 Lbs.
- Yellow Skin  Blonde Hair  Mustache  36-50 Yrs.  5'4"-5'8"  131-160 Lbs.
- Brown Skin  Gray Hair  Beard  51-65 Yrs.  5'9"-6'0"  161-200 Lbs.
- Red Skin  Red Hair  Glasses  Over 65 Yrs.  Over 6'  Over 200 Lbs.

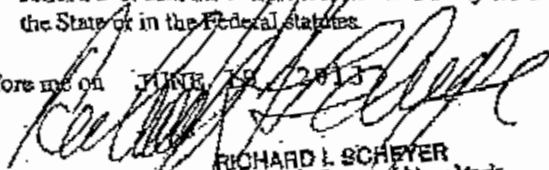
Other identifying features:

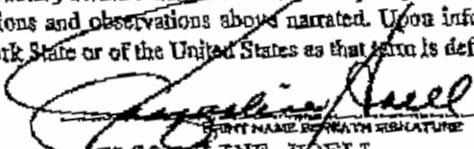
USE TO  
STATE OFFICE

The words "CONSUMER CREDIT TRANSACTION" were prominently displayed at the top of the summons(es) and the additional  
legend was printed in not less than 12 point bold upper case type on the summons(es) pursuant to 22 NYCRR §208.6(d) and (f).

MILITARY  
SERVICE

I asked the person spoken to whether recipient was in active military service of the United States or of the State of New York in any  
capacity whatever and received a negative reply. Recipient wore ordinary-civilian clothes and no military uniform. The source of  
my information and the grounds of my belief are the conversations and observations above narrated. Upon information and  
belief I aver that the recipient is not in military service of New York State or of the United States as that term is defined in either  
the State or in the Federal statutes.

Done before me on JUNE 19, 2013  
  
RICHARD L. SCHEYER  
Notary Public, State of New York  
No. 02SC8805870  
Qualified in Suffolk County  
Commission Expires December 31, 2014

  
JACQUELINE HOELL  
License No. \_\_\_\_\_

INSTRUCTIONS: Check appropriate boxes and fill in blank spaces.

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF SUFFOLK

IN THE MATTER OF THE APPLICATION OF PLURALIS, LLC., PETITIONER, FOR AN ORDER PURSUANT TO ARTICLE 78 OF THE CPLR. -AGAINST- TOWN OF BROOKHAVEN, et al., RESPONDENTS.

Index No. 13-15979

AFFIDAVIT OF SERVICE OF NOTICE OF PETITION & PETITION

STATE OF NEW YORK, COUNTY OF SUFFOLK SS: The undersigned being duly sworn, deposes and says: deponent is not party herein, is over 18 years of age and resides at 2906 PEBBLE BEACH PATH, RIVERHEAD, NY 11901. That on JUNE 19, 2013 at 10:15AM, at 1 INDEPENDENCE HILL, FARMINGVILLE 11738 deponent served the within NOTICE OF PETITION & PETITION UPON defendant therein name:

- INDIVIDUAL 1. [ ] by delivering a true copy of each to said defendant personally; deponent knew the person so served to be the person described: said defendant therein.
CORPORATION 2. [X] a MUNICIPAL corporation, by delivering thereof a true copy of each to LINDA SULLIVAN personally, deponent knew said corporation so served to be the corporation described in said summons as said defendant and knew said individual to be a CLERK thereof, AUTHORIZED TO ACCEPT SERVICE.
SUITABLE AGE PERSON 3. [ ] by delivering thereof a true copy of each to a person of suitable age and discretion. Said premises is defendant's—actual place of business—dwelling place—usual place of abode—within the state.
AFFIXING TO DOOR, ETC. 4. [ ] by affixing a true copy of each to the door of said premises, which is defendant's—actual place of business—dwelling place—usual place of abode—within the state. Deponent was unable, with due diligence to find defendant or a person of suitable age and discretion thereat, having called there.

MAILING TO RESIDENCE USE WITH 3 OR 4 M. [ ] Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a postpaid envelope properly addressed to defendant at defendant's last known residence, at and deposited said envelope in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State.
MAILING TO BUSINESS USE WITH 3 OR 4 M. [ ] Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a first class post paid envelope properly addressed to defendant at defendant's actual place of business, at in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State. The envelope bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the defendant.

- DESCRIPTION ONE WITH 1, 2, OR 3 [X] Male [X] White Skin [X] Black Hair [X] White Hair [ ] 14-20 Yrs. [ ] Under 5' [ ] Under 100 Lbs.
[ ] Female [ ] Black Skin [ ] Brown Hair [ ] Balding [X] 21-35 Yrs. [ ] 5'0"-5'3" [X] 100-130 Lbs.
[ ] Yellow Skin [ ] Blonde Hair [ ] Mustache [ ] 36-50 Yrs. [X] 5'4"-5'8" [ ] 131-160 Lbs.
[ ] Brown Skin [ ] Gray Hair [ ] Beard [ ] 51-65 Yrs. [ ] 5'9"-6'0" [ ] 161-200 Lbs.
[ ] Red Skin [ ] Red Hair [X] Glasses [ ] Over 65 Yrs. [ ] Over 6' [ ] Over 200 Lbs.

Other identifying features:

USE IN ANY COURT. [ ] The words "CONSUMER CREDIT TRANSACTION" were prominently displayed at the top of the summons(es) and the additional legend was printed in not less than 12 point bold upper case type on the summons(es) pursuant to 22 NYCRR §208.6(d) and (f).

MILITARY SERVICE [ ] I asked the person spoken to whether recipient was in active military service of the United States or of the State of New York in any capacity whatever and received a negative reply. Recipient wore ordinary civilian clothes and no military uniform. The source of my information and the grounds of my belief are the conversations and observations above narrated. Upon information and belief I aver that the recipient is not in military service of New York State or of the United States as that term is defined in either the State or in the Federal statutes.

Sworn to before me on JUNE 19, 2013

JACQUELINE HOELL License No. ...

RICHARD I. SCHEYER Notary Public, State of New York No. 02SC8805670 Qualified in Suffolk County Commission Expires December 31, 2014

INSTRUCTIONS: Check appropriate boxes and fill in blanks.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

In the Matter of the Application of

X  
VERIFIED PETITION

PLURALIS, LLC.,

Index No.

Petitioner,

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

-against-

EDWARD P. ROMAINÉ, Supervisor,  
of the Town Board of the Town of  
Brookhaven, Steve Fiore-Rosenfield,  
Jane Bonner, Kathleen Walsh,  
Constance Kepert, Timothy Mazzei,  
and Daniel Panico, constituting of the  
Town Board of the Town of Brookhaven,  
and the TOWN BOARD, and  
VINCENT E. PASCALE, Chairman,  
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STEVEN J. WILUTIS, KAREN J. DUNNE,  
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M. CECILE FORTE, constituting of the  
PLANNING BOARD of the Town of Brookhaven,  
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constituting the CENTRAL PINE BARRENS JOINT  
PLANNING AND POLICY COMMISSION,  
Created pursuant to the New York State Long Island  
Pine Barrens Protection Act of 1993 and codified  
in the New York Environmental Conservation Law  
Section 57,

Respondents.

-----X

**S I R S:**

The undersigned, JOSHUA S. FISHKIND, Manager of PLURALIS, LLC., one of the Petitioners, by its attorney, RICHARD L. SCHEYER, ESQ., complaining of the Respondents, allege:

1. PLURALIS, LLC. is a domestic limited liability company licensed to do business in the State of New York and is currently the registered owner of approximately 95 Pine Barrens Credits as defined below.

**PRELIMINARY STATEMENT**

2. In July of 1993 New York State passed The Long Island Pine Barrens Act which was codified in New York Environmental Law, Conservation Law Article 57; this law was amended several times through 2006. The goal of the statute was to preserve vast ecological and hydrological natural resources; this act, inter alia, sterilized over 50,000 acres of vacant land known as the Core preservation area as well as set forth strict development restrictions on another approximately 50,000 acres known as the Compatible growth area. The act further created the Pine Barrens Commission which is comprised of the Suffolk County Executive, and the Town Supervisors of Brookhaven, Riverhead, and Southampton, and one member appointed by the governor. The Commission was established to create and implement a comprehensive land use plan pursuant to

Section 57-0119 of the Comprehensive Law of the Central Pine Barrens Maritime Reserve Act (hereinafter referred to as Pine Barrens Act) which plan was adopted in June of 1995. In order for Brookhaven (and other Towns) to comply with Section 57-0123, it had to amend its land use and zoning code regulations to conform to this Plan by late 1995.

3. In essence the plan had two parts, each bearing distinct critical importance. The first part involved the preservation/sterilization of 100,000 acres of land heretofore described. The second was the compensation that the landowners and other citizens whose land was sterilized/taken were entitled to receive. NYS and Federal Constitutions have required that any taking of private property be consummated with the property owners receiving just compensation for the land or rights they lost.

4. The just compensation component was a central theme of the legislative process which led to the act and consequently the act and the Land Use Plan adopted by the Legislature and the Commission wherein the manner and method by which the landowners were required to be compensated, were set forth in detail in Section 57-0105 which described the Legislative intent and findings" ...the Central Pine Barrens Area requires ...a Plan that will provide for the preservation of the core area...with recognition of the rights of private landowners" (Section 2.1 of the Plan recites the same language).

5. The Government did not compensate the landowners from whom it took the 100,000 acres by writing them a check or money order, nor did it compensate

them by giving them alternative properties which properly equaled the fair market value of the land they lost. Instead, they created and provided the landowners with Transfer or Development Rights called "Pine Barrens Credits".

6. Cognizant that these credits were merely certificates made of ink and paper and that they had no value unless they could be re-sold or used in a development context, the Act and Plan established and imposed a very substantial array of requirements on the Town of Brookhaven. These requirements were to take immediate effect back in 1995, and were expressly intended to create robust markets and adequate uses for Pine Barrens credits, and hence imbue them with proper value, so that the landowners would be compensated for the property taken from them. This never happened!

7. Some of these requirements which Brookhaven failed to meet were:

(a) Identify Pine Barrens credit uses of sufficient quantity and quality to accommodate at least 2-1/2 times the number of Pine Barrens Credits available for allocation within the Town at the time and include enough absorption capacity in receiving districts. An as-of-right definition set forth in the Plan so as to absorb all of the Pine Barrens credits on a one-to-one ratio of sending and receiving areas (which was to be available to all interested parties for the use of Pine Barrens Credits on land designated by the Town and to be approved by the Pine Barrens Commission).

(b) In addition, the Town of Brookhaven was supposed to use creative techniques to implement feasible and practicable mechanisms for the use of Pine

Barrens credits, and

(c) The Town of Brookhaven failed to provide a Map with designations of areas where mandatory density is allowed which assist community development in appropriate Towns and the use of Pine Barrens Credits. The publication of such a Map was to assist the Pine Barrens Commission in the use of the credits.

Receiving areas which must be in a one-to-one ratio in the sending areas, must be as-of-right in nature. Meaning that such increased density for use of Pine Barrens Credits is not subject to discretionary decision of any Town Board or other Agency of the Town.

(d) The Town also failed to allow Pine Barrens Credits to be redeemed for changes in land use or for an increase in intensity or density in its unnamed receiving district (See Section 6.5.3.3.1 of the Pine Barrens Commission Land Use Plan).

(e) The Town also failed to permit Pine Barrens Credits to be redeemed in accordance with specified incentive zoning plans.

8. The Pine Barrens credits were supposed to be as-of-right (Section 6;4:1:1 of the Land Use Plan) which meant that the Town was supposed to review them only ministerially and without discretion. This legal aspect of the credits was mandatorily established precisely to avoid the credits being subject to the changing tides and whims of different political administrations which is exactly what did not occur in the instant matter which is politically motivated.

9. As a matter of fact, the operating policy of the Town of Brookhaven for



political and other reasons has been to utterly fail to take the mandatory actions imposed upon it by NYS Law, the Pine Barrens Commission's Land Use Plan, and its own Town Code necessary to create and support the value and liquidity of these Pine Barrens Credits. In fact, repeatedly over the last ten years when fully compliant land use applications endeavored to properly utilize Pine Barrens Credits, the Town has affirmatively denied the applications.

10. The net effect of Brookhaven's failures, breaches, and unlawful affirmative acts is that the Town of Brookhaven has from the inception adopted a policy and practice which artificially and continuously depresses the value and liquidity of Pine Barrens Credits so much so that over 20 million dollars of value has been lost to owners of these credits. The Town of Brookhaven has and is flouting the eminent domain clauses of the NYS and Federal Constitutions and has stripped property owners and Pine Barrens Credit owners of their property and civil rights. The Town sterilized peoples property and was to pay them with Pine Barrens credits which was a form of promissory note. They then markedly reduced the value of said notes by their own refusal to act.

11. In the process, the Town of Brookhaven has dealt and is continuing to deal a blow to middle class and affordable housing. One of the uses of these credits are supposed to be to increase density in housing and residential developments which would allow for lower priced housing options. The Town of Brookhaven by not permitting this to occur is raising the cost and retail prices of its new housing stock and is violating the spirit and intent of providing

economically practicable housing to all classes of society.

12. The Town of Brookhaven, the Pine Barrens Commission and New York State have been repeatedly notified that the Town of Brookhaven has flouted its obligations and is acting in violation of the Pine Barrens Act. They have not cured the problem or otherwise responded to it and are in violation of the mandates of the Pine Barrens Act.

13. The purpose of the Pine Barrens Statute, Pine Barrens Rules and the Pine Commission Land Use Plan has never been accomplished. According to the Pine Barrens Commission's records, 97% of all redemptions are used to meet waste water standards of the Suffolk County Health Department for commercial establishments and not for the transfer of residential housing units.

14. The Commission Rules mandate that there be receiving areas on a ratio of one to one, one receiving area for each Pine Barrens Credit issued.

15. The Town has never submitted a Map showing receiving areas and that using the language, "all Residential A-1 and A-2 parcels are receiving areas", is not a designation. The Pine Barrens Requirements Act specifically refer to Town Law Section 261-A involving transfer of development rights. A Pine Barrens Credit is in fact a form of transferable development rights evidenced by a Certificate instead of a Deed for land. Section 261-A 2 (b) provides that sending and receiving districts be designated and mapped specifically and the procedure of transfer of development rights be specified. The Town of Brookhaven has never mapped receiving areas for Pine Barrens Credits, in violation of both Section 57 of

the Environmental Conservation Law and Section 261-A of the Town Law, and the Pine Barrens Commission Rules and Regulations.

16. Absent specificity, potential real estate developers cannot properly perform their project analyses and, therefore, do not contact the Pine Barrens Credit owners for purchase of their credits which would otherwise be useable in their prospective density enhanced projects. Markets cannot form because sellers do not know where their credits can be used and developers do not know precisely which properties can be developed with increased density.

### POINT I

**THE PINE BARRENS RECEIVING AREAS  
WERE STATUTORILY TO BE A MANDATORY  
USE WITH ONLY MINISTERIAL REVIEW AND  
DID NOT MEAN AND DOES NOT MEAN DISCRETIONARY**

17. The definition under Section 6.4.1.1 of the Pine Barrens Regulations specifically defines "as-of-right": means that redemption of Pine Barrens Credits would entitle a person to an increase in density in accordance with the plans and the Town's Building Department or Planning Board will approve the use of Pine Barrens Credits with no additional special permits of any kind required. Pine Barrens Credits should be redeemable within any Town for an as-of-right use in each respective Town and designated in the Pine Barrens Plan.

18. A Complaint was made by the Long Island Builders Institute on March 23, 2012, to the Attorney General's Office. Mr. Pally, Chief Executive Officer of

the Long Island Builders Institute specifying at least four projects which had applied for additional density and denied as discretionary, when it was a mandatory use. Mr. Pally goes on to state, attached as Exhibit "A", that the Town of Brookhaven must approve such projects when they are located on mandatory receiving areas, otherwise, the mandatory designation has no meaning and landowners within the core of the Pine Barrens, in essence have no equity. These are the words of Mr. Pally and he is absolutely correct. Mr. Pally as C.E.O of the Long Island Builders Institute is completely familiar with the lack of compliance and cooperation by the Town of Brookhaven with the Pine Barrens Plan.

19. Again on August 8, 2012, Mr. Pally wrote to the Attorney General of the lack of mandatory receiving areas in the Town of Brookhaven enclosing copies of letters from current Pine Barrens Credit Holders who are deeply concerned over the lack of receiving areas and the negative effect it has on the value of their credits. The Petitioner herein is the holder of almost half of the outstanding Pine Barrens Credits at the current time and has the same concerns over the lack of receiving areas and the negative effect it has on the value and liquidity of Petitioner's credits; exactly what was complained about by Mr. Pally in Exhibit "B".

20. The Town of Brookhaven had a duty to ensure the validity of the mandatory receiving areas required under the State Statute so that full and adequate consideration would be given to property owners whose land was taken,

intervene with quick dispatch. No intervention was had. A final sentence of their letter is of vast significance in this suit. The three agencies said: "We are deeply concerned that inaction by the Brookhaven Town Board may undercut the protection of drinking water and habitat in Long Island's ecosystem and raise unwarranted and unnecessary questions regarding the legal viability of the Pine Barrens Protection Act." It would seem that the Town of Brookhaven is deliberately and intentionally avoiding complying with the Pine Barrens Act, as all of these Agencies indicate. That letter is attached as Exhibit "C".

24. Continuing the same path, Mr. Pally again, wrote to the Attorney General on March 2, 2012, Exhibit "D", discussing a potential mandatory 15% credit redemption for all zoning changes which does not in any way change the nature of the redemption program or the changes needed for the one-one ratio mandatory redemption requirements since those credits would be totally dependent upon a change of zone and would not be an as-of-right use. He makes it clear, and this Petitioner wishes to do the same thing, that over the past 19 years, the original purpose of the statute was to move both the residential and commercial development out of the Pine Barrens Core into other areas and this has not been accomplished.

## **POINT II**

### **PINE BARRENS TRANSFERABLE DEVELOPMENT RIGHTS "PINE BARRENS CREDITS" IS A PROGRAM WHICH HAS BEEN A FAILURE**

### POINT III

#### **RESPONDENT, CENTRAL PINE BARRENS COMMISSION HAD A DUTY AND RESPONSIBILITY TO ENFORCE THE ACT AND TO UPHOLD THE VALUE OF THE PINE BARRENS CREDITS**

28. The Respondent, Central Pine Barrens Commission had a duty and responsibility to enforce the act and to uphold the value of the Pine Barrens Credit. As noted above, all of the letters from Long Island Builders Institute complaining about the lack of receiving areas and diminution of value of the Pine Barrens Credits and the lack of just compensation for the loss of land to owners of such credits, are all within the knowledge of the Central Pine Barrens Commission. The Commission had a duty and responsibility over the last 19 to 20 years to move and compel the Town of Brookhaven to comply with the State Statute. It has failed and continues to fail to do so.

29. The Pine Barrens Act itself, Chapter 57 of the Conservation Law, both Sections 57-0119 and 57-0135 clearly allow the Pine Barrens Commission to take the necessary judicial action to enforce the Pine Barrens Act and the Pine Barrens Commission Rules and Regulations. The fact that they have not done so after due notice on many occasions, lays the legal groundwork to invalidate the entire Pine Barrens Act since it is predicated upon giving just compensation to landowners for sterilizing their property and that compensation was initially made with paper certificates called Pine Barrens Credits, yet no receiving areas were designated, density applications were routinely denied as not mandatory or as-of-right but

discretionary with various governmental officials who routinely turned them down.

30. It is argued, that the Pine Barrens Commission has the right to sue and be sued under the Act and is charged with the duty to see that other municipalities complied with the Act, the Act specifically required other municipalities to fully cooperate with the Pine Barrens Commission. Obviously, there has not only been a violation of the actual act itself, but both the spirit, the intent, and the meaning of the act.

31. Although, the Pine Barrens Credits are not the same as Confederate money, they have value, but they probably have half the value and far less than what they should have in a competitive market where there is use and liquidity for the credits which does not exist today.

#### **POINT IV**

#### **THE TOWN'S OWN AFFIRMATIVE ACTIONS HAVE BEEN REDUCING THE POTENTIAL NUMBER OF PARCELS AVAILABLE TO BE RECEIVING SITES**

32. It is further apparent that the Town has been intentionally reducing the number of parcels that could be receiving parcels by way of a battery of steps including taking open space through clustering, A-1 and A-2 parcel re-zoning, straight condemnations, and the purchase of development rights from land including farm land and other techniques without ever replacing areas that have

been eliminated. The amount of land being taken by the Town is very significant, with a constant reduction in the pool of available receiving sites, and consequently the need for Pine Barrens credits has dropped significantly. The Town continues these devaluing affirmative acts through today.

33. Furthermore, the Town was directed under Sections 6.5.3.3.1 of the Pine Barrens Regulations and Section 6.5.3.3.2 and Section 6.5.3.4 to use a variety of methods to allow increases in density for receiving districts involving incentive zoning provisions under Section 261-B of the Town Law, Redemption Schedules, Tables of Density, changes in use as appropriate. The credits being redeemable with specific incentive zoning for each district designated with the potential of Pine Barrens credits to be used to exceed incentive zoning in a receiving district and to apply also to overlay districts, Special Permit Uses, or Special Exception Uses, the Town has deliberately chosen not to apply any of those recommended laws to increase the inventory of potential uses for Pine Barrens Credits, in any practicable way.

34. Additionally, the Town of Brookhaven in designating all A-1 and A-2 Residential Districts as receiving areas for Pine Barrens credits which is almost all the residential properties in Town, did not by definition create any receiving districts for industrial, commercial, and other uses, other than residential.

35. The Pine Barrens Act and the Regulations require that Pine Barrens credits can be used for residential, industrial, commercial or any zones within the Town as-of-right provided the credit owner to build something in one of the



appropriate zones.

36. Since there is no zone other than residential as a receiving area, persons who would have received Pine Barrens Credits for sterilization of an industrial or commercial site, would receive credits for the loss of an industrial site. For instance, a person whose industrial or commercial property has been taken by the Pine Barrens, would not have any related receiving areas to which he could apply Pine Barrens Credits should he wish to find another site and have increased density. By the Town of Brookhaven's conduct, only residential property would receive it, even though the Pine Barrens Act and Regulations specifically state that Pine Barrens Credit can be used for homes, square footage, industrial, commercial, or any other use. The Town has picked their own definition to again reduce the use, value, market and liquidity of Pine Barrens Credits. This self-created definition by its own terms artificially devalues Pine Barren Credits.

#### POINT V

#### **THE TOWN HAS RECENTLY APPROVED A NEW MULTI-FAMILY STATUTE TO MASK ITS PINE BARRENS CREDIT APPLICATION DEFICIENCIES**

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37. The new Multi-Family Residence Act in its preamble states:

**"The Town Board further recognizes the need to provide for the redemption of the Pine Barrens Credits for the Town to be in compliance with Article 57 of the New York State Environmental Conservation Law, the "Long Island Pine Barrens Protection Act".**

That preamble alone is an acknowledgment by the Town of Brookhaven that they

are not currently in compliance with the Pine Barrens Act, and more importantly, that they know it.

38. The multi-family ordinance is essentially a floating zone. There is no Map or designation upon which it fits and it is not an as-of-right use, and it is a floating zone where you must meet certain criteria before you can apply the MF Law to it, which criteria are quite severe and does nothing to designate a receiving area as called for by the Pine Barrens Act and is simply a charade. One of the requirements to obtain this zoning would be the mandatory payment of Pine Barrens Credits which they claim is pursuant to Section 85-87D of their own statute. However, their own statute does not govern the Pine Barrens Act. They specifically state, that this new code shall not be subject to Pine Barrens redemption pursuant to Section 85-87D. Nor does this in any way, create a receiving area since it requires a zoning change just to create this zone and there is no map or specific location in which it can be located and it is totally a self-serving sham with regard to the concept that they are going to use this in some way to provide receiving areas. The use of Pine Barrens Credits under this scenario is so attenuated and dependent on other conditions that it is rendered useless in its support of Pine Barrens Credits.

39. It should also be noted, upon information and belief, that since 1986, only 15 out of 86 applications for multi-family housing have ever been approved which includes condominiums and townhouses. Since 2005, only 5 applications were approved. All of these applications were on properties that were previously

been zoned for multi-family use. There are currently no new multi-family sites in Brookhaven Town to which you can apply Pine Barrens Credits. The above statistics were testified to on May 21, 2013 at a Town Board Meeting by the Town's own attorneys.

40. Although it is not the primary issue here, the Town has recently in its re-zoning applications extended the area, which neighborhood opposition would force a super-majority vote to pass. See attached Article, Exhibit "G". Formerly, in re-zoning applications, Petitions served by 20% of community members within a certain radius would trigger super-majority voting. Apparently by virtue of this article, Petitions from the "surrounding community" or surrounding area would trigger a majority plus one voting which extends the area by which protests can make zoning more difficult and empowers Civic Associations. It is indicative of the Town's approach and since most of the uses for which Pine Barrens Credits would be allowed, would require Town Board or Planning Board, this further limits the use of Pine Barrens Credits for those cases in which a re-zoning would become necessary, including the new aforementioned Multi-Family Code.

41. In fact, this lip service they pay to Pine Barrens Credits through their Multi-Family Code is really an illegal impact fee increasing the cost to a developer of building multi-family houses which will further deter them from being interested in such development, in the first place that is, if they could first find the site that meets the criteria which involves public transportation, being able to walk to stores, etc. All of this indicates an intention and policy and practice by

47. It would be apparent that one of the reasons for this interest in which councilmatic district had which possible receiving areas, although never designated, would be that many people do not want increased density of housing in their particular councilmatic district since it creates housing on smaller lots, and/or more residential density.

48. One of the intended political effects, is that no ward leader or councilmatic individual wants receiving areas in their district and there are reasons for that. Increased density, means houses on smaller lots, and more significantly, it also leads to lower priced homes, middle class and lower middle class housing, and in some cases work force housing which they give lip service to but do not actually want in their councilmatic district. That is the only reason they would be getting breakdowns by councilmatic districts where receiving areas might be.

49. When the Pine Barrens Act went into effect in 1995, there were far more potential receiving areas, most of which have now been converted into open space designated as parkland, taken in cluster zoning applications by the Town, all of which uses do not allow building of any of kind since they are now in a public trust and severely reduce any potential receiving areas that would have existed. The Town continues to absorb large pieces of vacant property. In addition, it has purchased development rights on numerous other properties especially farms which again would preclude any receiving areas. In addition to not designating areas, they have been actively reducing the potentially designated area via affirmative actions on their part.

53. Construction of both commercial and residential, subdivisions and projects are abandoned on a constant basis because of the yield and density requirements of the Brookhaven Town Ordinances. It was expected that Pine Barrens Credits would be used as a relief valve. Some of those density requirements, the marketability of a project which the Town Officials do not seem to take into consideration, to wit: we are in a capitalist society and the profit motive is the only reason people build things, is almost totally destroyed by not being able to take those few parcels which might be practicable with a greater density since the number of units per acre a builder can build, tells you whether or not it is a profitable project and because the Town will not designate receiving areas and politically control each and every land use to either the Planning Department or the Town Board, causing projects to be abandoned.

54. The result of such control by the Town and lack of as-of-right uses, devalues Pine Barrens Credits, as indicated above, was in fact, compensation for the sterilization and involuntary condemnation of property rights in the Pine Barrens Core.

55. Since the Act was adopted, applications for increased density to the Town of Brookhaven are repeatedly, arbitrarily and in a wholesale manner denied by the Town Board even though they had to be granted as-of-right pursuant to the Act.

56. Upon information and belief, since 1993, only 17 Pine Barrens Credits were utilized to create additional residential housing units by the Town.

**POINT VIII**  
**CARMANS RIVER**  
**WATER SHED DISTRICT**

57. The New York State Legislature has also just approved legislation adding 1100 acres to the Pine Barrens Core Preservation Area. See Exhibit "H" attached. Upon information and belief, is gearing to issue a plethora of Pine Barrens Credit Certificates in exchange for acquiring 1100 acres of A1 and A2 property. When this happens, it will literally flood the market with Pine Barrens Credit Certificates, as there are only approximately 220 certificates now. This will crush the value of the existing credits owned by Pluralis, LLC and will severely compound the aforementioned artificial devaluation of the remaining extant pool of Pine Barrens credits caused by Brookhaven.

58. When companies on the stock exchange issue new shares, they always receive tangible value in return for it, in most cases money which typically takes the form of the dollar share price that people must pay for the newly issued stock certificates, which the company then expects to deploy in its business operations, all of which is designed to give current shareholders more shareholder value.

59. Here the Town is "diluting the stock of Pine Barrens Certificates". They are "diluting the stock" of current shareholders without adding any value to current Pine Barrens Credits Shareholders-Owners". The Town is not providing money or capital or any other additional remuneration of any kind to the existing credits owners yet they are drastically diluting them. This is complete value

dilution, and in stock exchange terms would be called "a fraud against shareholders" and would give rise to various causes of action by the current shareholders against the Company and its Board.

60. The Town should not be permitted to persist in this scheme. The Town is printing money, holding it out as having one value as the law requires, and then affirmatively guts that value after the exchange for land is made. They are buying things with paper and are concomitantly and intentionally diluting that paper. Respondent should not be able to continue to issue and print Pine Barrens Certificates without simultaneously and specifically supporting the value of current certificate holders. New putative certificate holders will also be defrauded as they will see the value of their certificate plummet instantaneously as the Town continues to ignore the value safeguards established by the act and plan which the just compensation clauses of the New York State and Federal Constitutions mandate.

61. Brookhaven should first be compelled by this Court to demonstrate complete compliance with the act and plan and redress its prior wrongs to existing credit holders before it is ever able to new issue Pine Barrens Credits.

**WHEREFORE**, your deponent respectfully requests that:

(a) The Court herein should compel the Respondent, Town of Brookhaven, to specifically designate the required number of receiving areas throughout the

Town to maintain the 2.5 to 1 and one-to-one ratios called for by the Pine Barrens Commission, and

(b) That the Town of Brookhaven be compelled in a manner that is feasible and practicable to comply with all of the incentive zoning and other methods of market making for Pine Barrens Credit Holders discussed in the Pine Barrens Commission and the complaint, and

(c) That failure of compliance within 120 days, would require a Finding by the Court that the Pine Barrens Act has been materially violated and may be annulled with regard to the participation of and within the Town of Brookhaven for deliberate failure to comply with the State Law, and

(d) That a Finding that all properties that have not been actually and or adequately paid for, should be restored to the original owners to the extent possible, for failure of consideration, fraud in inducement, and for the flouting of condemnation statutes, and

(e) Any properties that were taken in the Core, should be returned to the rightful owners, if said owners returned to the Town the Pine Barrens Credits that they received, and

(f) A declaration that as a result of the lack of receiving areas for the Pine Barrens, that in fact, a taking had taken place as defined by the New York State and Federal Constitutions of the parties who were fee title owners in the Core of the Pine Barrens, together with the imposition of interest at the state statutory rate of 9%, and



(g) In the alternative, the Pine Barrens Commission should be compelled to bring suit against the Town of Brookhaven under the powers granted to it by the Act to compel compliance with the Act, and

(h) That the Town of Brookhaven be stayed from imposing Pine Barrens related requirements on pending or new land use applications, or for any purpose whatsoever, while they are in violation of the Act itself, and

(i) That the Town of Brookhaven should be precluded from enforcing those part of the Pine Barrens Regulations it likes while it is in default and in violation of the gravamen of the Pine Barrens Act itself that it does not find politically suitable, and

(j) That subdivisions that attempt to use density and yields in accordance with the Pine Barrens Act, should be approved as a ministerial act without any discretionary determinations being made by the Town to defeat same, and

(k) To compel the Town to come into compliance with the requirements of the Pine Barrens Act, and as a consequence thereof, be required to advertise and publicize this compliance in appropriate media to be determined by the Court so that the public will be aware of the availability of the receiving sites and uses of Pine Barrens Credits for development purposes, and

(l) That the Court rescind the application of the Pine Barrens Act with regard to the Town of Brookhaven and prevent the Pine Barrens Commission from working in conjunction with the Town of Brookhaven to defeat the intent of the statute unless all parties come into compliance, and

(m) That the Town and the Pine Barrens Commissions should not be allowed to attempt to enforce any of the rules or regulations involved in the Act and in the Regulations unless they themselves are in full compliance with the regulations, and

(n) A determination by the Court that the Town of Brookhaven has been deliberately and intentionally attempting to destroy the building and housing industry for political purposes, and in particular middle class and lower middle class housing, and is unfairly and unreasonably restricting the application of zoning laws to preclude construction that they are not happy with or avoiding areas in the Town which would create political problems, and

(o) For ancillary damages to be appropriately apportioned among Pine Barrens Credit Holders in a manner, proportion, and value to be determined by the Court in its sole discretion, and

(p) Legal and professional fees and costs expended for having to bring the action in an amount to be determined by the Court, and

(q) Declaration and determination that the Town should not obtain land through clustering, condemnation, voluntary purchase, the purchase of development rights, or the rezoning of A1 and A2 residential land, which land would otherwise be eligible for Pine Barrens Receiving areas, until such time as

(q-2) That the Court issue a Declaration that Brookhaven cannot issue any more Pine Barrens Credits until such time as Brookhaven first demonstrates full compliance with the Act and Plan and redresses its prior wrongs to existing credit holders.

the Town of Brookhaven becomes in compliance of the Act.”

(r) For such other and further relief as to the Court may seem just and proper.

Dated: June 5, 2013

**PLURALIS, LLC.**



JOSHUA S. FISHKIND, ~~MEMBER~~ manager



Signature (Rule 130-1.1-a)

**RICHARD I. SCHEYER, ESQ.**

6 / 18 / 13

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
In the Matter of the Application of

**PLURALIS, LLC.,**

Petitioner,

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

-against-

EDWARD P. ROMAINÉ, Supervisor,  
of the Town Board of the Town of  
Brookhaven, Steve Fiore-Rosenfield,  
Jane Bonner, Kathleen Walsh,  
Constance Kepert, Timothy Mazzei,  
and Daniel Panico, constituting of the  
Town Board of the Town of Brookhaven,  
and the TOWN BOARD, and  
VINCENT E. PASCALE, Chairman,  
TARA KAVANAGH, Deputy Chair,  
STEVEN J. WILUTIS, KAREN J. DUNNE,  
JOSEPH A. BETZ, PETER E. ZARCONE,  
M. CECILE FORTE, constituting of the  
PLANNING BOARD of the Town of Brookhaven,  
the PLANNING BOARD of the Town of Brookhaven,  
and the DEPARTMENT OF PLANNING,  
ENVIRONMENT AND LAND MANAGEMENT  
of the Town of Brookhaven, and DANIEL P.  
LOSQUADRO, Superintendent of Highways  
of the Town of Brookhaven, and the TOWN  
OF BROOKHAVEN, and Peter A. Scully,  
Edward Romaine, Steve Bellone, Sean M. Walter,  
and Anna E. Throne-Holst, as Members of and  
constituting the CENTRAL PINE BARRENS  
JOINT PLANNING AND POLICY COMMISSION,  
Created pursuant to the New York State Long Island  
Pine Barrens Protection Act of 1993 and codified  
in the New York Environmental Conservation Law  
Section 57,

Respondents.

-----X  
**S I R S :**

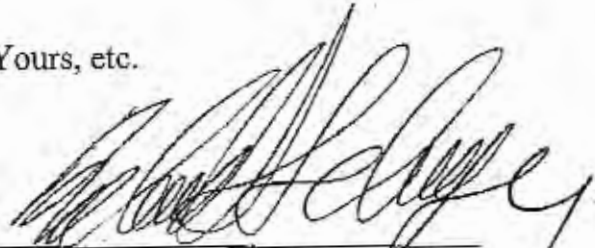
**PLEASE TAKE NOTICE** that on the Petition of JOSHUA S. FISHKIND, Manager of **PLURALIS, LLC.**, the Petitioners, in the above captioned matter, verified June 18, 2013, and the Affidavit of **RICHARD I. SCHEYER, ESQ.**, sworn to June 18, 2013, and upon all the proceedings heretofore had herein, an application will be made to this Court at a Special Term thereof, to be held at the Courthouse located at One Court Street, Riverhead, New York, on July 23, 2013, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an Order, pursuant to Article 78 of the CPLR, granting the relief demanded in the Petition, and that a verified Answer to the Petition, and supporting affidavits, if any, must be served at least five (5) days prior to the return date of said Petition.

**PLEASE TAKE FURTHER NOTICE** that pursuant to Subsection 7804 of the Civil Practice Law and Rules, you are directed to file with the Clerk of the Court your Answer, answering Affidavits, together with a certified copy of the Transcript of the record of the proceedings, together with the entire official file containing the application, exhibits and findings pertaining to the application herein which is the subject of this proceeding.

**SUFFOLK COUNTY** is designated as the place of trial on the basis of the location of the subject matter and the residence of the Petitioners and Respondents.

Dated: Nesconset, New York  
June 13, 2013

Yours, etc.

A handwritten signature in black ink, appearing to read 'Richard I. Scheyer', written over a horizontal line.

**RICHARD I. SCHEYER, ESQ.**  
Attorneys for Petitioners  
110 Lake Avenue So., Suite 46  
Nesconset, NY 11767  
(631) 265-8500



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

In the Matter of the Application of

**PLURALIS, LLC.,**

Petitioner,

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

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Pine Barrens Protection Act of 1993 and codified  
in the New York Environmental Conservation Law  
Section 57,

ATTORNEY'S AFFIDAVIT  
IN SUPPORT  
OF PETITION

Index No.



Respondents.

STATE OF NEW YORK)

SS.:

COUNTY OF SUFFOLK)

**RICHARD I. SCHEYER**, being duly sworn, deposes and says:

1. That I am the attorney for the Petitioners above captioned, and make this Affidavit in support of the relief requested in the Petition submitted herewith.

2. I have read the Petition of JOSHUA S. FISHKIND, Manager of **PLURALIS, LLC.**, the Petitioner herein and the supporting Affidavits and Exhibits submitted herewith.

3. The Petitioner is the owner of approximately 95 Pine Barrens Credits issued by the Long Island Central Pine Barrens Commission in accordance with Chapter 57 of the Environmental Conservation Law

4. From the Petition, it is obvious that the Town of Brookhaven which was under mandate by the statute cited to provide a list of receiving areas on a one-to-one ratio of one receiving area for every Pine Barrens Credit issued. The Town of Brookhaven never made such a designation, other than to say, all Residential A-1 and A-2 Lots could be deemed receiving areas.

5. It is very significant to note that the letter, Exhibit "A" of Mr. Pally, indicating that the use of Pine Barrens Credits is supposed to be a matter of right, not a matter of administrative discretion which is often applied for political purposes rather than for the economic purpose for which Pine Barrens Credits were designed.

6. Section 6.5.2 of the Pine Barrens Regulations reads: establishment and receiving capacity planned by each Town. "Each Town shall within three months of the adoption of the Plan (parenthetically in 1995) submit a Plan to the Commission demonstrating the manner in which Town will identify Pine Barrens Credits, uses of sufficient quantity and quality within the Town to accommodate at least 2-1/2 times the number of Pine Barrens Credits available for use within the Town at that time". The Town is in direct specific and unquestionable violation of that provision of the Regulations of the Pine Barrens Commission which is part of the Environmental Conservation Law of the State of New York.

7. The Town has never submitted a Plan demonstrating identification of Pine Barrens uses, but more importantly, in that statement, it is not just the quantity, it is the quality. They are supposed to be designating lots of equal use, not on top of a hill, or in a sump, or in a place with no road frontage. They are supposed to providing quality uses equal to the property that has been sterilized within the Town. They never made an allocation of either quantity or quality which places this again in the political arena.

8. As indicated in the Petition, the Town has had a continuous operating policy since the Pine Barrens Act was put in effect, to acquire land by virtue of development rights, cluster gifting, open space purchases, and has instituted other statutes and ordinances, each of which and all of which continually eliminate the pool of potential receiving areas.

9. The Town seems to be totally ignoring the requirements of Pine Barrens

Act which they themselves voted to adopt. The representative of the Town, at that time, Emily Pines, Town Attorney, did vote with the Supervisor to adopt this code. So far, they have done the one thing you should never do with legislation which is similar to the IRS singling out conservatives in their application for tax exemptions. Is to pick one group of people and literally prejudice against them. In this case, Pine Barren Credit Holders have been severely prejudiced by the Town. Since, if the Town designated, maintained and publicized quality sites upon which an applicant can apply the credits for developments, or sell to someone who wishes to do that, the value of the credits would be much greater.

10. To satisfy the United States Constitution, and not to make this a taking case for public use, the theory was purchase land by virtue of issuing Pine Barrens Credits, i.e. the price was not being paid in money. The price that was being paid was in this certificate called Pine Barrens Credits. Someone receiving the credit had the right to understand and expect that that credit would be worth what the value of the land was worth when they took it from him. Or, he could transfer the density rights to another piece of like or similar property of equal quality in which he could now build with a much greater density than he could otherwise have under the current law, because of these Pine Barrens Credits.

11. What the Town of Brookhaven has apparently done, is use the Pine Barrens Act, to your deponent's personal knowledge, on many occasions as a sword for means of punishment to somebody who wishes to develop any type of property by creating circumstances where everyone who makes an application to

the Town must comply with the statutes of the Pine Barrens Act. Moreover, the Town wishes constantly to receive Pine Barrens Credits but it does not comply with the law themselves. Rather than a protection for the community and the environment, they are using it as a means to stop development for political purposes. It is a complete evisceration of the purpose of the Pine Barrens Act which was created for a good purpose and which now is being used for deleterious purpose.

12. The letters from the Chief Executive Officer of the Long Island Builders Institute, Exhibits "A", "B", "C", "D" and "E", speak for themselves. The only remedy left essentially are the Courts. This action in the nature of a mandamus to compel public officials to do their job, to wit: the Town Board to designate receiving sites, the Planning Department in treating applications for increased density as an as-of-right use, rather than making it discretionary. To have the Environmental Department not being involved in Pine Barrens Credits which was not really a function that was intended by the Act, and to create forms of incentive zoning and other tools described in the Act that are both feasible and practicable which were recommended to the Town and which were never adopted.

13. The Town is always raising the issue of ripeness. Whenever the Town is uncomfortable with its substantive defenses, the attack almost always comes to the point of view of procedure, rather than merit. They would have a very hard time defending this matter on the merits. One of the issues they generally raise is Statute of Limitations. A mandamus is to compel a public official to do something

they are obligated to do. In a mandamus to compel an act, the statute does not run in such cases. In reaching this decision, the Courts are mindful that the exhaustion of remedies doctrine has no application where the purpose of the judicial proceeding is to compel the performance of a legal duty, see Milnarik v. Rogers, 298 A.D. 2d 637, 638-639 [2002] citing Matter of Friends Academy v. Superintendent of Div. Of Bldg. Of Town of Oyster Bay, 134 A.D. 2d 497, 498, lv denied 71 N.Y. 2d 806).

14. It had further been held on the issue of ripeness as to whether or not mandamus is the appropriate remedy and was discussed in the case First Time Design v. The Town of Brookhaven Supreme Court of Suffolk County, Index No. 04-08272, before Justice Sandra L. Sgroi, decided April 27, 2004, a case in which the Brookhaven DEP refused to grant a Road Opening Permit alleging that the applicant needed a Wetlands Permit Approval and a Pile Plan Approval to get a Road Opening Permit. In that case the Town contested the fact of whether the matter was ripe or whether or not mandamus was an appropriate remedy. The Court found:

"Where a proceeding is brought in the nature of mandamus to compel administrative action, there is no requirement that there be a final order or determination. (Friends Academy v. Superintendent of the Division of Building, Town of Oyster Bay, 134 A.D. 2d 497, 521 N.Y.S. 2d 280 (2nd Dept. 1987); Von Aken v. Town of Roxbury, 211 A.D. 2d 863, 621 N.Y.S. 2d 204 (3rd Dept. (1995), lv. to app. den. 85 N.Y.2d 812, 631 N.Y.S. 2d 288 (1995). "What has been somewhat lost from view is this function of mandamus to compel acts which officials are duty-bound to perform, regardless of

whether they may exercise their discretion in doing so" (Klostermann v. Cuomo, 61 N.Y. 2d 525, 475 N.Y.S. 2d 247 (1984); See, also, 2433 Knapp Street Restaurant Bar, Inc. v. Department of Consumer Affairs of the City of New York, 150 A.D. 2d 464, 543 N.Y.S. 2d 911 (2nd Dept. 1989).

15. When a Petitioner is seeking to have a set of circumstances reviewed and decided, where they are harmed by municipal action and are asking the municipality to comply with their own ordinances, mandamus would be available. When there is a question of a determination of interference with Petitioner's Constitutional and Civil Rights, the one thing the Town cannot do with applications of this type, is nothing at all.

16. The law is clear that mandamus comes in two different functions: One is to review a proceeding which is not the instance here, examining administrative actions involving exercises of discretion, and the second is a mandamus to compel, such as the instant matter. Essentially, mandamus to compel an agency or officer to perform a ministerial act is one in which the Court examines whether a Petitioner possesses a legal right to the relief sought, and whether or not the agency or officer had the corresponding non-discretionary duty to grant the relief. See Van Aken, et al. v. Town of Roxbury, et al., and Klostermann v. Cuomo, supra.

17. Apparently, Long Island Builders Institute and other bodies such as the Pine Barrens Society have attempted to compel the Town and the Pine Barrens Commission to comply with their own legal requirements but cannot get a determination. The remedy there is through the Court System to compel the

Respondents to do its job and enforce its own statutes. The Pine Barrens Act itself reiterates the doctrine that the Town Board, the Planning Board, the Building Department and other agencies of the Town are not bestowed with discretion in Pine Barren Credit Use but are obligated to issue the necessary Permits as ministerial acts using the Pine Barrens to increase density. The relief in the nature of a mandamus is always appropriate when a Town or Government fails to act.

18. There does not have to be a final Order or a determination of some type before a mandamus can be brought. In the case of Sayville Browning Properties v. Town of Brookhaven Building and Planning Department, Index No. 04-00460, Supreme Court, Suffolk County, decided on 4/15/04 by the Honorable Sandra L. Sgroi was a set of circumstances where the Town of Brookhaven was delaying the processing the site plan for a Marriot Hotel with substantial undue delay and numerous submissions having been made as a result of inaction on behalf of the Town, the applicant was forced to bring a mandamus action. The delay was even less than the delay involved in the subject case. The Court found that:

**"Where a proceeding is brought in the nature of mandamus to compel administrative action, there is no requirement that there be a final order or determination. (Friends Academy v. Superintendent of the Division of Building, Town of Oyster Bay, 134 A.D. 2d 497, 521 N.Y.S. 2d 280 (2nd Dept. 1987); Von Aken v. Town of Roxbury, 211 A.D. 2d 863, 621 N.Y.S. 2d 204 (3rd Dept. 1995), 1v to app. den. 85 N.Y. 2d 812, 631 N.Y.S. 2d 288 (1995). "What has been somewhat lost from view is this function of mandamus to compel acts which officials are duty-bound to perform, regardless of whether they may**

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19. As indicated by Exhibit "A", the Town on at least four occasions and probably many more which can found in the course of this suit, this Department is trying to take a non-discretionary function and make it discretionary. Their job is to review applications ministerially and in situations where they refuse to act and attempt to bring discretion into being as indicated in the cases above, the members of the Town, in that case, the Planning Board have exceeded any authority they may have had.

20. The Act itself states that actions of this type can continue until the last Pine Barrens Credits have been redeemed and since there are hundreds of unredeemed credits, this action is ripe to be heard, by the acts very language..

21. Section 57-0121 (f) of the Environmental Conservation Law provides:

"Identification of sending Districts to Core Preservation and compatible growth areas and receiving districts in compatible growth areas and outside the Central Pine Barrens area for the purpose of providing for the transfer of development rights and values to further the preservation and development goals of the land use plan and methodologies and standards for procedural equity and appropriate values in establishing rights and values consistent with the provisions of section two hundred sixty-one-a of the Town Law."

Obviously, the Town has not adopted the methods necessary to protect the

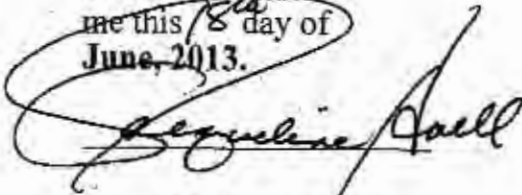


appropriate property values provided for in the Act.


**WHEREFORE**, your deponent requests that the Court grant the relief requested in the Petition.

  
RICHARD I. SCHEYER

Sworn to before  
me this 8<sup>th</sup> day of  
June, 2013.



JACQUELINE HOELL  
Notary Public, State of New York  
No. 01HO4826427  
Qualified in Suffolk County  
Commission Expires Sept. 30, 20 14

  
Signature (Rule 130-1.1-a)  
RICHARD I. SCHEYER, ESQ.  
5/18/13