

ORDINANCE NO. 2012 -12

ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BARNEGAT, COUNTY OF OCEAN, STATE OF NEW JERSEY, REZONING A CERTAIN OVERLAY ZONE FROM THE RC ZONE TO THE RH ZONE

WHEREAS, the Township of Barnegat, County of Ocean, State of New Jersey (the "Township") has previously entered into a three-party agreement with the New Jersey Pinelands Commission ("Pinelands") and Mark Madison, LLC ("Mark Madison"); and

WHEREAS, the three-party agreement (hereinafter referred to as the "Agreement") is dated on or about September 13, 2004; and

WHEREAS, the Agreement provides, in part, that a substantial portion of property located in the Ocean Acres section of the Township will be forever protected from development by placing said properties in the Residential Conservation Zone ("RC Zone") as set forth in Section 55-48 of the Township Land Use Ordinance; and

WHEREAS, the Agreement also provides in part that certain portions of Ocean Acres shall be designated for reasonable residential development purposes, and other delineated purposes, as set forth in the "RH – High Zone" as set forth in Section 55-47 of the Township Land Use Ordinance ("RH Zone"); and

WHEREAS, the Agreement provided that a portion of the property designated for the RC Zone would be the subject of continued environmental studies in order to determine whether or not that approximate 135 lot area should be in fact protected because of the presence of threatened or endangered plant and animal species in and around that area (hereinafter designated as the buffer ("overlay area")); and

WHEREAS, the Agreement provided in part that Mark Madison would be given an opportunity to provide to Pinelands additional threatened and endangered (both plan

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and animal) species survey work in order to demonstrate that the overlay area did not constitute habitat critical for the survival of the local population of the Northern Pine Snake; and

WHEREAS, the Agreement provided, in part, at paragraph 30:

Should the Pinelands Commission determine, based upon the submission of new information generated by the additional survey work discussed in paragraph 28 above, that the area described in paragraph 17 above or a designated portion thereof does not constitute habitat critical for the survival of the local population of Northern Pine Snakes found in Ocean Acres, Barnegat agrees to properly amend its zoning ordinances to remove this area or the designated portion thereof from the RC Zone and place it within the RH Zone and to submit such ordinance to the Pinelands Commission for certification pursuant to N.J.A.C. 7:50-3.4 (emphasis underscored).

WHEREAS, the Township has received numerous letters from representatives of the Pinelands, including a letter dated December 11, 2009 from John Stokes, Executive Director of the Pinelands, which provides, after reviewing the survey work prepared by Mark Madison in conformance with the Agreement, that the Pinelands' "staff concluded that the overlay area did not constitute critical habitat for Northern Pine Snakes"; and

WHEREAS, in addition Mr. Stokes indicated in a letter dated December 11th that:

The Commission staff reviewed the survey results, which were negative, i.e., no Northern Pine Snakes were found. In a written determination dated October 2, 2009, developed based upon staffs' analysis of the survey results, comments regarding such results submitted by six individuals knowledgeable about snake surveys and comments submitted by the public, staff concluded that the overlay area did not constitute critical habitat for Northern Pine Snakes.

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WHEREAS, the Township has considered suggestions and arguments raised by various interested parties as to whether the Township should comply with its contractual and zoning obligation and re-zone the overlay area from the RC Zone to the RH Zone; and

WHEREAS, despite said Agreement the Township failed to rezone the subject property resulting in the Township being named as a defendant in certain litigation filed in the Superior Court of New Jersey entitled Mark Madison, LLC, *et als.*, vs. Township of Barnegat, *et als.*, bearing Docket No. OCN-L-1962-10; and

WHEREAS, the Township has determined that even if it prevails with respect to said litigation, the Township would be obligated to return the sum of \$200,000.00, which it previously received in accordance with said Agreement; and

WHEREAS, in addition to refunding said monies, if the Township prevails in this litigation, there is no rational basis for the rezoning which occurred in 2004, based upon the findings and opinion of the New Jersey Pinelands Commission that the subject property does not constitute critical habitat for Northern Pine Snakes, and as a result, the zoning of same would revert to its prior classification permitting the same development in any event; and

WHEREAS, if that occurs, the Township would lose the benefits of the 2004 ordinance which provides small, individual property owners, the benefits of Pinelands Transfer Credits'; and

WHEREAS, the Township believes that the adoption of an amended zoning ordinance reclassifying the area in the overlay zone to the RH Zone is necessary and appropriate, not only to meet its contractual obligations with Pinelands and Mark Madison, but also to ensure that the Township ordinances remain in compliance with the certification

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required from the Pinelands Commission, so as to not risk decertification by Pinelands of the Township zoning ordinances:

NOW THEREFORE, BE IT ORDAINED this 19th day of March, 2012, by the Township Committee of the Township of Barnegat, County of Ocean, State of New Jersey, as follows:

SECTION I. In accordance with the aforementioned Agreement and recommendation and direction from the Pinelands Commission the Township re-zones the overlay area, a specific detailed list of the lot and blocks within the overlay area is attached hereto and made a part hereof and labeled "Schedule A", from the RC Zone (Section 55-48) to the RH Zone (Section 55-47) of the Township Land Use Ordinance.

SECTION II. Severability. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

SECTION III. Repealer. Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION IV. Effective Date. This Ordinance shall take effect upon publication in an official newspaper of the Township, as required by and in conformance with law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced and passed by the Township Committee of Barnegat on first reading at meeting held on the