

**Northern Sites / Hampton West Estates / Nemeth - Core**  
**900-308-5-59**

3/9/94 - Commission approved application.

4/13/94 - Commission adopted a written decision and findings of fact.

Excerpts from minutes of these two meetings, plus the written decision, follow.

*Summary of March 9, 1994 Commission Meeting  
Riverhead County Center*

*Present: Commissioner Gaffney, Commissioner Haynes, Commissioner Thiele, Ms. Filmanski(alternate for Commissioner Janoski), Jessie Garcia(alternate for Commissioner LaMura), Mr. Corwin(director), Mr. Rigano(general counsel), Ms. Roth(general counsel).*

3. **Core Preservation Area:**

• **Northern Sites Application/J. Nemeth**

**Summary:** Mr. Nemeth was identified as present. Doris Roth read the section of the central pine barrens statute pertaining to the provisions that are required to be met for a hardship case in the core preservation area. Commissioner Thiele requested that general counsel apply the facts of the application to the statute provisions for a hardship in the core area. This was provided by Mr. Rigano with supporting comment provided by Mr. Corwin. Mr. Cowen, (Director of NYSDEC) provided comment that the case for a hardship in the core should be based on environmental hardship and not economic hardship. Commissioner Thiele concurred with Mr. Cowen's statement and added there was no environmentally beneficial use for this property since it was disturbed and due to its proximity to more densely developed parcels. Mr. Schwenk (Long Island Builder's Institute) stated he agreed with Mr. Cowen and Commissioner Thiele's statements and expressed the opinion on behalf of the Long Island Builder's Institute that the application should be granted. Commissioner Haynes made a motion to grant the application for relief for this project from the provisions of the statute that was seconded by Commissioner Thiele. The motion was carried unanimously. A written decision and findings will be prepared by general counsel.

*..section 24-1-124*

**Central Pine Barrens  
Joint Planning and Policy Commission**

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Robert J. Gaffney, *Chairman*  
John LaMura, *Vice Chairman*  
Ulric S. Haynes, *Member*  
Joseph F. Janoski, *Member*  
Fred W. Thiele, Jr., *Member*

P.O. Box 587  
3525 Sunrise Highway, 2nd Floor  
Great River, New York 11739

**Minutes**

**Meeting April 13, 1994**

**Riverhead County Center 2:00 p.m.**

*Present: George Gatta (for Commissioner Gaffney, Jessie Garcia and Emily Pines (for Commissioner LaMura), Ray Cowen (for Commissioner Haynes), Brenda Filmanski (for Commissioner Janoski), Ray Corwin (Executive Director), Lorraine Trezza (Administrative Assistant) and Doris Roth and Jim Rigano (General Counsel).*

**2. Core Preservation Area**

- Adoption of Northern Sites written decision

The decision was presented by General Counsel

***A motion was made by Commissioner Thiele and seconded by Mr. Cowen to adopt the written decision on the Northern Sites application. The motion was carried unanimously.***

DECISION AND FINDINGS OF FACT  
CORE PRESERVATION AREA HARDSHIP EXEMPTION PERMIT

Applicant: Joseph G. Nemeth, Jr.  
Northern Sites

Property Location: Sixteen-acre parcel at the terminus of Hamilton Avenue, Westhampton, New York, west of the Gabreski Airport and adjacent to and southwest of Hampton West Estates, Town of Southampton, County of Suffolk.

Description of Proposed Development:

The applicant is proposing to construct a clustered subdivision consisting of fourteen single-family homes on property zoned 1-acre residential. The property had previously been used as a trailer park from 1960 to 1974. Portions of the infrastructure which serviced the fifty trailers remain in place on the property.

Date of Public Hearing Before the Commission: December 8, 1993

Decision of the Central Pine Barrens  
Joint Policy and Planning Commission:

By resolution dated March 9, 1994, the Commission voted to grant the application for a hardship exemption based upon the findings of fact set forth herein.

Findings of Fact:

The subject property is located in the Core Preservation Area of the Central Pine Barrens as such term is defined in Article 57 of the Environmental Conservation Law ("Article 57").

Pursuant to §57-0121(8) of Article 57, no development is permitted in the Central Pine Barrens prior to the approval and implementation of a comprehensive land use plan. Prior to the adoption of this land use plan, an application for a hardship permit exempting a Core Preservation Area property owner from the development prohibition in § 57-0121(8) may be submitted to the Commission pursuant to §57-0121(10).

Section 57-0212(10) sets forth specific standards which must be met before the Commission may grant a hardship exemption in the Core Preservation Area. The applicant must satisfy one of two prongs by establishing either: (a) an extraordinary hardship as distinguished from mere inconvenience if he is precluded from developing the property or (b) a compelling public need for the proposed development.

In order to establish an extraordinary hardship, the applicant must demonstrate that the subject property has no beneficial use if used for its present use or if used as permitted as of right under Article 57. The lack of beneficial use, furthermore, must be due to the existing unique circumstances of the subject property which: (a) do not apply to or affect other property in the immediate vicinity; (b) relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; or (c) are not the result of any action or inaction by the applicant.

In addition, prior to granting an application to develop in the Core Preservation Area, the Commission must determine that the approval:

- a. Will not be detrimental to other property in the area;
- b. Will not increase the risk of fire;
- c. Will not endanger public safety;
- d. Will not substantially impair the resources of the Core Preservation Area;
- e. Will not be inconsistent with Article 57; and
- f. Is the minimum relief necessary to relieve the extraordinary hardship.

The subject property was formerly part of a large tract acquired by the U.S. Air Force in order to provide housing for servicemen stationed at the adjacent air base and their families. From approximately 1960 to 1974, there were fifty trailers on the subject parcel. The trailers have been removed from the site but individual concrete trailer pads remain. The remainder of the Air Force tract, adjacent to the subject parcel on its northeast, consists of 160 single and two-family homes which are now in private ownership. This subdivision, known as Hampton West Estates, is densely developed on lots of varying sizes, some as small as 5,000 square feet.

The applicant acquired the subject parcel in 1987 at which time it was zoned for 5-acre residential development. The applicant applied to the Town Board of the Town of Southampton for a change of zone to 1-acre residential. The Town Board, as lead agency, required the applicant to submit a draft environmental impact statement ("DEIS") because the property is

located in the Aquifer Protection Overlay District of the Town of Southampton.

The areas of relevant concern identified and addressed in the DEIS and its addendum include: 1) groundwater quality; 2) threatened or endangered species of animals or plants; and 3) habitats of such endangered or threatened species. The DEIS and its addendum state that the resulting nitrogen loading from the proposed development is well within the guidelines of the Suffolk County Department of Health Services. Those documents further state that the subject parcel is not a Dwarf Pine Barrens area and additionally that it is not expected that any Federal or New York State listed endangered, threatened or special concern faunal species breed on the parcel. It is not expected that nesting by the northern harrier has occurred or that the buckmoth will mate or pupate on the parcel. The DEIS and its addendum conclude that the site is previously disturbed, that it contains roads and water mains and that no endangered or rare species exist on the site, possibly due to the extent of prior disturbance.

On January 9, 1990, the Suffolk County Pine Barrens Review Commission approved the proposed development, noting that the proposal is unique because of the prior disturbance and existing infrastructure. On February 8, 1990, the Suffolk County Planning Commission approved the proposal, with the condition that the number of dwelling units not exceed 14, that they be constructed on the disturbed portion of the site and that 25% of the units be set aside for "affordable" housing purposes. On March 21, 1991, based upon the DEIS and its addendum, the Southampton Town Board, as lead agency, issued a negative declaration pursuant to SEQRA on the change of zone application. On March 26, 1991, the Southampton Town Board granted the applicant's request for a change of zone in order to permit the construction of 14 single-family dwellings. The Southampton Planning Board granted Sketch Plan approved for the 14-lot subdivision on July 1, 1993. There has been no substantial change in the project since the issuance of the negative declaration and the change of zone approval.

The DEIS and its addendum have been submitted to the Commission and are a part of the record in this application. Based upon the environmental review materials and the evidence and testimony provided during the public hearing and on other material in the record, the Commission finds that the subject parcel is substantially disturbed as a result of its prior use

for fourteen years as a trailer park. Specifically, there are approximately 2,600 linear feet of asphalt roadway, numerous concrete trailer pads, abandoned water mains, electric junction boxes; water hook-ups and telephone poles. Approximately 50-75% of the site had been cleared to build the trailer park and related infrastructure. Part of the existing infrastructure is useable and will be incorporated into the proposed development.

Due to the extent and nature of the prior disturbance of the parcel, the Commission finds that the parcel is unique and has no beneficial use if used for its present use (abandoned trailer park) or as authorized by ECL Article 57. The Commission further finds that if the provisions of Article 57 are literally enforced, the existing unique circumstance of the subject parcel will result in an extraordinary hardship to the applicant. The Commission finds that the applicant has established the following:

1. The subject parcel's unique circumstances do not apply to other parcels in the immediate vicinity. The adjoining remainder of the former U. S. Air Force tract is now privately owned and is improved with approximately 160 single and two-family homes which are occupied. There is no abandoned infrastructure in this adjacent subdivision (Hampton West Estates) and there is no other parcel in the immediate vicinity in the same condition as the subject parcel.
2. The unique circumstances of the subject parcel are unrelated to the personal situation of the applicant. The parcel was disturbed when the applicant acquired it and the disturbance is a specific characteristic of the parcel.
3. The unique circumstances of the parcel are not due to any action or inaction of the applicant. The applicant did not become the owner of any contiguous property after June 1, 1993. The unique circumstances are a result of the use of the parcel as a trailer park from 1960 to 1974 and its subsequent abandonment.

The applicant has met his burden of demonstrating an extraordinary hardship by strict enforcement of Article 57. The Commission further determines:

1. The granting of this application will not be detrimental or injurious to surrounding property. The adjacent property to the northeast is already

densely improved with 160 dwellings. The addition of 14 more single-family dwellings on 1-acre plots will not have a deleterious impact on the neighboring subdivision. There are sufficient water resources to service all the needs of the proposed development, including fire prevention. In view of the substantial pre-existing disturbance of the property, the proposed development will not substantially impair the resources of the Core Preservation Area. Based upon the environmental review, it appears that any impairment of natural resources has already occurred in connection with the prior use of the site and that there will be no additional impairment if this development proceeds.

2. The general purpose of Article 57 is to protect the groundwater and to preserve endangered or threatened species and their habitats. The DEIS and its addendum identified and addressed these areas of concern. It was concluded that the proposed development would result in no impact to the groundwater and that, due to the substantial disturbance of the property, no rare or endangered species exist on the site. The subject property is disturbed and the proposed development is not expected to have an additional impact on the central pine barrens.
3. Finally, the Commission finds that the relief granted is the minimum necessary to avoid the extraordinary hardship. The Commission's TDR program has not yet been developed or implemented, nor have receiving districts outside the Core Preservation Area been designated. There is no other relief available under Article 57 for the applicant.

The application is granted.

