

# REQUEST FOR JUDICIAL INTERVENTION

UCS-840 (7/2012)

SUPREME COURT, COUNTY OF SUFFOLK

Index No: 16-02657 Date Index Issued: 3, 11, 16

**CAPTION:** Enter the complete case caption. Do not use et al or et ano. If more space is required, attach a caption rider sheet.

IN THE MATTER OF THE APPLICATION OF  
HENRY R. DITTMER, AS ADMINISTRATOR  
OF THE ESTATE OF RICHARD C. DITTMER,  
FOR AN ORDER PURSUANT TO ARTICLE 78  
OF THE CIVIL PRACTICE LAW AND RULES,

R.J.I. FEE PAID  
Judith A. Pascale  
Suffolk County Clerk

-against-

-Plaintiff(s)/Petitioner(s)-

JOHN PAVACIC, EDWARD ROMAIN, STEVEN BELLONE, SEAN M. WALTER, AND  
ANNA E. THRONE-HOLST, 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 NEW YORK  
STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE STATE OF NEW YORK,

-Defendant(s)/Respondent(s)-

## NATURE OF ACTION OR PROCEEDING:

Check ONE box only and specify where indicated.

### MATRIMONIAL

☐ Contested

**NOTE:** For all Matrimonial actions where the parties have children under the age of 18, complete and attach the **MATRIMONIAL RJI Addendum**.  
For Uncontested Matrimonial actions, use RJI form UD-13.

### TORTS

☐ Asbestos

☐ Breast Implant

☐ Environmental: \_\_\_\_\_

(specify)

☐ Medical, Dental, or Podiatric Malpractice

☐ Motor Vehicle

☐ Products Liability: \_\_\_\_\_

(specify)

☐ Other Negligence: \_\_\_\_\_

(specify)

☐ Other Professional Malpractice: \_\_\_\_\_

(specify)

☐ Other Tort: \_\_\_\_\_

(specify)

### OTHER MATTERS

☐ Certificate of Incorporation/Dissolution [see NOTE under Commercial]

☐ Emergency Medical Treatment

☐ Habeas Corpus

☐ Local Court Appeal

☐ Mechanic's Lien

☐ Name Change

☐ Pistol Permit Revocation Hearing

☐ Sale or Finance of Religious/Not-for-Profit Property

☐ Other: \_\_\_\_\_

(specify)

### COMMERCIAL

☐ Business Entity (including corporations, partnerships, LLCs, etc.)

☐ Contract

☐ Insurance (where insurer is a party, except arbitration)

☐ UCC (including sales, negotiable instruments)

☐ Other Commercial: \_\_\_\_\_

(specify)

**NOTE:** For Commercial Division assignment requests [22 NYCRR § 202.70(d)], complete and attach the **COMMERCIAL DIV RJI Addendum**.

**REAL PROPERTY:** How many properties does the application include? \_\_\_\_\_

☐ Condomnation

☐ Mortgage Foreclosure (specify): \_\_\_\_\_

☐ Residential

☐ Commercial

Property Address: \_\_\_\_\_

**NOTE:** For Mortgage Foreclosure actions involving a one- to four-family, owner-occupied, residential property, or an owner-occupied condominium, complete and attach the **FORECLOSURE RJI Addendum**.

☐ Tax Certiorari - Section: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_

☐ Tax Foreclosure

☐ Other Real Property: \_\_\_\_\_

(specify)

### SPECIAL PROCEEDINGS

☐ CPLR Article 75 (Arbitration) [see NOTE under Commercial]

☒ CPLR Article 78 (Body or Officer)

☐ Election Law

☐ MHL Article 9.60 (Kendra's Law)

☐ MHL Article 10 (Sex Offender Confinement-Initial)

☐ MHL Article 10 (Sex Offender Confinement-Review)

☐ MHL Article 81 (Guardianship)

☐ Other Mental Hygiene: \_\_\_\_\_

(specify)

☐ Other Special Proceeding: \_\_\_\_\_

## STATUS OF ACTION OR PROCEEDING:

Answer YES or NO for EVERY question AND enter additional information where indicated.

Has a summons and complaint or summons w/notice been filed?

Has a summons and complaint or summons w/notice been served?

Is this action/proceeding being filed post-judgment?

YES NO

☐ ☐ If yes, date filed: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

☐ ☐ If yes, date served: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

☐ ☐ If yes, judgment date: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

For Court Clerk Use Only:

IAS Entry Date

Judge Assigned

RJI Date

Received

MAR 14 2016

Clifford B. ...

**NATURE OF JUDICIAL INTERVENTION:**

Check ONE box only AND enter additional information where indicated.

- ☐ Infant's Compromise  
☐ Note of Issue and/or Certificate of Readiness  
☐ Notice of Medical, Dental, or Podiatric Malpractice  
☐ Notice of Motion  
☒ Notice of Petition  
☐ Order to Show Cause  
☐ Other Ex Parte Application  
☐ Poor Person Application  
☐ Request for Preliminary Conference  
☐ Residential Mortgage Foreclosure Settlement Conference  
☐ Writ of Habeas Corpus  
☐ Other (specify): \_\_\_\_\_

Date Issue Joined: \_\_\_\_/\_\_\_\_/\_\_\_\_

Relief Sought: \_\_\_\_\_

Return Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Relief Sought: \_\_\_\_\_

Return Date: 4 / 13 / 16

Relief Sought: \_\_\_\_\_

Return Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Relief Sought: \_\_\_\_\_

**RELATED CASES:**

List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases.  
 If additional space is required, complete and attach the RJJ Addendum. If none, leave blank.

Case Title	Index/Case No.	Court	Judge (if assigned)	Relationship to Instant Case

**PARTIES:**

For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in space provided.  
 If additional space is required, complete and attach the RJJ Addendum.

Un-Rep	Parties:	Attorneys and/or Unrepresented Litigants:	Issue Joined (Y/N):	Insurance Carrier(s):
	List parties in caption order and indicate party role(s) (e.g. defendant; 3rd-party plaintiff).	Provide attorney name, firm name, business address, phone number and e-mail address of all attorneys that have appeared in the case. For unrepresented litigants, provide address, phone number and e-mail address.		
<input type="checkbox"/>	Name: HENRY R. DITTMER Role(s): PETITIONER	RICHARD I. SCHEYER, ESQ. 110 LAKE AVENUE SO., SUITE 46 NESCONSET, N.Y. 11767 (631) 265-8500 (631) 265-8558	<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: CENTRAL PINE BARRENS JOINT PLANNING & Role(s): POLICY COMMISSION RESPONDENTS	JOHN MILAZZO, ESQ. 4060 SUNRISE HIGHWAY OAKDALE, N.Y. 11769	<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: 		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: 		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: 		<input type="checkbox"/> YES <input type="checkbox"/> NO	

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: 3 / 9 / 16

SIGNATURE

1539196  
 ATTORNEY REGISTRATION NUMBER

RICHARD I. SCHEYER, ESQ.  
 PRINT OR TYPE NAME

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X

In the Matter of the Application of

**HENRY R. DITTMER, As Administrator  
of the Estate of Richard C. Dittmer,**

Petitioner,

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

-against-

**JOHN PAVACIC, EDWARD ROMAINE,  
STEVEN BELLONE, SEAN M. WALTER,  
AND ANNA E. THRONE-HOLST, 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.

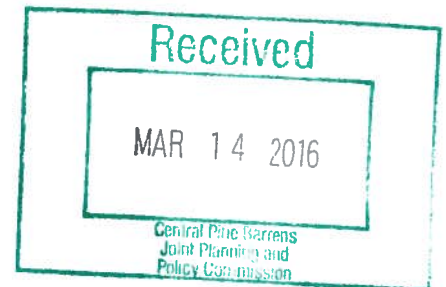
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**S I R S :**

**PLEASE TAKE NOTICE** that on the Petition of **HENRY R. DITTMER**, the Petitioner, in the above captioned matter, verified **March 7, 2016**, and the Affidavit of **RICHARD I. SCHEYER, ESQ.**, sworn to **March 9, 2016**, 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 **April 13, 2016**, at 9:30 o'clock in

**NOTICE OF  
PETITION**

Index No. **16-02657**

**Filed 3/11/16**



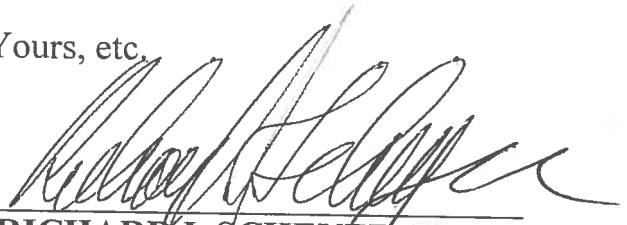
the forenoon of that day or as soon thereafter as counsel can be heard for an Order, pursuant to Article 78 of the CPLR, granting the relief demanded in the Petition, and that a verified Answer to the Petition, and supporting affidavits, if any, must be served at least five (5) days prior to the return 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  
March 9, 2016

Yours, etc.



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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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

**VERIFIED PETITION**

**HENRY R. DITTMER, As Administrator  
of the Estate of Richard C. Dittmer,**

Petitioner,

Index No. 16-02657

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

Filed 3/11/16

-against-

**JOHN PAVACIC, EDWARD ROMAINÉ,  
STEVEN BELLONE, SEAN M. WALTER,  
AND ANNA E. THRONE-HOLST, in their  
capacity as Members of the Central Pine  
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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.  
-----X

**S I R S:**

The undersigned, **HENRY R. DITTMER, Administrator of the Estate of  
Richard C. Dittmer,** the Petitioner, by his attorney, **RICHARD I. SCHEYER,  
ESQ.,** complaining of the Respondents, alleges:

1. The Petitioner, **HENRY R. DITTMER,** is the owner of a parcel of  
property of approximately 100 x 100 feet in size located in the Central Pines

Barrens Core, Town of Brookhaven. Attached hereto as Exhibit "A" is a survey of the property.

2. The Respondents constituting the **CENTRAL PINE BARRENS JOINT PLANNING AND POLICY COMMISSION** exists pursuant to the **NEW YORK LONG ISLAND PINE BARRENS ACT** passed in July of 1993 codified in the New York Environmental Conservation Law as Article 57 which has been amended several times. The goal of the statute was to preserve vast ecological and hydrological resources, this act inter alia sterilized 50,000 acres known as the Core Preservation Area and 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, the Respondents herein, which is comprised of the Suffolk County Executive and the Town Supervisors of Brookhaven, Riverhead, and Southampton Towns and one member appointed by the Governor, which is JOHN PAVACIC. 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 Maritime Reserve Act (hereinafter referred to as the "Pine Barrens Act", or for the purposes of this Complaint, "the Act". The plan was adopted in 1995.

3. The Respondent, NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION is a Governmental Entity created by the State of New York, and the Respondent, STATE OF NEW YORK, is the Agency that created the Respondent.

## **THE GENESIS OF PINE BARRENS CERTIFICATES**

4. The Pine Barrens Plan essentially had two parts each of critical importance. The first part involved the preservation sterilization of 100,000 acres of land. The second was compensation that the landowners and other citizens whose land was sterilized were entitled to receive NYS and Federal Constitutional requirements that any taking of private property be consummated with the property owners receiving just compensation for the land and the property they lost.

5. The just compensation component was the central theme of the legislative process which led to the Act, and consequently, the Land Use Plan adopted by the Legislature; and the Commission specifically indicates the manner and method by which landowners were required to be compensated.

6. 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 substitute properties of equal and fair market value for the land that they lost. Instead they created and provided these landowners with transferable development rights called "Pine Barrens Credits".

7. In short, if a person had a building lot that was taken, the person was provided with a Certificate which entitled them to have that building right re-directed to another parcel usually in the same Town that the original one came from to increase that parcel's density by one housing unit. In this manner, the State and Town could preserve property if felt had environmental significance, without having to spend cash dollars.

8. The Petitioner owned this property before the Pine Barrens was created, to wit: 1971. The Petitioner herein went to the Pine Barrens Clearing House, a subdivision of the Central Pine Barrens Joint Planning and Policy Commission which did an interpretation of this property, which interpretation was that the property would be entitled to 0.10 of a Pine Barrens Credits. A copy of that interpretation is attached as Exhibit "B".

9. The property value is far in excess of the .10 Credit to be issued, and was not accepted by the Petitioner herein. An application was then made to the Pine Barrens Commission for a Hardship Waiver to allow the property to be developed for a single-family residential home.

10. The Petitioner herein then made this application to the Pine Barrens Commission and a Hearing was held on December 16, 2015 before the Commission. At which time, the Petitioner, through his attorney submitted documentary, evidence, and testimony to support the application together with numerous precedents.

11. After the Hearing on December 16, 2015, the matter was put aside for a decision. It was heard again by the Commissioner at a Meeting, February 17, 2016 in which the Commission by unanimous vote denied the application in a six page Decision which is attached hereto as Exhibit "C". This Article 78 Proceeding is being commenced to challenge the Decision of the Commission as arbitrary, capricious, and not in keeping with the evidence and incorrect in many of its conclusions which will reviewed below.



## ARGUMENT

12. The Commission was aware that this parcel of property is 300 feet from the Compatible Growth Area of the Pine Barrens and essentially is just inside the Pine Barrens Core and had it been 300 feet closer, it would be exempt from this entire argument.

13. The applicant since they could not obtain Pine Barrens Credits anywhere near the value of the property, decided that it would be more appropriate to construct a single-family residential home on this site.

14. The subject Decision itself is replete with errors which we will discuss before we go into precedent. The Decision, Exhibit "C", stated that there are approximately 55 of the old parcels in the filed Map of Flower City in which this parcel is located. That is not true. There are approximately 7 parcels that were developed on the Map, and only 7 vacant parcels left. One of which is a Core Road Frontage Exempt Parcel which is buildable. Therefore, the Eighth "WHEREAS", of their Decision is absolutely untrue. No evidence was ever submitted by way of documents or cases at the Hearing that justified this position. The Minutes of the Hearing are attached as Exhibit "D", and will be referred to if necessary.

15. They acknowledge that this is a Type II Action for a Residential Home which is Exempt from SEQRA. They acknowledge that we submitted exhibits and materials, copies of which will be attached in their Return, but part of which was in Book Form and is a verbatim statement what was testified to the Board and cases

were submitted which are in the Cases portion to be discussed.

16. According to the Pine Barrens Act, the Pine Barrens has to find that there is a Hardship involved in the property for it to be granted. The hardship here is simple, without the Pine Barrens Commission the property cannot be used at all. In fact, it has been sterilized and Clearing House wishes to pay almost nothing for the property which in the argument of the applicant which we discussed also, would constitute a taking under the United States Constitution which says, you cannot take property from individuals without just compensation. If you cannot build on it, and they are only offering the equivalent of approximately \$6,000.00, the equivalent of taking the property without any compensation.

17. Respondents also indicated that any grant would not result in a substantial impairment of the resources of the Pine Barrens Area. As discussed in all the cases below that have been granted, it is hard to believe that one 100 x 100 parcel of land is going to have a substantial impact on the resources of an area of over one hundred thousand acres. It was never alleged at this Hearing that there are any endangered species or anything of that nature on site. It is basically a wooded upland parcel of property untouched and only 153 feet from the Main Road on a Paper Street on a filed Map.

18. It is further important to note, that this parcel is held in single and separate ownership. A copy of the single and search from the Title Company is attached as Exhibit "E", and under the ordinances of the Town of Brookhaven where the property is located, any parcels held in single and separate ownership that

is at least 6,000 feet and 62 feet in width, are buildable as a matter of right provided they are built within the terms of what is known as the Small Lot Ordinance, Section 85-883 (D) (2) and (D) (3A) having to do with setbacks and house size. Therefore, if it were not in the Pine Barrens, this would be a buildable lot as a matter-of-right. There is no indication in the record or evidence on either side, that this is a substantial impairment of the resources of the Pine Barrens.

19. In their statement, in the Eighth "WHEREAS", they find that the project does not affect any other properties in the immediate area since the only one in the immediate area is a developed residential home.

20. The next "WHEREAS", is absolutely untrue. They indicate that the property is not unique and the provisions of the section apply in effect to at least 50 other privately owned undeveloped properties in a Study Area, to the immediate vicinity of the project site. As indicated above, in Exhibit "F". There are six lots in the Radius developed with single-family residences, and ten others immediately outside the radius, all marked in yellow. The 50 lots they talk about are all owned by County of Suffolk or one of its Agencies. The attached Ownership List lists 51 parcels, of which 39 lots are owned by the County of Suffolk in one form or another and cannot be built on. One of the lots is the subject parcel. The remaining eleven lots, the majority of which are too small to build on and are only 40 feet. Lots 3, 12, 30, 37, 44, are the only privately owned parcels which are only 40 x 100 and are not necessarily buildable. Therefore, the 50 lots they refer to in their Decision as creating a precedent, is totally untrue. There are actually no lots that would be

buildable and as indicated above, almost 39 of these lots are owned by the County, and the majority of the remaining lots are too small to build on. The applicant's parcel here is the only 100 x 100 parcel that is buildable within this radius.

21. They further state, that the development of any of these parcels would result in significant adverse environmental impact on the resources of the Central Pine Barrens affecting the groundwater, ecological resources, existing habitat, publicly owned open space, and would create an adverse precedent and may help to induce other types of development in the area. The issue of precedent will be discussed in the next section of this Petition, but there is no specific evidence that was put in the record other than conclusions that the development of this parcel of property would have any affect on the ecological resources. There was no expert testimony presented. In fact, there was no testimony presented on those issues, other than conclusions put in the decision.

22. They then say that in addressing this, the application states, the project does not arise out of a personal situation of the applicant. It does not, in the extent, he inherited this piece of property which has been in the family since 1971, and the Pine Barrens did not exist until 1993. This does not arise out of any situation that was created by the applicant, it was created by having the Pine Barrens super-imposed over this piece of property which was owned by this family since 1971.

23. The Court is aware that all rights and privileges having to do with property ownership runs with the land, not the individual which is clearly set forth by the Supreme Court of the United States of America in the case of Palazzola v. Rhode Island, et al., 533 U.S. 606, 121 S.Ct. 2448, 150 L.Ed.2d 592 (2001) and reinforced in Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning

Agency, 122 S.Ct. 1465, 152 L.Ed 2d 517 (U.S.,2002), that it does not matter how you acquire property before, or what you knew when you acquired it. The rights that run with property, run with it regardless of who the ownership is, and the implication here, that there is any personal situation cannot be true. This property was a single and separate parcel prior to 1954.

24. They then in the next "WHEREAS", again, did not tell the truth. Indicating the property is not unique because it is similar to 50 other privately owned, substandard, undeveloped parcels in this map. We have already discussed it twice, there are not 50 parcels. There are 14, 7 are developed and 7 are vacant and not developed. One of them is exempt for being Core Frontage. That position and conclusion of the Board is simply not accurate nor is it backed up by anything in the record.

25. The Eighth "WHEREAS", again, indicate there are 50 other parcels with similar characteristics in the area which would be affected by the project and that has never been proven but does not have to be true. See our Exhibit "F".

26. They further indicate this would be precedent setting in nature which would induce additional development in the area which the public has desired to preserve. That is also not true since they have already created the precedent and have granted numerous applications to the immediate area which we will discuss in the precedent section below. Many of which cases have been submitted to the Commission at the time of the Hearing which they chose to ignore.

27. The Decision indicates that this application may adversely affect already preserved public land, is not explained on the record. Again, it is a conclusion. The entire Decision of six pages, is completely rife with conclusions and conclusory

decisions are not competent evidence upon which you can grant or deny anything.

28. Respondents again, state in the twenty-seventh "WHEREAS", Page 5, that the hardship would result in an adverse precedent as it had potential to result in additional development in the Core Preservation area. As will be indicated below, there already is substantial development in the Core Preservation Area. The patchwork basis granted by this Board without rhyme or reason over a period of years for lots as small as 40 feet and subdivisions in 10 acre zoning.

29. They indicate that we have not established the existence of single and separate hardship, see Exhibit "E". There is no evidence to indicate there was not.

30. They indicate that building this one house on one 100 x 100 lot would affect the ecosystem of the Pine Barrens which almost a million acres. It is an argument which borders on nonsensical. They say the waiver exceeds the minimum relief necessary to eliminate the hardship. The waiver requested does not exceed anything. It can only be used to build one house. What is the excessive nature of it. They are not asking to subdivide it or build multiple homes. One house, on a single and separately owned 1/4 of an acre.

31. The fact that it is on an unopened, undeveloped road, 150 feet from a main road, is not precedent setting as they said it is, as discussed below, numerous grants by them on unimproved roads and some that have no roads at all.

32. The entire decision is basically a large conclusion, rife with errors, that say, that in their opinion it does not meet the spirit and intent of the Pine Barrens. However, this is a statutory approach, and they are the ones who discussed the issue of precedent. Precedent was submitted to them at great length at the Hearing.

## **PRECEDENT**

33. In the submission, copy attached, in Book Form, which was submitted to the Board together with arguments. In said Book submitted to the Respondents, discusses numerous cases, with copies of the decisions. All part of this exhibit. One of which is the application of **Rita Kristiansen** which was construction of a single-family dwelling for a single-family house on .2/10 of an acre or 8,700 square feet in an A-10 Residential Zone, bordered on one side by County land and contained fresh water wetlands associated with the Peconic River on the site. Again, it was a Type II Action. It needed a Fresh Water Wetlands Permit. It needed a variance from Brookhaven Town Zoning Board of Appeals. It needed a Health Department Permit and a WSR River Permit. They were found to meet the Hardship Criteria, yet our parcel does not. There they found it would not have any impairment of the resources of the Core Preservation Area and the application was granted. Attached is an aerial photograph showing the property as development and the case, Exhibit "G".

34. Attached is the application of **Dolores Blake** a subdivision of 5.2 acres into three lots in an A-2 Zone, each of which would be substandard, found to be an unlisted application under SEQRA and was granted a clustered subdivision. Exhibit "H" (a) and (b).

35. In the application of **Katherine Foster Screven** also attached .9/10 of a parcel acre parcel in an A5 Zoning District for the building of a single-family home and was granted. Exhibit "I" (a) and (b).

36. The application of **Evan Goldstein** who wished to build on 3/4 of an acre on a parcel that was surrounded on all sides by a nature preserve and publicly

owned property with no residential property within at least a mile of the site. There was no development in the area and yet it was given an extraordinary hardship exemption to build. Upon information and belief, it is currently improved with a house. They found that would not result in any substantial impairment of the Core and would have no negative impact and was not inconsistent with the objectives and spirit of the Core, and found exactly the reverse in our parcel which has a house 150 feet from an improved road and a paper street. Exhibit "J" (a) and (b).

37. **The Woodstock Company** case is a more interesting case is only 40 x 100 lot which is classified 0.9/10 of an acre parcel in an A-5 Residential Zone. They were going to allocate a 1/10 of a credit and it was appealed. They determined that parcel was entitled to a full Pine Barrens Credit which is currently worth in today's market approximately \$75,000.00. A copy of the survey and aerial photograph are attached as Exhibit "K" 40 x 100).

38. All of those cases were submitted to the Board which made no comment about them and chose to ignore them. In addition, Exhibit "G", a copy of the subject parcel an aerial photograph showing that the street Yaphank Middle Island Road was improved with houses on both sides and shows the proximity of the site to the main road.

39. Applications for single-family homes are Type II and automatically do not need SEQRA.

40. In the application of **Osleeb** for a single-family home hardship was granted without a Hearing and without a review and was given a negative deck. A copy of that decision is attached as Exhibit "L".

41. A letter from the Pine Barrens Credit Clearing House for a single-family



dwelling on a lot was deemed non-development because it was a single and separate parcel and was granted and now has a house on it, is attached as Exhibit "L".

42. In the Marshall case and attached herein again. Marshall is on a paper street, such as our project, surrounded on three sides by Nature Preserve, the Water Authority and the County. There are only two houses within 500 feet in a vacant area. Core Hardship was granted for a single-family residential home. See Exhibit "M" (a) and (b).

43. In the Woodstock case, a 8,700 square foot lot in an A-5 Zone which received one-full Pine Barrens Credit by the Commission overruling the Clearing House. Exhibit "K".

44. In the Goldstein case which we cited before where they found that there was no beneficial use of the property and the owner had done nothing to affect the environment of change circumstances in an A-5 Zoning, the application was granted and a copy of the survey is attached hereto showing this is simply a parcel of vacant land. Exhibit "J".

45. An up-to-date single and separate search was submitted to the Town on May 13, 2015.

46. The Pine Barrens Core Exemption List, although, this site is not on it, at least one site on this road is on that list, and is only approximately 200 feet away. The purpose of the list was to show parcels in substantially developed area. They have by innuendo classified this as substantially developed area.

47. There was much discussion at the Hearing that this matter should be settled and a settlement discussion was had. However, it is interesting to note, that Mr. Freleng, on Page 63, indicates that there are half-a-dozen parcels that are within

153 feet to be developed. However, the decision of the Commission was that there were 50 parcels. This testimony contradicts their own findings on Page 62 of Exhibit "D".

48. There was discussed further in the record that several members were willing to settle the matter for a Pine Barrens Credit before it was adjourned, but no decision was made. Obviously, the Board did not agree with the proposed settlement of the Riverhead Supervisor.

### **CONCLUSION**

49. That this 100 x 100 single and separate lot in the Pine Barrens Core was a buildable lot for at least 20 or 25 years before the Pine Barrens came into existence, held by one family, falls under all the provisions of the Brookhaven Town Ordinance and will be an as-of-right buildable parcel, were it not for the Pine Barrens.

50. It is clearly a hardship, the Clearing House offered almost nothing for the property. If the applicant cannot get paid for his property, he should be able to build it. Otherwise, under our Constitution, this would constitute a taking. You can either use or get paid for it. The Pine Barrens does not want to neither. Even though, it was suggested at the Hearing, that this should get a full credit, which would have been at least \$75,000.00 as compared to the approximate \$6,500.00 that the Commission had offered.

51. That much of their decision evolved around creating precedent. We have submitted at least eight cases together with copies and survey maps which are part of the submission to the Board of the cases that they granted in far more extreme circumstances. 40 foot lots on no road and other grants on unimproved

roads, subdivision parcels, parcels on a much more restricted zoning area such as creating substandard lots under an acre in 5 acre zoning. Their decisions are all over the place. However, the fact that they simply did not tell the truth in the decision, claiming this would create a precedent for 50 lots, when there are no 50 improved lots in the area. No more than 7 at best. They are not of the same size and shape as this, leaves one to believe that their decision is being made purely on the issue of conclusions. There was no competent evidence in the record submitted by the Pine Barrens.

52. In essence, the Pine Barrens Act is taking away a building parcel of land from the applicant who will not let him build on it and will not pay him for it. It is the argument of the Petitioner based on all the evidence, that this represents a taking.

**WHEREFORE**, your deponent respectfully requests:

(a) That the Court should reverse the Pine Barrens Decision and grant the application, and

(b) A finding that the Decision of the Commission constitutes a taking under the U.S. Constitution, and

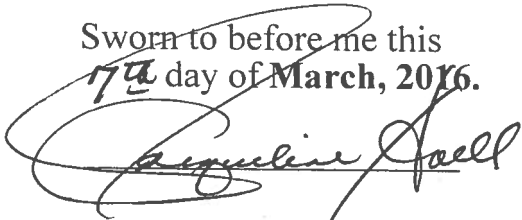
( c) Violation of the Fourteenth Amendment of the Constitution Equal Protection Law, and

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

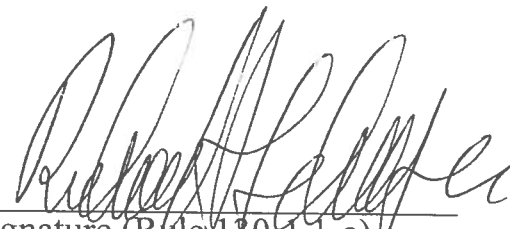
Dated: February 23, 2016.

  
HENRY R. DITTMER, Administrator  
of the Estate of Richard C. Dittmer

Sworn to before me this  
17<sup>th</sup> day of March, 2016.



JACQUELINE HOELL  
Notary Public, State of New York  
No. 01HO4826427  
Qualified in Suffolk County  
Commission Expires Sept. 30, 2018

  
Signature (Rule 130-1.1-a)  
RICHARD I. SCHEYER, ESQ.  
3/7/16

VERIFICATION

STATE OF NEW YORK)

SS.:

COUNTY OF SUFFOLK)

**HENRY R. DITTMER**, being duly sworn, deposes and says:

That I am the Petitioner in the within action.

I have read the foregoing Petition and know the contents thereof; the same is true to my own knowledge, except as to those matters stated therein to be alleged upon information and belief, and as to those matters, I believe it to be true.

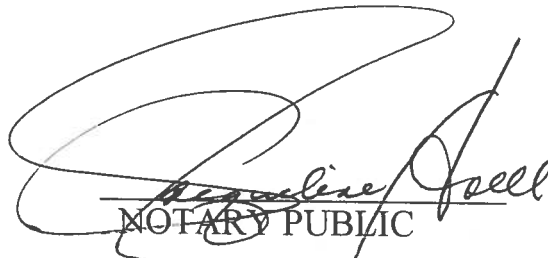
  
HENRY R. DITTMER

STATE OF NEW YORK )

SS.:

COUNTY OF SUFFOLK)

On **March 7<sup>th</sup> 2016**, before me, the undersigned, a notary public in and for said State, personally appeared **HENRY R. DITTMER** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
NOTARY PUBLIC

JACQUELINE HOELL  
Notary Public, State of New York  
No. 01HO4826427  
Qualified in Suffolk County  
Commission Expires Sept. 30, 2018

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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

**ATTORNEY'S AFFIDAVIT  
IN SUPPORT  
OF PETITION**

**HENRY R. DITTMER, As Administrator  
of the Estate of Richard C. Dittmer,**

Index #

Petitioner,

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

-against-

**JOHN PAVACIC, EDWARD ROMAINÉ,  
STEVEN BELLONE, SEAN M. WALTER,  
AND ANNA E. THRONE-HOLST, 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.

-----X  
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 Petitioner in the above captioned matter, and make this Affidavit in support of the relief requested in the Petition submitted herewith.

2. I read the Petition of Mr. Dittmer and it is true and accurate to the best of my belief.

### **PRECEDENT**

3. The Pine Barrens in its Decision indicated that granting this application would be precedent setting in nature and would induce additional development. This is clearly not true. The Pine Barrens itself has already created a precedent. The Pine Barrens has granted numerous applications in the immediate area, Many of which cases were submitted to the Commission which they chose to ignore. A list starting on Page of 11 of the Petition under Precedent. Almost all of which cases, are far more severely requests than are being made here.

4. There are eight cases and there are many more instances in which the Pine Barrens Commission has granted hardship exemptions on parcels smaller, parcels not on main roads, parcels with no roads, and greater violations of underlying zoning, remembering that this is a single and separate lot that complies with the requirements of the Brookhaven Town Code and is a building lot under their code at the present time and was at the time the Pine Barrens was created.

5. This property is 100 x 100 foot parcel or a 1/4 of an acre and complies with the minimum requirements of Brookhaven which requires 60 x 100 single and separate to be buildable.

6. As testified, the Commission approved at least all of the other houses shown on the Radius Map, Exhibit "F", and Aerial Photograph, Exhibit "G", and has approved all of the parcels listed in the Petition which was submitted to the

Court. Administrative Boards in general, are not allowed to ignore their own precedent which violates the doctrine of the Court as well as the Equal Protection Clause of the Constitution.

## POINT I

### **ADMINISTRATIVE BOARDS SUCH AS THE PINE BARRENS COMMISSION MUST FOLLOW THEIR OWN PRECEDENT UNLESS THEY CAN SUBSTANTIALLY DISTINGUISH THE FACTS**

7. Effective prior decisions before a Board must be followed or they must be differentiated. The Courts have held that failing to set forth the reasons for reaching different results on similar facts is arbitrary and capricious. See Robert T. Knight, et al. v. Amelkin, et al., 68 N.Y. 2d 975, 510 N.Y.S. 2d 550, Nov., 1986; Matter of Charles A. Field Delivery Service, Inc. v. Roberts, 491 N.Y.S. 2d 601, App. Div., 3<sup>rd</sup> Dept. (1985); Matter of Larkin Co. v. Schwab, 242 N.Y. 330 (1926); Matter of Pesek v. Hitchcock, 156 A.D. 2d 6909, 549 N.Y.S. 2d 164.

8. The above cases have all held, that a Board or Commission cannot ignore its own precedent unless they should show the subject application is substantially different, out of many of the prior applications that were granted.

9. In the case of Josephine Aliperti, Supreme Court decided on December 26, 2006, A.D. 2d NY Slip Op 10060 against the Zoning Board of Appeals of the Town of Brookhaven. The Supreme Court gave an absolute decision. The Supreme Court held, that a Board's finding of a different results on substantial similar applications, was arbitrary and capricious and would not remit the matter



back to the Zoning Board but reversed their decision. Annulled the Board's determination and granted the Petition. That decision was in June of 2005. .

10. It is also important to note, that the Appellate Court, decisions are more significant and more binding than any Supreme Court decision. The Appellate Division, Second Department, in the Matter of Campo Grandchildren Trust v. Zoning Board of the Town of Brookhaven, 39 A.D. 3d 746 in a decision dated April 17, 2007, in which the Appellate Division went into a long discussion of the issue of precedence and ordered that a Judgment of the Zoning Board of Appeals of the Town of Brookhaven be reversed and annulled and was sent back as approved, reversing the Supreme Court as well.

11. The finding of the Appellate Division was that the Zoning Board of Appeals failed to provide a rational explanation to reach a different result on substantially similar facts than it did on prior determinations. Decisions of a Board cannot be sustained if they lack rational basis and deemed to be arbitrary and capricious when it reaches a different result with essentially the same facts as prior cases.

12. It has long been held, that Boards in reaching a decision, different than any prior decisions they made, have the responsibility to substantially differentiate the applications. It should be noted in this case, that 100 x 100 foot lots are similar in size and shape to the many of the improved lots on the map.

13. In the case of Lucas v. Board of Appeals of Village of Mamaroneck 57 A.D. 3d 784, 870 N.Y.S. 2d 78, 2008 N.Y. Slip Op. 10003, N.Y.A.D. 2 Dept.

December 16, 2008 (No 2007-01034, 2007-05026, 10960/06). The Appellate Division in 2008 rejected reasons cited by the Village in attempting to differentiate the property of the developer's application from previously similar applications.

14. The Appellate Division reiterated in the case of Bassano v. Town of Carmel Zoning Bd. Of Appeals, 56 A.D. 3d 665, 868 N.Y.S. 2d 677 (2d Dep't 2008), that the decision of the Board was arbitrary and capricious and failed to explain the denial and essentially the same facts as three prior determinations and why such variance would produce an undesirable change in the character of the neighborhood.

15. More significantly, the Supreme Court of Suffolk County, on March 28, 2012, rendered a decision in the case of Toni Seaman v. The Zoning Board of Appeals of the Town of Islip is a decision by Justice Rebolini indicating that there were two cases that created precedent, basically, the same factual circumstances which constituted precedent by which the municipal authority was bound, the absence of a rational basis otherwise for varying their result. Granting the Petition of the applicant and annulling the determination of the Zoning Board of Appeals of the Town of Islip. This matter is in keeping with all the other cases cited herein.

16. As indicated earlier, the Lower Court decisions that allowed the municipality in extreme circumstances, especially where the land was primarily vacant, did not follow earlier decisions, all of which cases were overruled.

Enclosed in this discussion, are primarily Appellate cases, your author knows of no Appellate Division Decisions which allow Zoning Boards to ignore its prior decisions in property sites that are substantially similar.

17. The prevailing law in New York State which as stated above, Municipal Boards are bound to follow their own precedent, unless they can differentiate an application being substantially dissimilar to the one being proposed as precedent. Here, almost every case discussed is substantially similar.

18. The cases submitted to the Board by Petitioner show numerous instances of grants in the immediate area of similar cites which decisions are apparently without rhyme or reason.

## **POINT II**

### **EQUAL PROTECTION**

19. The actions of the Commission in this case is quintessential equal protection violation and the Plaintiff herein is being singled out and being treated differently than others, and by taking a building lot and denying it essentially any Pine Barrens Credit in payment and sterilizing the parcel in an area where it clearly indicates that it is developed with many houses and is extremely similar to numerous other grants. The actions of the Commission should be considered a violation of the Fourteenth Amendment to the United States Constitution Equal Protection Law and may be a taking under the Fifth Amendment to the Constitution by taking their property without just compensation. They are saying, it cannot be used, and Respondents are only offering an equivalent of three or four

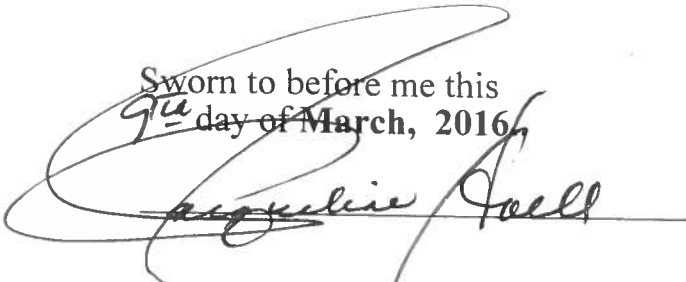
thousand dollars for this building lot which is silly in today's world.

20. The Equal Protection Clause of the Fourteenth Amendment is “essentially a direction that all persons similarly situated be treated alike.” LaTrieste Rest. v. Vill. of Port Chester, 188 F. 3d 65, 69 (2d Cir. 1999) (quoting City of Cleburne v. Cleburne Living Ctr. Inc., 473 U.S. 432, 439, 105 S. Ct. 3249, 87 L.Ed. 2d 313 (1985)). In the land use context, a plaintiff can show an equal protection violation either under the selective enforcement standard, or the class-of-one standard articulated by the United States Supreme Court in Village of Willowbrook v. Olech, 528 U.S. 562, 120 S.Ct. 1073, 145 L. Ed 2d 1060 (2000). Courts vary as to whether selective enforcement and class-of-one constitute separate causes of action, or simply different ways of pleading a general equal protection cause of action. See, e.g. Fortress Bible Church v. Feiner, F.Supp 2d ....., 2010 WL 3199876, at \*102 (S.D.N.Y. Aug. 12, 2010) (addressing selective enforcement and class-of-one as alternative ways to plead a land use equal protection claim); Sloup v. Loeffler, No. 05-CV-1766, 2008 WL 3978208, at \* 14 (E.D.N.Y. Aug. 21, 2008) (addressing the selective enforcement and class-of-claims as two different equal protection causes of action).


21. In this case, there is both selective enforcement, and the applicant here, would be classified as class-of-one and complies with both standards.

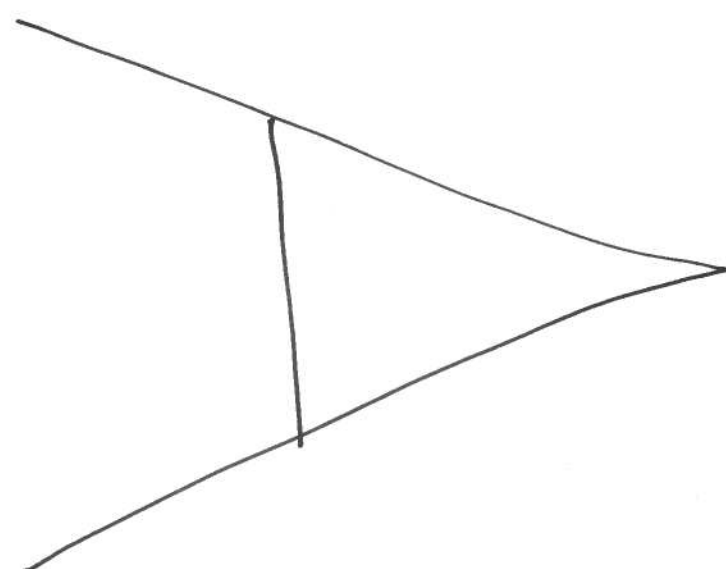
**WHEREFORE**, your deponent respectfully requests that the relief requested in the Petition be granted.

Sworn to before me this  
9<sup>th</sup> day of March, 2016

  
JACQUELINE HOELL  
Notary Public, State of New York  
No. 01HO4826427  
Qualified in Suffolk County  
Commission Expires Sept. 30, 2018

  
RICHARD I. SCHEYER

  
Signature (Rule 130-1.1-a)  
RICHARD I. SCHEYER, ESQ.  
3/9/16



YAPHANK & MIDDLE  
ISLAND ROAD  
(66' WIDE)

EXIST. 12" WATER MAIN

153.20'

PROP. WATER MAIN

N 06°57'00" E 100.00'

PROP. W.S.

20.0'

28'

CHESTERFIELD AVENUE  
(33' WIDE) (NOT OPEN)  
PROP. 28' WIDE PAVEMENT

N 83°03'00" W 100.00'

PROP. DRIVE

PROP. EXP.

PROP. S.T.

PROP. L.P.

60.0'

20.0'

S 06°57'00" W 100.00'

LOT 51

LOT 52

LOT 53

LOT 54

LOT 55

LOT 56

LOT 57

LOT 17

LOT 16

LOT 15

LOT 14

LOT 13

10,000 S.F.

PROPOSED DWELLING

35.0'

W

20.0'

30.0'

W

20.0'

30.0'

W

20.0'

30.0'

W

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CERTIFIED TO:

*Donald H. Beckman*

THE EXISTENCE OF RIGHTS OF WAY  
AND/OR EASEMENTS OF RECORD IF  
ANY, NOT SHOWN ARE NOT  
GUARANTEED.

UNAUTHORIZED ALTERATION OR ADDITION  
TO THIS SURVEY IS A VIOLATION OF  
SECTION 7209 OF THE NEW YORK STATE  
EDUCATION LAW.

COPIES OF THIS SURVEY MAP NOT BEARING  
THE LAND SURVEYOR'S INKED SEAL OR  
EMBOSSSED SEAL SHALL NOT BE CONSIDERED  
TO BE A VALID TRUE COPY.

GUARANTEES INDICATED HEREON SHALL RUN  
ONLY TO THE PERSON FOR WHOM THE SURVEY  
IS PREPARED, AND ON HIS BEHALF TO THE  
TITLE COMPANY, GOVERNMENTAL AGENCY AND  
LENDING INSTITUTION LISTED HEREON, AND  
TO THE ASSIGNEES OF THE LENDING INSTI-  
TUTION, GUARANTEES ARE NOT TRANSFERABLE.

SURVEY OF: LOTS 52 THROUGH 56 INCLUSIVE, BLOCK 2  
MAP OF FLOWER CITY PARK - SECTION B  
FILED JANUARY 31, 1927 FILE No. 597

SITUATED IN: YAPHANK

TOWN OF: BROOKHAVEN

SUFFOLK COUNTY, NEW YORK

DATE: 11/12/2010 JOB NO. B10-13129 SCALE: 1" = 20'

	DIST.	SEC.	BLK.	LOT
S.C.T.M. NO.	0200	529	05	035

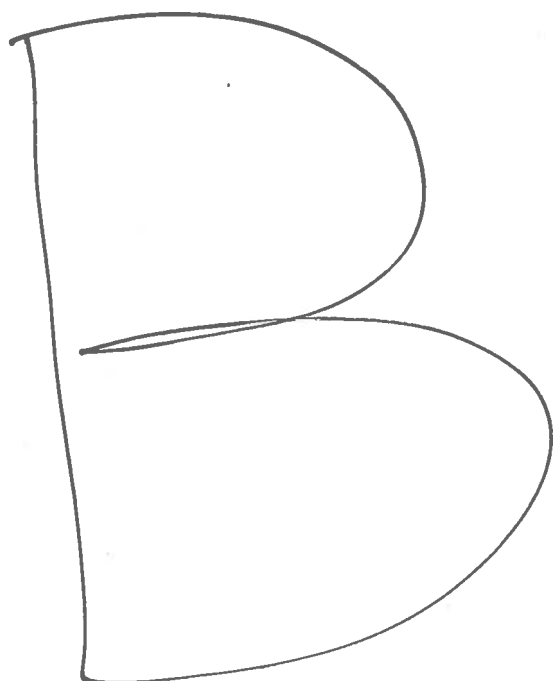
KENNETH H. BECKMAN, L.S.

Surveying and Land Planning  
1814 Middle Country Road  
Suite D

Ridge, N.Y. 11961

(631) 345-9427

FAX (631) 345-9429





# PINE BARRENS CREDIT CLEARINGHOUSE

JAMES T.B. TRIPP, ESQ., CHAIRMAN  
ANDREW P. FRELENG, VICE CHAIRMAN  
RICHARD W. HANLEY, MEMBER  
MITCHELL H. PALLY, ESQ., MEMBER  
ROBERT ANRIG, MEMBER

## LETTER OF INTERPRETATION

Re: Suffolk County Tax Map Number: 200-529-5-35  
Applicant: Henry R. Dittmer

Date: January 12, 2015

### *Findings of Fact*

The applicant applied for a Letter of Interpretation for the above-referenced .23 acre parcel. The parcel is in the Town of Brookhaven. It was in the A-5 District at the adoption of the *Central Pine Barrens Comprehensive Land Use Plan* (the "Plan") on June 28, 1995.

### *Conclusions*

The *Plan* grants to every parcel of land in a sending area a use right, known as Pine Barrens Credits, that may be used to seek development density or intensity increases on lands identified as receiving areas within the same township.

The *Plan* establishes the formula for allocating Pine Barrens Credits. In sending areas within the A-5 District of the Town of Brookhaven, the number of Pine Barrens Credits allocated is equal to the parcel's size in acres multiplied by .16. Based upon this allocation formula, .0368 Pine Barrens Credits may be allocated to this parcel. Allocations are increased to the hundredth of a credit, therefore this parcel would receive .04 Pine Barrens Credits. There are no known conditions on the parcel which reduce the allocation of Pine Barrens Credits pursuant to Section 6.3.3 of the *Plan*. This allocation qualifies for the application of Section 6.7.6.7 of the *Plan* permitting the allocation of no fewer than 0.10 Pine Barrens Credits per parcel.

**The total number of Pine Barrens Credits allocated for this parcel is .10**

This Letter of Interpretation expires in three years from the above date. In order to obtain a Pine Barrens Credit Certificate you must complete the Pine Barrens Credit Certificate Application and follow the instructions contained in the Pine Barrens Credit Handbook.

If there is a mortgage or other lien on this parcel, the applicant will have to make an arrangement with the lender or other party holding the lien before the Clearinghouse can issue a Pine Barrens Credit Certificate for this tax map parcel.

### *Appealing your Allocation*

Any person who is aggrieved by this determination may appeal the allocation within thirty (30) days of the date of this letter by giving notice, in writing, to the Central Pine Barrens Joint Planning and Policy Commission. The Commission address is 624 Old Riverhead Road (CR31), Westhampton Beach, NY 11978. Included with this notice shall be the name and address of the person requesting reconsideration and the reasons supporting the appeal as well as the number of Pine Barrens Credits requested. The Commission shall consider and decide the appeal within sixty (60) days of receipt of an appeal and will schedule a public hearing on the appeal.

624 Old Riverhead Road (CR31), Westhampton Beach, NY 11978  
631 388 1070 (P) 631 388 1071 (F)

c



**Commission Meeting of February 17, 2016  
Town of Riverhead Town Hall, Riverhead, New York**

Present: Carrie Meek Gallagher (State of New York),  
Sarah Lansdale (Suffolk County), Brenda Prusinowski (Town of Brookhaven),  
Daniel McCormick (Town of Riverhead), Martin Shea (Town of Southampton)

**Adopted Resolution  
Henry Dittmer Core Preservation Area Extraordinary Hardship  
Yaphank, Town of Brookhaven, SCTM #: 200-529-5-35**

Carrie Meek Gallagher  
*Chairwoman*

Steven Bellone  
*Member*

Edward P. Romaine  
*Member*

Jay H. Schneiderman  
*Member*

Sean M. Walter  
*Member*

**Whereas**, on August 27, 2015, Henry Dittmer (the "Applicant"), by his attorney, Richard Scheyer, submitted to the Central Pine Barrens Commission office an application for a Core Preservation Area Extraordinary Hardship Waiver to develop a single-family residence with an individual sanitary system and related infrastructure including customary accessory uses on a 10,000 square foot wooded and vacant parcel with no frontage on an improved road identified as Suffolk County Tax Map Number 200-529-5-35, and to develop a 4,290 square foot portion of a paper street known as Chesterfield Avenue (taken together the "Project Site") to provide access to the Project Site from Yaphank Middle Island Road, an existing improved road, all as per the survey prepared by Kenneth H. Beckman, L.S. dated November 12, 2010 (the "Project"); and

**Whereas**, the Applicant submitted supplemental application materials on October 13, 2015; the Applicant submitted a request for an extension of time due to the Applicant's illness on November 2, 2015; and the Applicant submitted additional supplemental application materials on November 13, 2015 and January 28, 2016; and

**Whereas**, the Project Site contains natural pine barrens vegetation, is located within an old-filed subdivision map known as Flower City Park, and is approximately 153 feet east of the nearest paved, improved and developed road, Yaphank Middle Island Road, in the A-5 Residence Zoning District, in the hamlet of Yaphank, in the Core Preservation Area in the Town of Brookhaven; and

**Whereas**, the Project is proposed within a study area identified by the Commission in its review of the application containing approximately 450 acres of preserved public land owned and managed by Suffolk County to the north, east, south and west of the Project Site as identified in its Staff Report and Exhibits prepared for the public hearing on December 16, 2015. These County nature preserve properties and large, unfragmented open spaces include Suffolk County Parklands in the Core Preservation Area commonly known as Warbler Woods, Prosser Pines, and Cathedral Pines. Other environmentally sensitive resources in the study area include a Central Pine Barrens Critical Resource Area (CRA) Site B2 identified in Volume 1 Chapter 4

624 Old Riverhead Road  
Westhampton Beach, NY  
11978

Phone (631) 288-1079  
Fax (631) 288-1367  
[www.pb.state.ny.us](http://www.pb.state.ny.us)

of the Central Pine Barrens Comprehensive Land Use Plan (CLUP), as well as a Scenic Resource corridor, Yaphank Middle Island Road, identified in Volume 2, Chapter 8 of the CLUP; and

**Whereas**, the Project requires other permits and approvals including, but not limited to, a Town of Brookhaven building permit and road opening permit, approval from the Suffolk County Department of Health Services to construct a new sanitary system; and a permit from Suffolk County Department of Public Works for a curb cut onto Yaphank Middle Island Road; and

**Whereas**, there is limited development on Yaphank Middle Island Road in the study area; there are no improved intersecting streets emanating on the east side for a distance of approximately 3,700 feet, and there are no improved intersecting streets emanating on the west side for a distance of approximately 1,500 feet; and

**Whereas**, in addition, only seven residences and one commercial structure are developed in the study area; and

**Whereas**, the Town of Brookhaven Carmans River Conservation and Management Plan (2013) identifies the Project Site as being within the 10-year groundwater contributing area of the Carmans River watershed; and

**Whereas**, an estimated 50 privately owned parcels exist in old-filed Map of Flower City Park; the majority of these parcels, including the Project Site, are undeveloped, wooded, vacant, and substandard as per current zoning and are interspersed with publicly owned parcels that are also undeveloped, wooded, vacant, and substandard; a number of paper streets also exist on the Map; and

**Whereas**, the Applicant applied to the Pine Barrens Credit Clearinghouse for a Letter of Interpretation (LOI) on the Project Site and on September 3, 2010 received an LOI allocating 0.10 Pine Barrens Credit (PBC) for the Project Site; the Applicant did not appeal the LOI allocation; and

**Whereas**, the Project is a Type II Action pursuant to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act, SEQRA); and

**Whereas**, on December 16, 2015, the Commission held a public hearing on the Project; at the hearing the Commission reviewed the Staff Report and eight Exhibits prepared for the hearing; the Commission also heard testimony from the Applicant, its attorney and representatives and the public and received the Applicant's submission of Exhibit materials; a stenographic transcript was made of the hearing; and

**Whereas**, Section 4.5.1 of the CLUP, states, "[t]he [Long Island Pine Barrens Protection] Act requires the prohibition or redirection of development in the Core Preservation Area and sets forth the jurisdiction of the Commission over, and certain requirements for processing, hardship exemptions. The Act authorizes the Commission, by majority vote, to waive strict compliance

with this Plan upon finding that such waiver is necessary to alleviate hardship according to the conditions and finding of extraordinary hardship” pursuant to subdivision 10 of Section 57-0121 of the Act; and

**Whereas**, pursuant to the Act, in reviewing a Core Preservation Area Hardship exemption application, the Commission shall consider the criteria set forth in ECL §57-0121(10)(a) (i), (ii), and (iii) and Sections 57-0121(10)(c)(i), (ii), and (iii) and determine whether or not the requested relief is consistent with the purposes and provisions of the Act and if granted, would not result in a substantial impairment of the resources of the Central Pine Barrens area, and

**Whereas**, in its application, the Applicant addressed the Core Preservation Area Hardship exemption criteria; and

**Whereas**, the Commission has considered the application, the Staff Report and Exhibits, and the hearing transcript; and

**Whereas**, to establish the existence of an extraordinary hardship, an Applicant must demonstrate the elements set forth in ECL §57-0121(10)(a); and

**Whereas**, pursuant to ECL §57-0121(10)(a)(i), in addressing this element, the application states, the Project “does not affect any other properties in the immediate area since the only other immediate area is a developed house;” and

**Whereas**, the Commission finds the Applicant has not satisfied the element in ECL §57-0121(10)(a)(i), because the subject property is not unique and the provisions of the CLUP apply to and affect at least 50 other privately-owned and undeveloped properties in the study area, in the immediate vicinity of the Project Site, and the development of the Project Site or some or all of these parcels would result in significant adverse environmental impacts on the resources of the Central Pine Barrens including adverse impacts on groundwater and ecological resources, fragmentation of the existing habitat and publicly-owned open space, and establishment of an adverse precedent in that it may help to induce and promote similar types of development applications to be submitted in the area of the Project Site and in other hamlets in the Core Preservation Area where low-density development and expansive public land holdings exist; and

**Whereas**, pursuant to ECL §57-0121(10)(a)(ii), in addressing this element, the application states, the Project “does not arise out of the personal situation of the Applicant;” and

**Whereas**, the Commission finds the characteristics of the subject property are not unique because the property is similar to at least 50 other privately owned, substandard and undeveloped parcels in the old filed map of Flower City Park in the study area surrounding the Project Site and also in other hamlets of the Core Preservation Area; and the proposed development may be applied to all said 50 or more parcels in the Core Preservation Area; and

**Whereas**, pursuant to ECL §57-0121(10)(a)(iii), in addressing this element, the application states, the “property was single and separate long before the pine barrens was created;” and the application states, “The problem is not the result of any inaction by the applicant who has no transfer of contiguous land and we were not in common ownership on or after June 1, 1993. Section (a) of that code is completely met. This is an old single and separate lot that the client owns within the Pine Barrens. There is a house nearby, it has road on the map. We would have to improve the road which is classified as nondevelopment to put in a road and it would be an environmental benefit because if this road should be cleared, it would act as a fire brake in an area that is prone to fires. All issues here arise out of the character of the property, single and separate search its location, the nearness to other properties, the road, etc;” and

**Whereas**, the Commission finds that the Applicant took controlling interest of the undeveloped, wooded, substandard Project Site pursuant to Letters of Administration dated October 7, 2004; and

**Whereas**, the Applicant alleges that the Project Site is held in single and separate ownership as defined by the Town of Brookhaven Code and thus entitled to a Hardship Exemption, and

**Whereas**, the Commission finds that even if the Applicant can establish that the Project Site is held in single and separate ownership, such status alone, does not exempt the Project Site from complying with other ordinances implemented for resource protection purposes such as the Act or create special rights under the Act such as entitlement to a hardship waiver exemption if development is proposed for the Project Site; and

**Whereas**, pursuant to ECL §57-0121(10)(c)(i), in addressing this element, the application states, the Section “requires that there would be no material detriment or injury to other property improvements in the area, which it would not, since the only development in the area is another residential home. It would not increase the danger of fire, but in fact, it would be a safety issue, building a fire brake on the road. Would not endanger public safety and certainly would not impair the resources of the Core Preservation Area with the development of one 100 x 100 single and separate lot;” and

**Whereas**, the Commission finds the Project will be materially detrimental or injurious to other property or improvements in the area because there are at least 50 other parcels with similar characteristics and conditions in the area near the Project which would be affected by the Project, and the Project would result in the endangerment of public safety or substantial impairment of the resources of the Core Preservation Area since it has growth-inducing impacts and is precedent setting in nature in that it would induce and promote additional development in an area which the public has desired to protect and preserve, where limited development density exists and expansive public lands exist and may adversely affect the already preserved public lands; and additional development in an area with expansive undeveloped land may increase the risk of fire danger to public and property;

**Whereas**, pursuant to ECL §57-0121(10)(c)(ii), granting of the waiver would not be consistent with the purposes, objectives or general spirit and intent of this title as the Project does not redirect development from the Core Preservation Area or support the preservation of Core Preservation Area lands, preserve existing natural vegetation, ecologic, and hydrologic functions of the Pine Barrens; and

**Whereas**, an approval of the hardship waiver would result in an adverse precedent as it has the potential to result in significant additional development in the Core Preservation Area not only on the Project Site and in the study area of the Project Site but in other areas of the Core Preservation Area of the Central Pine Barrens and has the potential to result in substantial development in the Core Preservation Area and thus substantial impairment of the resources in the Core Preservation Area, particularly in remote areas where less development exists and where significant expanses of public lands and nature preserves are present; and now therefore be it

**Resolved**, the foregoing recitals are incorporated herein and made a part hereof; and be it further

**Resolved**, the Commission finds that the Applicant has not demonstrated extraordinary hardship exists for the reasons set forth above; and be it further

**Resolved**, that Applicant has not established the existence of an extraordinary hardship by alleging the Project Site is held in single and separate ownership; and be it further

**Resolved**, the Commission finds that the Project is not consistent with the purposes and provisions of the Act, including but not limited to, the goals and objectives to “[p]reserve the functional integrity of the Pine Barrens ecosystem, protect the quality of surface water and groundwater, discourage piecemeal and scattered development, [to] accommodate development in a matter consistent with the long-term integrity of the Pine Barrens ecosystem and to ensure that the pattern of development is compact, efficient, and orderly;” and be it further

**Resolved**, the Commission finds that, the requested waiver exceeds the minimum relief necessary to relieve hardship; the development of a vacant, privately owned Project Site on an unopened, undeveloped road is precedent setting and will result in adverse growth inducing impacts in the study area and in other hamlets in the Core Preservation Area, and if approved would be inconsistent with ECL Article 57, in particular ECL §57-0121(10)(c)(iii), and be it further

**Resolved**, that the Commission hereby determines the application, as submitted, does not meet nor satisfy the criteria for a Core Preservation Area Extraordinary Hardship Waiver pursuant to New York State ECL Article 57 §57-0121(10) for the reasons set forth in this resolution; and be it further

**Resolved**, that the application for a Core Preservation Area Extraordinary Hardship exemption is denied.

**Henry Dittmer Core Preservation Area Extraordinary Hardship SCTM #: 200-529-5-35**

**Record of Motion:**

Motion by: B. Prusinowski

Seconded by: M. Shea

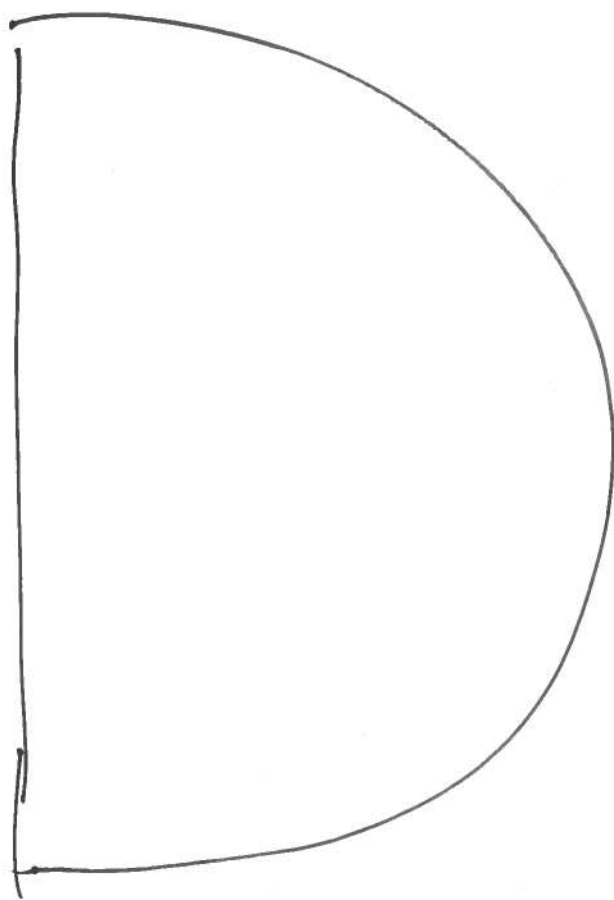
In Favor: 5

Opposed: 0

Abstention: 0

cc: Town of Brookhaven Divisions of Planning and Building  
Town of Brookhaven Board of Zoning Appeals  
New York State Department of Environmental Conservation Region 1  
Suffolk County Department of Health Services Wastewater Division  
Suffolk County Department of Public Works





PUBLIC HEARING  
HENRY DITTMER CORE PRESERVATION

December 16, 2015

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HENRY DITTMER CORE PRESERVATION

3

AREA HARDSHIP WAIVER APPLICATION

4

5

1 INDEPENDENCE HILL, FARMINGVILLE, NEW YORK 11738

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7

December 16, 2015

8

3:06 p.m.

9

PRESENT:

10

JOHN PAVACIC, Executive Director/Acting as Chairman

11

ED ROMAINE, Member

12

SEAN WALTER, Member

13

DON MCCORMICK, Representative

14

ANNA THRON-HOLST, Member

15

BRENDA PRUSINOWSKI, Representative

16

KYLE COLLINS, Representative

17

MARTY SHEA, Representative

18

ANDY FRELENG, Member

19

CAROL SHOLL, Commission Staff

20

JOHN MILAZZO, Commission Staff

21

JUDY JAKOBSE, Commission Staff

22

JULIE HARGRAVE, Commission Staff

23

LARRY HYNES, Commission Staff

24

25

ALSO PRESENT:

26

RICHARD AMPER, Long Island Pine Barrens Society

27

RICHARD SCHEYER, Attorney for Henry Dittmer

28

MIKE NOVELETTI, Code Enforcement Officer

29

HENRY DITTMER, Owner/Applicant

30

JAMES EAGAN, Owner/Applicant

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33

34

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1 MR. PAVACIC: Folks, I'd like to  
2 welcome you to the public hearing portion  
3 of our agenda, and for the record, my name  
4 is John Pavacic, Executive Director of the  
5 Commission. I'm also currently the acting  
6 chair. I'm going to read into the record  
7 the notice of public hearing. I'll then  
8 provide it to the court stenographer.

9 "Pursuant to the New York State  
10 Environmental Conservation Law Article  
11 57-0121(10) and the Central Pine Barrens  
12 Comprehensive Land Use Plan, notice is  
13 hereby given that the Central Pine Barrens  
14 Joint Planning and Policy Commission will  
15 hold a public hearing on Wednesday,  
16 December 16th, 2015, on the matter of a  
17 Core Preservation Area Extraordinary  
18 Hardship Waiver."

19 The name of the project to be heard  
20 is the Henry Dittmer Core Preservation Area  
21 Hardship Waiver Application. The  
22 owner/applicant is Henry Dittmer/James  
23 Eagan and Richard Scheyer. The project  
24 site location is the East side of Yaphank  
25 Middle Island Road, also known as County

1 Road 21, south of Rustic Road, Yaphank.  
2 The Suffolk County Tax Map Number is:  
3 200-529-5, Lot 35 and the project  
4 description is: Request for a Core  
5 Preservation Area Hardship Permit to  
6 develop a 10,000 square foot wooden  
7 property, a single-family residence,  
8 individual septic system, related  
9 infrastructure and accessory structures,  
10 and development of Chesterfield Avenue, an  
11 unopened paper road. The proposal is a  
12 Type II Action pursuant to the State  
13 Environmental Quality Review Act.

14 I'll then hand that to the  
15 stenographer, and so, I'd just like to ask  
16 the members of the commission to identify  
17 themselves, please, starting with  
18 Supervisor Romaine.

19 MR. ROMAINE: Yes. Brookhaven Town  
20 Supervisor, Ed Romaine.

21 MR. PAVACIC: John Pavacic,  
22 Executive Director and acting as chair.

23 MR. WALTER: Sean Walter, member.

24 MR. FRELENG: Andy Freleng,  
25 representing Town Executive and Sub-County

1 Executive, Steven Malone.

2 MR. PAVACIC: We have our rep from  
3 Southampton.

4 MR. COLLINS: Kyle Collins, Town  
5 Planning and Developmentalist  
6 Administrator, Town of Southampton,  
7 representing Supervisor, Thron-Holst.

8 MR. PAVACIC: At this point, I'd  
9 like to ask Ms. Julie Hargrave to please  
10 come forward and just speak about the  
11 application first and then we'll hear from  
12 the applicant.

13 MS. HARGRAVE: Thank you and good  
14 afternoon. You each should have a copy of  
15 the staff report and exhibits before you  
16 and the applicant has a copy as well. I'm  
17 just going to briefly go through it and  
18 then the applicants here to present in the  
19 public hearing. The Staff Exhibits include  
20 A through F:

21 A is aerial of the project site and  
22 also of the surrounding area, showing about  
23 a half a mile radius with the core and  
24 compatible group area down below.

25 B is the property survey that was

1 submitted with the application showing the  
2 property is approximately 153 feet off of  
3 East Yaphank & Middle Island Road, County  
4 Road 21 and on an undeveloped, unopened  
5 road on Rustic Avenue.

6 C is the photographs of the private  
7 site taken by the staff. It includes an  
8 additional set of photographs taken on --  
9 so it includes November 12th, 2015  
10 photographs and also December 10th, 2015.  
11 The first day we were out there, it was  
12 raining and the pictures didn't come out  
13 very well. So you can see some views north  
14 and south of the site and also the existing  
15 drawing that runs on County Road 21. This  
16 project site is behind that property in the  
17 woods, and again, on an undeveloped road,  
18 so you can't really see it except for  
19 looking at the woods.

20 D is some of the historical  
21 accounts of endangered and threatened  
22 species that were listed on this date,  
23 DEC's website, and also a map of the area  
24 of the project site and you can see a large  
25 wetland area across the street on the west

1 side of 21.

2 And F is a copy of the Tax Map, so  
3 you can see the location of the property  
4 and its placement among many protected  
5 lands owned by the County, Suffolk County,  
6 and nature preserved properties to the  
7 north of the site and south and west across  
8 the road, and to the south is a large  
9 101-acre parcel owned by the County as  
10 well.

11 And G is a copy of the Pine Barrens  
12 Credit Clearinghouse letter that the  
13 applicant received when they applied for a  
14 Letter of Interpretation to carry out from  
15 2010 and they received an outpatient of .1  
16 credit.

17 And H is a copy of the applicant's  
18 letters that relate to this proposal and  
19 their petition addressing the hardship  
20 criteria in the Pine Barrens Lot. So just  
21 to go through the staff report a little  
22 bit, this is, again, the 10,000 square foot  
23 parcel on an undeveloped road. It's in the  
24 5-acre residential zone district. It's  
25 wooded and it would require development of

1 a street approximately 4,290 square feet of  
2 clearing to develop that road. This is  
3 considered development under the Pine  
4 Barrens Act according to the definition in  
5 the act.

6 The site, we don't know exactly if  
7 the site contains any endangered species.  
8 The applicant didn't provide that  
9 information and we haven't received a  
10 response from the Natural Heritage Program  
11 on that.

12 There appear to be no wetlands  
13 shown on the survey. Not sure also about  
14 whether they actually are, if the surveyor  
15 looked for wetlands or if there are in fact  
16 none. It's not in the wild we see a river  
17 area.

18 We're waiting for a copy of a  
19 response -- I'm sorry. We received the  
20 response from the State for Preservation  
21 Office that no cultural resources would be  
22 impacted from the project, and County Road  
23 21 is identified in the Pine Barrens Plan  
24 as a scene of resource, so that's listed in  
25 the staff report.



1           Just to go over the composition of  
2     the area where the project site is located,  
3     again, it's in the Core Preservation Area  
4     and there appears to be approximately seven  
5     houses developed in this span of County  
6     Road 21 where the site is located and one  
7     commercial property.

8           Once you go north or south of the  
9     core, you can see in the aerial, there are  
10    other developed properties in the  
11    compatible growth area. Those predated the  
12    Pine Barrens Act, developed course, and the  
13    subdivision development on Rustic Road  
14    north of the site, and also south, just off  
15    the map, there's a subdivision as well that  
16    creates the Act.

17          There are no roads in this -- in  
18    the swamp of the core where the project  
19    site is. There are no -- There are houses  
20    in front on 21, but there are no roads  
21    going east or west.

22          There are approximately 35 parcels  
23    in the core that are protected through  
24    conservation provisions that are in the  
25    vicinity of this project site through the

1 credit program, and so, again, the owner  
2 received a Letter of Interpretation for one  
3 .1 Pine Barrens Credit and that was never  
4 appealed by the applicant. It says it's  
5 Type II under SEQRA. The Health Department  
6 Approval would be pending, that application  
7 has not been made, and the applicant would  
8 need permits from the Town of Brookhaven  
9 for building permits at least.

10 The questions we have on page 6,  
11 just to have the applicant address the  
12 hardship criteria, whether they ever plan  
13 to appeal their credit allocation if  
14 they've attempted to sell the property to  
15 the County, since there is significant  
16 County holdings in that area, and perhaps  
17 it could be picked up by the County, if  
18 there were interested -- both parties. The  
19 feasibility of developing Chesterfield  
20 Avenue and obtaining that curb cut on the  
21 County Road 21, whether there are any  
22 wetlands.

23 The opposite side of Chesterfield  
24 Avenue, if you look at the Tax Map, is a  
25 County Nature Preserve Land, so it's not --

1 I'm not sure if the parties would agree to  
2 opening that road -- both parties, and not  
3 sure if the proper project needs any  
4 variances as well. That's everything.

5 MR. PAVACIC: Any questions for  
6 Ms. Hargrave?

7 MR. ROMAINE: I just have a few  
8 quick questions. You mentioned there were  
9 seven residential areas and one commercial.  
10 Were they all built prior to the Pine  
11 Barrens Act?

12 MS. HARGRAVE: I believe so. I  
13 believe so. I have an aerial from 1994.

14 MR. ROMAINE: Obviously, I'm asking  
15 a question because I used to represent that  
16 area in the legislation in the 80's and all  
17 those structures were there when I  
18 represented, including the telephone  
19 company, so I'm very familiar with this  
20 area and I believe they were all there  
21 prior to the Pine Barrens Act. So nothing  
22 has been developed along this way since the  
23 Pine Barrens.

24 The town zoning on the property is  
25 listed as what?

1 MS. HARGRAVE: I believe A-5.

2 MR. ROMAIN: Which is five-acre  
3 residential, so on the basis that they  
4 don't meet the zoning, even should a  
5 hardship be granted, they'd have to take  
6 other steps at the Town, and for the Town  
7 to allow development on 100 x 100 parcel in  
8 an area that was zoned 5-acre -- I think  
9 the best word I can use is problematic, and  
10 lastly, to develop this parcel, would they  
11 not have to apply for a permit to the Town  
12 of Brookhaven to open this paper street and  
13 pave it?

14 MS. HARGRAVE: Yes.

15 MR. ROMAIN: Have they submitted  
16 an application to do such, since part of  
17 this paper street, the adjoining property,  
18 I believe is owned by the County and  
19 there's a residential unit immediately to  
20 the west of this property on the north side  
21 of Chesterfield that may also have to  
22 concur on the highway law for this to be  
23 opened; is that not correct?

24 MR. MILAZZO: That's our  
25 understanding.

1 MR. WALTER: I don't think they  
2 have to concur.

3 MR. MILAZZO: That's a legal  
4 question. We should let the applicant  
5 address that issue.

6 MR. ROMAIN: Right. I'm raising  
7 that question because I want to know if  
8 they have done the research on what the  
9 requirements are, what the requirements are  
10 for a road opening permit and a road  
11 construction permit, and maybe the  
12 applicant can address that because, quite  
13 frankly, if the road can't be open or if  
14 there's impediments for doing so or if  
15 there's a standard that they can't meet,  
16 all this application is moot.

17 MR. WALTER: It's unfortunate for  
18 us because I'd like to see the zone board  
19 of appeals weigh in on this proposal.

20 MR. ROMAIN: We have an excellent  
21 chairman in the zoning board of appeals.

22 MR. FRELENG: There appears to be  
23 separate lots -- they appear. I just want  
24 to confirm that's single and separate; one  
25 south and one east of the subject property.

1 MS. HARGRAVE: South?

2 MR. FRELENG: I'm sorry, east and  
3 west.

4 MS. HARGRAVE: Lot 36 is another  
5 application by this applicant, Dittmer,  
6 that will be on your agenda next week.  
7 That is a 4,000 square foot lot. I believe  
8 it's one separate and single lot near that  
9 material to show that. Lot 34, it's not  
10 developed -- I'm not sure -- and --

11 MS. PRUSINOWSKI: Julie, do you  
12 have the single and separate search? If 35  
13 and 36 are not single and separate, then  
14 this is premature.

15 MS. HARGRAVE: I had that question,  
16 if they're the same owner, how can they be  
17 single and separate? But I think they have  
18 been kept in different names.

19 MR. ROMAINE: Could I ask a  
20 question to my other colleague from  
21 Brookhaven? Single and separate has to be  
22 held single and separate from what time  
23 forward?

24 MS. PRUSINOWSKI: That depends on  
25 the date of the upgoing of the property.

1 Its got to go back to when these were  
2 conforming lots typically.

3 MR. ROMAINE: And you can give the  
4 planning department --

5 MS. PRUSINOWSKI: Our planning  
6 department can give that date, yes.

7 MR. ROMAINE: It will be helpful if  
8 you can provide it because this is another  
9 application coming in. The planning  
10 department should say that they have to be  
11 held single and separate from this date  
12 forward, and I assume there's a chain of  
13 title search that will be done to confirm  
14 that.

15 MS. PRUSINOWSKI: Yes.

16 MR. ROMAINE: Just curious.

17 MS. PRUSINOWSKI: For the  
18 applicant.

19 MR. ROMAINE: All County Clerk  
20 coming out of me.

21 MR. PAVACIC: Are there any other  
22 questions from the Commission for Ms.  
23 Hargrave?

24 At this time, I'd like to hear from  
25 the applicant, please.

1 MR. SCHEYER: Mr. Chairman, members  
2 of the board, I just received a pamphlet  
3 from the secretary, so I never checked to  
4 read it, but here is one from me, which  
5 will make this much quicker.

6 I want to answer first one of the  
7 questions from the supervisor. This is a  
8 single and separate lot. This one is  
9 bought in 1971 and has been single and  
10 separate ever since long before the Pine  
11 Barrens existed.

12 MR. ROMAINE: That isn't the  
13 standard for single and separate, as you  
14 know, Counselor.

15 MR. SCHEYER: I know, but I'm  
16 giving you the date. It's never been  
17 attached to any other, never been  
18 subdivided from any other, and in this  
19 pamphlet, which I'm going to give you --  
20 it's very short -- the single and separate  
21 search is attached.

22 MR. MILAZZO: Is this the same as  
23 you submitted earlier?

24 MR. SCHEYER: No.

25 MR. MILAZZO: Okay. I'd love to



1 get a copy of that.

2 MR. SCHEYER: I gave him six or  
3 seven.

4 I'll make it very brief because I  
5 have one witness. Mr. Dittmer is the owner  
6 of this property. It belonged to his  
7 father before him in Manorville, as you  
8 know, it's in the core. It is single and  
9 separately owned. There's a copy of the  
10 search in here. It was purchased in 1970.

11 The reports have been submitted to  
12 the Pine Barrens. They never said it  
13 wasn't single and separate, but it's  
14 attached here to Exhibit A to these papers.  
15 Property is currently zoned A-5, but was  
16 not zoned A-5 in 1970. The aerial  
17 photograph they have, and so do we, it's  
18 Exhibit C of this book, and the title  
19 report fully shows that it was bought. As  
20 people from Brookhaven would know, if the  
21 lot is more than 60 feet wide, held in  
22 single and separate ownership and you owned  
23 it, it was not in the Pine Barrens, you  
24 could build on it as a matter of right  
25 under the Brookhaven code today.

1 MR. ROMAIN: Depending on when  
2 single and separate went into effect.

3 MR. SCHEYER: Yes.

4 MR. ROMAIN: For some lots, it was  
5 1937, for other lots it was 1958. It's all  
6 when zoning was in acted in effectuated  
7 within the town.

8 MR. SCHEYER: When this was born in  
9 1970, it was zoned D residential at the  
10 time, and as subsequently --

11 MR. ROMAIN: Zoning and single and  
12 separate are two different matters.

13 MR. SCHEYER: I understand. I'm  
14 just explaining the history.

15 Boarded in 1970, it was a D zoning  
16 at the time. It's been held the same way  
17 unsubdivided from any other since, so the  
18 search is in here.

19 MR. WALTER: You said  
20 D-Residential. I'm sorry to interrupt, but  
21 what was the minimum lot size for D  
22 residential?

23 MR. SCHEYER: Oh, much smaller than  
24 this. D residential, I think it was  
25 multifamily, the D residential.

1 MS. PRUSINOWSKI: It was, yes, but  
2 I don't recall the single family lot size  
3 at this point.

4 MR. ROMAIN: Could we have a  
5 report from the planning department  
6 regarding subsequent lots from this from  
7 which the applicant bring forwards the  
8 hardship so that people other than the town  
9 of Brookhaven who are members of this  
10 commission would know what each of the  
11 single and separate applies and the zoning,  
12 which is a separate issue, and when the  
13 rezonings were done, et cetera.

14 MR. SCHEYER: I believe there were  
15 several rezonings since then.

16 MR. ROMAIN: Yes.

17 MR. SCHEYER: The current proposal  
18 is developed as court arranged as a  
19 100 x 100 foot parcel. As you've seen on  
20 the survey, it's Exhibit B here, the survey  
21 attached. It's on a paper street. We  
22 would have to improve 100 feet of the  
23 street to get to the house. I do know it  
24 is required for a road opening. This is  
25 the lot of a filed map. The road is on a

1 filed map. I've gone through this law  
2 before, we could do it if you want again,  
3 but a road on a filed map, you have the  
4 right to open it. That's not development.  
5 You've had a lot of cases on that.

6 MR. MILAZZO: Which cases are on  
7 that?

8 MR. SCHEYER: What?

9 MR. MILAZZO: Which cases are on  
10 that?

11 MR. SCHEYER: I have some attached.

12 MR. MILAZZO: That the road opening  
13 is not developed?

14 MR. SCHEYER: Oh, no. I can supply  
15 that if you want.

16 MR. MILAZZO: I would like them.

17 MR. SCHEYER: Pilanski versus the  
18 town of Brookhaven is one of the clearest  
19 cases. If it's on the map -- a file map,  
20 you have the right to open it as a road if  
21 you own property on it. I'll give you the  
22 cases. I have a whole brief on it. We've  
23 argued this in the Supreme Court.

24 MR. MILAZZO: My question was: You  
25 indicated that the Commission said opening

1 the road is not a development. Which case  
2 is that?

3 MR. SCHEYER: I will give you the  
4 cases.

5 MR. MILAZZO: Okay.

6 MR. SCHEYER: The problem which  
7 arises out of the characteristics of the  
8 property -- I'm going through the code --  
9 is not a personal hardship of the  
10 applicant. It's not a result of any action  
11 or inaction by the applicant who did not  
12 transfer any contiguous land and common  
13 ownership after 1993 when the Pine Barrens  
14 came into effect. There is no owned  
15 contiguous land since 1971.

16 In addition to Provision C, this  
17 would not materially be detrimental or  
18 injurious to other property or improvements  
19 in the area. I have a witness to come in  
20 on that. The area will clearly indicate  
21 there are only four or five homes nearby  
22 and the secretary indicated that and it's  
23 all on --

24 MR. MILAZZO: She's not a  
25 secretary. I'm sorry.

1 MR. SCHEYER: Excuse me?

2 MR. MILAZZO: She's an  
3 environmental analyst.

4 MR. SCHEYER: I'm sorry for using  
5 the wrong title.

6 MR. MILAZZO: It's okay.

7 MR. SCHEYER: In the case, there  
8 are four or five homes nearby on our side  
9 of the street and four or five more across  
10 the street, which could very well be  
11 classified under these cases as significant  
12 development by standard setup by this board  
13 and other cases which I'm going to relate  
14 and are attached.

15 This would not increase the danger  
16 of fire or public safety or impairment of  
17 any resources of the area. There's no  
18 wetlands here. The waiver is the minimum  
19 release necessary because the property in  
20 its present status under the code can't be  
21 used. History wise, they applied for the  
22 clearing, as indicated, five years ago. A  
23 copy of the decision is also included in  
24 Exhibit D. Their interpretation was  
25 offered to Mr. Dittmer's 1/10 of a Pine

1 Barrens Credit, which he rejected. The  
2 Pines Barrens Commission has in the past  
3 approved numerous Core Area Permits for  
4 building in the immediate area in examples,  
5 which I'm just going to mention some.  
6 Every one that I mention will be in your  
7 book under "cases."

8 The case of Harold Marshall: North  
9 of East Bartlett Road, South of Schneider  
10 Lane, in Middle Island. Application for  
11 Core Preservation Area Hardship for a  
12 single-family home. The applicant is  
13 zoning A-5 Residential as here. That  
14 applicant has 3.9 acres of vacant wooden  
15 property on a paper street, no road.  
16 Circumstances identical to those before  
17 you. Topography was flat. Vegetation was  
18 mature oak-pitch pine forest.

19 This Commission met on October 2nd,  
20 2002. We have the case number and the case  
21 here. Commission determined that the  
22 application met all requirements for  
23 Extraordinary Hardship and allowed clearing  
24 for a single-family home and approved the  
25 Core Hardship Exemption on this piece of

1 vacant wooded property on a paper street,  
2 which happened to abut nature trails and  
3 preserves. It was further indicated that  
4 there was going to be physical disturbance  
5 of the land, an increase of the use of the  
6 area and involved new destruction.

7           They were given permission to clear  
8 the site within the core to build a  
9 single-family home, which they would  
10 classify as development, but was determined  
11 to have a hardship. The parcel had only  
12 two houses near it within a 500-foot radius  
13 and was vacant in the entire surrounding  
14 area. The case is attached.

15           Two, second case: Evan Goldstein,  
16 Hot Water Street, Manorville, Town of  
17 Brookhaven. That parcel was surrounded by  
18 County property on three sides and existed  
19 prior to Pine Barrens Core Roadfront  
20 Exemption List. Commission determined that  
21 the application met all requirements for  
22 Extraordinary Hardship under Section  
23 57-0121 (10(a) and (c)), exactly what the  
24 applicant here is requesting under the same  
25 section. The only condition was that they



1 could not clear more than 20 percent of the  
2 total lot area. This was determined on  
3 September 17th, '97. At that point, it was  
4 a completely vacant area. No house  
5 anywhere near it.

6 Next case is Anna and Alexander  
7 Czanecki: The property is located on the  
8 north side of North Street, west of Wading  
9 River Road, Manorville. The applicant  
10 wished to build a house on North Street,  
11 which was near the Peconic River Wild  
12 Scenic and Recreational Rivers corridor.

13 Single-family home on a lot would  
14 comply with the Brookhaven Zoning and could  
15 have been built on this lot because it was  
16 single and separate. Same as this piece.  
17 Granted the Extraordinary Hardship under  
18 Section 57 -- same one -- (a) and (c). The  
19 same provisions we're asking for here and  
20 would approve without any conditions as a  
21 Core Area Hardship Exemption in their  
22 Meeting of September 26th, 2001. I'm  
23 almost done.

24 The case of the application of  
25 Katherine Foster Screven: Property is

1 located north side of North Street, west of  
2 Center Moriches Road, Manorville.  
3 Application for Core Area Hardship to build  
4 a single-family home under septic system in  
5 an A-5 District, same as we're discussing  
6 here.

7 Property was single and separate,  
8 totally wooded, bordering a horse farm to  
9 the west, and a single-family residence to  
10 the east on the south side of North Street  
11 with a vacant lot behind it.

12 Contrary to the approvals, they  
13 completely cleared the lot, neutering of  
14 all trees and the Commission afterwards,  
15 based on complaints, that regular meeting  
16 approved the Core Hardship Exemption as  
17 submitted without conditions. Clearing was  
18 done after the application was made and  
19 subsequently approved. The applicant built  
20 a single-family home with the permission of  
21 Pine Barrens and cleared every tree.

22 The application of Dolores Blake,  
23 1997 case: Applicant needs variances from  
24 the Town of Brookhaven to build. Yet the  
25 commission granted a Core Preservation Area

1 Hardship, allowed them to subdivide 5 acres  
2 into three lots containing less than 2  
3 acres each in an A-2 Zone, didn't meet  
4 zoning, but it required variance from the  
5 Town of Brookhaven. Yet the Extraordinary  
6 Hardship was granted by the board under the  
7 same provisions we requested here.

8 Then we have the interesting  
9 application of Rita Kristiansen on the east  
10 end of Forge Road in Calverton: It should  
11 be noted, the majority of this property was  
12 certified wetland. The applicant asked  
13 permission to build a single-family home on  
14 .2 of an acre, which is 8,000 square feet.  
15 Hardship Request Hearing was held March  
16 20th, '96. The Commission found that this  
17 small parcel met all of the requirements of  
18 the Extraordinary Hardship under (a) and  
19 (c), exactly what we're talking about here.  
20 Exactly what we're requiring, the lot was  
21 smaller; required variances from ZBA to be  
22 built. The lot was only 8,700 square feet  
23 in an A-10 Zone. Our parcel is an A-5 Zone  
24 and was 10,000 feet. There were units in  
25 the immediate vicinity, but not close.

1           Given the size of the parcel, only  
2   a 261 square-foot house could have been  
3   built. The Board gave them the right to  
4   build a full scale house with clearing on  
5   the site, which is far more severe than  
6   this application.

7           And the Woodstock Company  
8   application made in July of '98 on a lot  
9   which is 40 x 100, same filed map we're  
10   discussing here (two blocks away.) At that  
11   time, you could build on a 40 x 100 single  
12   and separate in the Town of Brookhaven  
13   before they increased it to 60 feet.  
14   However, this particular parcel had no road  
15   on the map or anywhere else. It required 1  
16   280-A Application to build a road or  
17   right-of-way. It did not even exist on the  
18   map. This lot did not come in for a  
19   Hardship Exemption because the  
20   Clearinghouse allocated one full Pine  
21   Barrens Credit based on the fact they had  
22   apparently been approved by the Town on an  
23   earlier code. It had no road, no road  
24   frontage, and it was grossly substandard to  
25   the ordinance and would not have been

1 single and separate at the time the  
2 application was made to the Pine Barrens.  
3 The applicant didn't go further because he  
4 was offered a full credit and he took it.

5 All these cases are listed here  
6 under cases fully printed out, the whole  
7 case.

8 Conclusion: Mr. Dittmer owned this  
9 property since 1970. It was a buildable  
10 parcel, again, under D-Residence. The  
11 property was subsequently upzoned by the  
12 Town in a series of upzoning, which rounds  
13 up today at A-5. In 1995, we arguably can  
14 argulate it, but it is single and separate  
15 and was not in the core. This thing could  
16 be built.

17 In 1995, it was placed in the Core  
18 of Pine Barrens for all the reasons  
19 explained before, this is a paper street.  
20 The application wishes to pave 100 feet of  
21 it. He rejected the 1/10 of a credit, far  
22 less than any similarly situated parcel has  
23 received Pine Barrens, including a 40 foot  
24 parcel previously mentioned.

25 He wishes to develop the property

1 now, which is the best use for it under  
2 Sections (a) and (c), all the cases  
3 submitted above under the same provision of  
4 the code approved by this Commission. We  
5 have shown you numerous examples and can  
6 provide more that were not on any Road  
7 Frontage Exemption List that was acceptably  
8 approved, but not when the time map was  
9 created.

10 In cases to hold that if you are on  
11 a paved or paveable road, it would be  
12 considered non-development under decisions  
13 that have been submitted before. I will  
14 get those to you. The roadway is  
15 considered non-development. It is in the  
16 core, complies with the code of the Town of  
17 Brookhaven and is single and separate  
18 parcel in excess of 60 feet. If other  
19 precedents are to be followed, this should  
20 fall within.

21 We're asking the Commission to do  
22 two things: Grant a waiver that has been  
23 done in previous applications of the strict  
24 criteria of the Pine Barrens.

25 Allow us to go to Brookhaven for a

1 building permit and build a house on this  
2 single and separate lot in an area that is  
3 pretty well developed. As you all know,  
4 when they were developed is not the issue.  
5 It's what's not on ground that counts and  
6 there's houses all around here.

7 I would like at this time, which is  
8 all I have to say, it's all in the book, we  
9 have one other witness, Mr. Noveletti, the  
10 code expert among other things, who will  
11 give you a very quick presentation also and  
12 I'll get together with Mr. Milazzo and give  
13 whatever he needs.

14 MR. MILAZZO: I would just like the  
15 information on your assertion that the  
16 development of a road is not development  
17 under Article 57.

18 MR. SCHEYER: We have a bunch of  
19 cases with it where you found that. I'll  
20 get them to you.

21 MR. MILAZZO: Very well.

22 MR. WALTER: Can I ask Counsel a  
23 question? I'd ask the witness a question,  
24 but you're not putting the witness on that  
25 I'd like to ask questions, so I won't

1 blind-side you.

2 If we gave you a full credit, would  
3 this satisfy your client?

4 MR. SCHEYER: I have to ask him.  
5 He's sitting in the back. I'd have to go  
6 out and ask him. I can't answer that,  
7 but --

8 MR. WALTER: I would have asked  
9 him, but didn't want to blind-side him.  
10 Maybe you can ask him that question.

11 MR. SCHEYER: I will ask him that  
12 question. If you want my suspicion, he  
13 might. The 1/10 of the credit allocation  
14 is ludicrous. As you know, the building  
15 lot is worth far more than \$7,000 or  
16 \$8,000.

17 MR. FRELENG: Before we raise  
18 edification, on what grounds would we issue  
19 you additional credit?

20 MS. PRUSINOWSKI: It was never  
21 appealed.

22 MR. FRELENG: It was never  
23 appealed.

24 MR. SCHEYER: Well, he decided not  
25 to get credits. He wants to build it.



1 MR. MILAZZO: Did he buy this  
2 parcel?

3 MR. SCHEYER: He inherited it. His  
4 father bought it in 1970. His father  
5 passed away and he inherited 10 or 15 years  
6 ago. Same people, same -- he took his  
7 father's estate. His father was also  
8 Henry, but it was bought in 1970. Is that  
9 45, 50 years ago? This is not a  
10 subdivision or a speculative thing. He had  
11 it. It has not been merged with anything  
12 else. It's been sitting there at his  
13 property since then and when you formed the  
14 Pine Barrens, this was a building lot.

15 MR. WALTER: This is what I would  
16 call an exercise in esoteric real property  
17 law, that I suspect that if we do go into  
18 executive session and start to talk about  
19 things, certain things are going to fall  
20 into place. If you can ask your client  
21 that, that might be important.

22 MR. SCHEYER: I will. Do you want  
23 me to do it right now?

24 MR. WALTER: The rest of your case  
25 will be fine. You don't even have to

1 answer it today.

2 MR. SCHEYER: I will get back to  
3 you on that. Can I call Mr. Noveletti,  
4 because I want to get you out of here.

5 MR. PAVACIC: Are there any other  
6 questions for Mr. Scheyer?

7 MR. SCHEYER: I know nothing about  
8 Pine Barrens. I wouldn't know one if I was  
9 holding it.

10 MR. PAVACIC: Are there any other  
11 questions for Mr. Scheyer from the  
12 Commission?

13 You have your other witness then,  
14 please.

15 MR. SCHEYER: Yes, please. Thank  
16 you.

17 MR. PAVACIC: Are you an attorney,  
18 sir?

19 MR. NOVELETTI: No, I'm not.

20 MR. PAVACIC: Can you swear him in?

21 M I K E N O V E L E T T I, the witness herein,  
22 having been first duly sworn by a Notary Public of  
23 the State of New York, was examined and testified  
24 as follows:

25 MR. NOVELETTI: My name is Mike

1 Noveletti. I live at 8 Stillwaters Lane,  
2 West Hampton Beach, New York. I do  
3 environmental consultant work. I'm a code  
4 enforcement officer in New York State,  
5 building inspector, and I routinely do --  
6 address land issues and evaluations of  
7 properties with development construction  
8 and potential development. I'm going to  
9 explain to you by examples what the impacts  
10 are of this proposed project relative to  
11 four examples that I'll read to you that  
12 have already previously been approved in  
13 this neighborhood as a developed area.

14 MR. MILAZZO: I'm sorry to  
15 interrupt, sir. Can you just define "in  
16 this neighborhood?" What does that mean?  
17 Is that 5 feet? 10 feet? A mile? 10  
18 miles? One I see is in the Town of  
19 Southampton.

20 MR. NOVELETTI: We're speaking  
21 about the road.

22 MR. MILAZZO: How big is your  
23 circle? Your testimony was that, "in this  
24 neighborhood." I just want to know what  
25 does "neighborhood" mean to you.

1 MR. NOVELETTI: The neighborhood  
2 means the locations and locus of the  
3 properties I'm about to tell you about.  
4 They're along the road and adjacent to the  
5 subject property.

6 MR. MILAZZO: But my question is  
7 this -- Why don't you give your  
8 presentation and I'll probably ask the same  
9 question at the end.

10 MR. NOVELETTI: Okay. The parcel  
11 belonging to the -- Mr. Dittmer, the  
12 subject property known as 200-529-5-35 is  
13 in the Core of the Preservation Pine  
14 Barrens. The area in which the parcel is  
15 located is classified by the Pine Barrens  
16 as substantially developed. The  
17 adjacent -- the apartments adjacent to this  
18 property are classified as substantially  
19 developed. Exhibits A, B, and C, A, being  
20 Core Preservation Area Permits, and B known  
21 as Central Pine Barrens Core Preservation  
22 Area existing development patterns and  
23 vacant lots, and C, as a Core Preservation  
24 Area Non-development parcel --  
25 Non-development parcel list, define the

1 parcels that are approved in substantially  
2 developed areas.

3 The Yaphank-Middle Island Road is a  
4 substantially developed area. The aerial  
5 photographs shown as 1, 2, and 3 are  
6 examples of cases approved or developed on.  
7 The aerial known as 1 as highlighted in  
8 blue, is on the front road exemptions  
9 list -- of the road front exception list  
10 and was developed on two sides along with  
11 numerous other parcels on the street. The  
12 area known as 2 is the 40 x 100 size lot,  
13 also highlighted in blue, which was the  
14 subject of an application known as the  
15 Woodstock Application. The parcel had  
16 building permits but was never developed.  
17 For this lot, the Pine Barrens issued one  
18 full Pine Barrens Credit.

19 The four parcels approved for  
20 development by the Pine Barrens possess  
21 many issues which Mr. Dittmer's parcel does  
22 not share. The parcels listed for our  
23 purposes of example are 1, 2, 3, and 4  
24 before as follows:

25 Example 1: The application of Seth

1 Morgan with regards to parcels known as lot  
2 200-410-1-7.6 & 10. These parcels are land  
3 locked and 7 acres from the road, required  
4 an easement and more clearing than the  
5 Dittmer lot would require. The application  
6 was approved for development of multiple  
7 single-family houses.

8 Example number 2: The application  
9 put forth by Janet DuMauro in regards to  
10 this parcel number 200-382-3-13, resides in  
11 wetlands which was required a wetland  
12 permit. Also, the parcel required more  
13 clearing than Mr. Dittmer's lot and was  
14 approved for construction of a  
15 single-family residence.

16 Item number 3 --

17 MS. PRUSINOWSKI: Sir, where are  
18 the items that you're referring to?

19 MR. NOVELETTI: The Tax Map.

20 MR. MILAZZO: First page.

21 MS. PRUSINOWSKI: I'm trying to  
22 follow and I'm having a very difficult  
23 time.

24 MR. MILAZZO: First page.

25 MS. PRUSINOWSKI: So they're not

1 maps?

2 MR. NOVELETTI: No. I'm sorry. I  
3 guess I should have -- Tax Maps is numbers.  
4 We're doing the Tax Map numbers.

5 Example 3: George Cachimpanis put  
6 in an application for Tax Map number  
7 200-300-3-29 required more clearing to  
8 construct a single-family home than the  
9 subject Dittmer lot.

10 Example number 4: Theresa Cox put  
11 in an application for Tax Map number lot  
12 900-358-1-9 that required the Zoning Board  
13 approvals in order to build. Mr. Dittmer's  
14 lot does not, at least according to Mr.  
15 Scheyer.

16 MR. MILAZZO: That seems circular.

17 MR. NOVELETTI: The final exhibit,  
18 Exhibit D, we would like to present is  
19 regarding a parcel identified as Tax Map  
20 number 200-460-1-6, 6-acre parcel with  
21 building approval as well as clearing  
22 limits. The property is owned -- the  
23 property owner cleared 4 acres, much  
24 exceeding the clearing limits as shown on  
25 the aerial photograph of the property

1 belonging to Exhibit D. Afterwards, the  
2 Pine Barrens declared the excess clearing  
3 of the parcel to be permissible.

4 What we're trying to prove by  
5 providing these examples is that Dittmer's  
6 land belongs to an area classified as  
7 significantly developed, based on these  
8 exhibits, and along with other examples  
9 stated in this document and related  
10 documents, also including the core road  
11 front exemption list.

12 The parcels meet the criteria of  
13 surrounding developed parcels. The  
14 development of this parcel will not effect  
15 or have a material detriment to any of the  
16 surrounding parcels or improvements to the  
17 area in which the subject property is  
18 located. Furthermore, it will not increase  
19 the danger of wildfire or endanger safety,  
20 also it will not cause substantial  
21 impairment to the resources of the core.  
22 Based on the previous approvals of the  
23 parcels Mr. Dittmer's 10,000 -- the subject  
24 property -- 10,000 square-foot lot, 6,000  
25 feet of which will be cleared is not out of



1 character to the surrounding area or of  
2 greater environmental significance than all  
3 the examples, which are listed.

4 MS. PRUSINOWSKI: Where are the  
5 exhibits in reference to Exhibit D and then  
6 an aerial known as 1, where are those? Are  
7 they within this book somewhere?

8 MR. NOVELETTI: Yes, they are. The  
9 aerial photographs open in the highlights.

10 MS. PRUSINOWSKI: Do you have one  
11 map indicating the proximity of  
12 Mr. Dittmer's parcel to the remainder of  
13 the parcels that you're using as --

14 MR. NOVELETTI: The first aerial,  
15 D, Dittmer property, is here (indicating).

16 MS. PRUSINOWSKI: First aerial?  
17 This (indicating)?

18 MR. NOVELETTI: Yes. This is D.  
19 I'm sorry. The Tax Map number here is  
20 529-5-35 -- 529-5-34, which is the Dittmer  
21 subject property.

22 MS. PRUSINOWSKI: Yes. I  
23 understand that, but I don't understand how  
24 these other parcels on different tax maps  
25 relate to Mr. Dittmer's parcel in this

1 instance. Do you have a map that indicates  
2 that?

3 MR. NOVELETTI: Mr. Scheyer, the  
4 maps showing the relationship to these  
5 examples?

6 MR. MILAZZO: Do you have that map?

7 MR. EAGAN: In the -- within your  
8 own report was created -- well, in the  
9 Central Pine Barrens Core, there's a  
10 development identification box where  
11 there's a Tax Map attached to the northern  
12 part --

13 MR. MILAZZO: I'm sorry, are you  
14 testifying?

15 MR. NOVELETTI: They're referring  
16 to this section and the company maps.  
17 They're not highlighted.

18 MS. PRUSINOWSKI: Unclear what the  
19 point you're trying to get across is.

20 MR. NOVELETTI: The point is that  
21 the intensity of the development of the  
22 proposed Dittmer lot is less intensive than  
23 the approval that has been granted on the  
24 lots we just sited, those four examples, so  
25 that it's customary to the character of or

1 less than the development intensity.

2 MS. PRUSINOWSKI: But how does the  
3 subject parcel relate to the other cases  
4 that you're trying to use as being  
5 proximate?

6 MR. NOVELETTI: They're precedent  
7 through this property being approved for  
8 development.

9 MS. PRUSINOWSKI: How are they  
10 precedent?

11 MR. NOVELETTI: Because it's less  
12 than 6,000 square feet of clearing on the  
13 size of the lot, the proximity to the road  
14 and the opening of the road to bring excess  
15 to it.

16 MS. THRON-HOLST: I think the  
17 question that we're looking for an answer  
18 on is not that they're similar so much that  
19 they are within a reasonable radius,  
20 because I think that was what was being  
21 suggested that this property was in a  
22 similar radius of similar properties that  
23 have been granted.

24 MR. NOVELETTI: We're trying to say  
25 here that it is within proximity.

1 MS. THRON-HOLST: But I think  
2 that's what we're having a hard time seeing  
3 from what you have shown us so far.

4 MR. PAVACIC: Mr. Noveletti, do you  
5 have an overall aerial photograph showing  
6 the locations of the parcel in relation to  
7 the subject parcel?

8 MR. NOVELETTI: No. I have the  
9 aerial photograph --

10 MR. PAVACIC: The individual aerial  
11 photographs for each of the parcels you're  
12 claiming as exhibits?

13 MR. NOVELETTI: No. We referred to  
14 the Tax Map drawings where those properties  
15 were located as those being on the list  
16 that are within the Pine Barrens Core, the  
17 existing development, patterns, and vacant  
18 lots.

19 MR. MILAZZO: Are they in the  
20 immediate vicinity of the parcel?

21 MR. NOVELETTI: I don't know. I  
22 have to ask Mr. Scheyer.

23 MR. MILAZZO: Mr. Scheyer, are  
24 those parcels in the immediate area? Are  
25 they in the immediate vicinity of the

1 parcel?

2 MR. SCHEYER: I'm sorry?

3 MR. MILAZZO: Can you ask him?

4 MR. SCHEYER: If I may, I want to  
5 answer the question Mr. Walter asked me  
6 earlier if my client would accept one  
7 credit, and the answer to that is yes.

8 MR. MILAZZO: That wasn't my  
9 question. My question was whether the  
10 parcels are in the immediate vicinity, if  
11 the property that you referenced through  
12 Mr. Noveletti are in the immediate vicinity  
13 of this parcel.

14 MR. SCHEYER: It's in my booklet  
15 that the aerial, you can see the --

16 MR. MILAZZO: Is it's a yes or no  
17 question. Is it yes or no?

18 MR. SCHEYER: I don't know if it's  
19 in his pamphlet, but it's in mine.

20 MR. NOVELETTI: Do you have his  
21 pamphlet?

22 MR. MILAZZO: I have his pamphlet,  
23 but those are different properties, aren't  
24 they? Let me back up. Why don't we deal  
25 with Mr. Noveletti's proposal. Mr.

1 Noveletti, there are four parcels. Are  
2 these parcels in the immediate vicinity of  
3 Mr. Dittmer's lot?

4 MR. NOVELETTI: That I don't know.  
5 I have to ask Mr. Scheyer.

6 MR. MILAZZO: When you defined this  
7 area, would you agree that seven homes in a  
8 3,700 foot linear section of a roadway,  
9 seven homes constitutes substantial  
10 development?

11 MR. EAGAN: Yes.

12 MR. MILAZZO: That wasn't a  
13 question to Mr. Eagan. If Mr. Eagan wants  
14 to testify, he can do that.

15 MR. EAGAN: I'd be happy to  
16 testify.

17 MR. MILAZZO: Okay.

18 MR. EAGAN: Mr. Noveletti, please  
19 step away. Thank you.

20 My names is James Eagan. I'd be  
21 happy to testify on his behalf.

22 MR. PAVACIC: You need to be sworn  
23 in.

24 MR. EAGAN: I'd be happy to be  
25 sworn in.

1 J A M E S E A G A N, the witness herein, having  
2 been first duly sworn by a Notary Public of the  
3 State of New York, was examined and testified as  
4 follows:

5 MR. MILAZZO: My question again:  
6 Would you agree seven homes in a 3,7000  
7 linear stretch of a roadway constitutes  
8 substantial development?

9 MR. EAGAN: Yes, I would. I would  
10 base this on the fact that the Pine Barrens  
11 Commission has created three lists:

12 One is the core road for an  
13 exemption list, one is the core development  
14 and patterns of the development, and one is  
15 the permits issued.

16 The Pine Barrens did this because  
17 they basically defined what development was  
18 and the development that they said was,  
19 "This is all that was allowed, so you have  
20 to declare this as development based on the  
21 fact that there is a parcel number 18  
22 within 600 feet of Mr. Dittmer's and it is  
23 in an area that they classify the Pine  
24 Barrens, a substantially developed area.

25 You have to look at the Pine

1 Barrens as a unique entity. There isn't  
2 total development and it's not seven  
3 houses. It's ten houses on one side, 12  
4 houses down the street, three across the  
5 street. Mr. Dittmer's property is in the  
6 -- at the end of a substantially developed  
7 area, but someone has to be at the end of a  
8 substantially developed area. Not everyone  
9 can be in the middle because the Pine  
10 Barrens basically took people's property,  
11 and what they're trying to do is not give  
12 them compensation, as they've shown, where  
13 they're only willing to give Mr. Dittmer  
14 1/10 of a credit and the Woodstock  
15 company --

16 MR. WALTER: Mr. Eagan --

17 MR. MILAZZO: Let him testify.

18 MR. WALTER: Are you a contact  
19 vendee?

20 MR. EAGAN: I am an owner with  
21 Mr. Dittmer on the parcel. I am not a  
22 contract vendee.

23 MR. MILAZZO: Was that disclosed to  
24 us?

25 MS. PRUSINOWSKI: Then it's single



1 and separate.

2 MR. MILAZZO: Was that disclosed?

3 MR. EAGAN: I don't know if that  
4 had to be disclosed. Mr. Dittmer and I  
5 have partners on lots of land. If you  
6 would like an owner's affidavit that Mr.  
7 Dittmer and I are partners on land, I'd be  
8 happy to, and I don't own any contiguous  
9 land.

10 MR. MILAZZO: So I would just  
11 direct your attention to the application.

12 MR. ROMAINE: Could I ask a  
13 question?

14 MR. EAGAN: Sure.

15 MR. ROMAINE: When did you become a  
16 part owner in this parcel?

17 MR. EAGAN: Mr. Dittmer and I have  
18 an arrangement about -- within the last  
19 couple of years. I don't see how that  
20 matters, whether I'm --

21 MR. ROMAINE: Well, I asked that  
22 question with one specific --

23 MS. PRUSINOWSKI: Were you also a  
24 partner with number 36?

25 MR. EAGAN: No.

1 MR. ROMAIN: Arrangement is  
2 different than being a part-owner. If  
3 you're a part-owner, then you should be on  
4 the deed. Are you on the deed of this  
5 property?

6 MR. EAGAN: No, I am not. Well,  
7 then I am not a part-owner. I have an  
8 arrangement with a friend.

9 MR. WALTER: Is it written?

10 MR. EAGAN: No, it's not.

11 MR. ROMAIN: It's usually a  
12 contract vendee then.

13 MR. EAGAN: Well, I don't have a  
14 contract. All I'd like to say is what the  
15 definition of "substantially developed" is,  
16 and it's by your own record that  
17 "substantially developed" is based on what  
18 the Pine Barrens defines as an area that  
19 has development in it. That's why they  
20 picked road front parcel and said, This is  
21 a substantially developed area and if  
22 you're on -- in an area where you believe  
23 that you could put a house, it's  
24 "substantially developed."

25 MS. PRUSINOWSKI: Where does it say

1 that?

2 MR. EAGAN: It implies it in the  
3 law.

4 MR. WALTER: So if we're to issue a  
5 credit to build a road, who gets the  
6 financial benefit of that; you and  
7 Mr. Dittmer or you?

8 MR. EAGAN: That would be for  
9 Mr. Dittmer to determine.

10 MR. MILAZZO: Would you consider  
11 this area significantly developed?

12 MR. EAGAN: The best I can tell,  
13 yes.

14 MR. MILAZZO: Would you say that  
15 this property is similar to the property  
16 that's surrounding to the east?

17 MR. EAGAN: The east is -- the  
18 County boarded up all the land.

19 MR. ROMAINE: That's all woods.

20 MR. EAGAN: So everybody in that  
21 neighborhood whose got County behind it.

22 MR. ROMAINE: The development is  
23 north and south on the street of 21.

24 MR. WALTER: Did you have anything  
25 more to add because I think your attorney

1 would like you to sit down?

2 MR. EAGAN: Yeah. He'd like to  
3 choke me.

4 MR. WALTER: Figuratively, that's  
5 probably realistic.

6 MR. EAGAN: That's fine. You got  
7 to learn somehow. You know, it's all about  
8 people's property right and it's about  
9 getting people fair value for your money.

10 MR. WALTER: Mr. Eagan, thank you.

11 MR. EAGAN: I appreciate it.

12 MR. ROMAINE: Thank you.

13 MR. PAVACIC: Any other questions  
14 for the applicant from the Commission at  
15 this point? Any questions from the public?

16 MR. AMPER: (Indicating.)

17 MR. PAVACIC: Mr. Amper?

18 MR. AMPER: This question is --

19 MR. WALTER: We have to swear him  
20 in.

21 R I C H A R D A M P E R, the witness herein,  
22 having been first duly sworn by a Notary Public of  
23 the State of New York, was examined and testified  
24 as follows:

25 MR. AMPER: Have we established

1 whether or not the applicant attempted to  
2 sell property either to the Town of  
3 Brookhaven or Suffolk County? Has that  
4 come out and I just didn't hear it today?

5 MR. MILAZZO: We don't have the  
6 ability to answer that. He can answer  
7 that. Mr. Scheyer can answer that.

8 MR. SCHEYER: It has not. The deed  
9 is in his name. I saw the deed. It's the  
10 name of Henry Dittmer.

11 MS. PRUSINOWSKI: If I may, the  
12 Town has made overtures to those parcels  
13 located within these filed maps -- old  
14 filed maps in order to require those  
15 parcels that the County has not already  
16 taken.

17 MR. AMPER: Say that again.

18 MS. PRUSINOWSKI: The Town has made  
19 overtures to those individuals who owned  
20 parcels other than the County of Suffolk in  
21 order to increase the municipal holdings in  
22 this area.

23 MR. AMPER: And they have not  
24 accepted those offers?

25 MS. PRUSINOWSKI: There has been

1 very little acceptance to date.

2 MR. ROMAINE: No response.

3 MS. PRUSINOWSKI: And I'm not  
4 referring to this specific parcel.

5 MR. AMPER: There's no evidence  
6 that they made any effort to sell the  
7 property to the County of the Town. They  
8 didn't appeal the credit allocation, so I'm  
9 going to go back to an argument that I  
10 raised before and that is that: This  
11 hardship is as a result of the inaction on  
12 the part of the applicant, and that is  
13 impermissible. This is in more of the  
14 woods for folks that are not aware about  
15 this. I don't want to go into the details,  
16 because the number of species of bird, the  
17 history of endangered species on this  
18 property is well-documented. This is an --  
19 I think obviously is a parcel in the middle  
20 of the Pine Barrens that we sought to  
21 protect, and it does not seem to me as  
22 though the applicant has attempted to use  
23 other remedies to resolve the problem for  
24 which he is seeking a way.

25 MR. WALTER: Mr. Amper, can I ask

1     you a question?

2             MR. AMPER:    Sure.

3             MR. WALTER:   If the Clearinghouse  
4     had given him one full credit allocation,  
5     would you have objected to that?

6             MR. AMPER:    No, and if he appeals  
7     and it is granted, we wouldn't object to  
8     that either.

9             MR. WALTER:    So if the Commission  
10    could fashion a resolution of this that did  
11    not set precedent, that would be my opinion  
12    just -- and I may have a little more  
13    background as a lawyer than others sitting  
14    on the Board -- but I would not be opposed  
15    based on what I've heard to us figuring out  
16    a way to authorize one credit and have  
17    this -- because --

18            MR. AMPER:    The precedent issue is  
19    an important one.

20            MR. WALTER:    I agree.   We have to  
21    do it in a way --

22            MR. AMPER:    But clearly, the  
23    Commission has the authority to rule on the  
24    credit allocation.

25            MR. WALTER:    So could they --

1 MS. THRON-HOLST: Under what  
2 parameters in this case though?

3 MR. WALTER: Could they amend the  
4 application, our Counselor?

5 MR. MILAZZO: The first office is  
6 still part of the public hearing?

7 MR. WALTER: You're still part of  
8 the public hearing. I'm keeping it all out  
9 in the open now, Dick.

10 MR. AMPER: Terrific.

11 MR. MILAZZO: The Clearinghouse  
12 has -- there's an appeal process that would  
13 come to the Commission and you would hear  
14 an appeal, which as suspect, you would  
15 notice it, we would look at the application  
16 under the contexts of an appeal, and we do  
17 that in research and we haven't done that.

18 MR. WALTER: So this is what my  
19 recommendation is: If Counsel is willing  
20 to do this, close the public hearing now,  
21 leave it open for written comment and  
22 discuss a way to figure out whether we can  
23 convert this to that appeal or how that  
24 takes place, if the Commission is willing  
25 to do that.



1 MR. ROMAIN: At this point, I'll  
2 make a motion to close this public hearing  
3 and leave it open for written discussion to  
4 put it on our decision calendar for our  
5 January meeting.

6 MR. WALTER: I think that that  
7 would be an important first step to see if  
8 we can come up with -- what I would deem  
9 would be a settlement, but we have to do it  
10 in a way that it's not -- I don't want  
11 people coming --

12 MR. ROMAIN: Stipulated.

13 MR. WALTER: Yeah. We got to come  
14 up with a way to do that. This can't be --  
15 this shouldn't happen this way. You guys  
16 should have appealed your Clearinghouse  
17 decision way back when. That should have  
18 been what happened and you put us in a  
19 tough position.

20 MR. SCHEYER: I don't agree. May  
21 I?

22 MR. WALTER: Absolutely. We  
23 haven't closed it officially.

24 MR. SCHEYER: The client chose at  
25 that point to try to develop the property

1 because it was not given any -- it was so  
2 far from realty, that going to the Zoning  
3 Board of Appeals to the Clearinghouse was a  
4 useless act -- useless. Therefore --

5 MR. WALTER: Well, usually after  
6 the appeal from the Clearinghouse, it comes  
7 to us, doesn't it?

8 MR. SCHEYER: Well, ultimately,  
9 this is the Board that has the authority to  
10 do what it wants with all of this. The  
11 Clearinghouse is only really an arbitrate  
12 to you --

13 MR. WALTER: Dick disagrees.

14 MR. SCHEYER: You're the final  
15 authority, they're not. I don't think on  
16 the issue of reaching settlement, that this  
17 Board has the authority to do it. I would  
18 probably get something to Mr. Milazzo on  
19 that because I sat on a lot of boards, as  
20 you know, and certainly, they have --  
21 you're the final authority.

22 You have the right to make any  
23 decisions that you want based on the facts,  
24 and it's easy to differentiate the facts.  
25 This case is unusual enough that it's not

1 going to create a precedent. You're not  
2 going to find a case like it if you look  
3 all day long. So that if you separate it  
4 and differentiate it from anything else and  
5 come up with a settlement based on the  
6 facts of this particular case, I don't see  
7 why at this point there's not the authority  
8 to do it. You have the authority to do  
9 what you want, really.

10 MR. WALTER: Well, I would disagree  
11 with that, but it's very critical in law  
12 school you have your wherefore clause that  
13 has it together with which as the court  
14 deems just, so I'm asking you, your request  
15 of this Commission is either the ability to  
16 develop or one credit. Is that what you're  
17 amending?

18 MR. SCHEYER: Yes.

19 MS. PRUSINOWSKI: Can I ask? I  
20 have two questions.

21 MR. SCHEYER: Yes, Brenda.

22 MS. PRUSINOWSKI: How did  
23 Mr. Dittmer and when did he take title to  
24 the subject parcel?

25 MR. SCHEYER: His father owned it

1 and took title in 1970. He inherited when  
2 his father died.

3 MS. PRUSINOWSKI: When was that  
4 approximately?

5 MR. SCHEYER: Ten years ago  
6 approximately, maybe more.

7 MS. PRUSINOWSKI: And how did he do  
8 that?

9 MR. SCHEYER: He's the  
10 administrator of his father's estate. They  
11 both have the same name.

12 MS. PRUSINOWSKI: And who's Ida  
13 Dittmer?

14 MR. MILAZZO: Mother.

15 MR. SCHEYER: Yeah.

16 MS. PRUSINOWSKI: What proof do we  
17 have that Parcel 35 and 36 are not in the  
18 same name?

19 MR. SCHEYER: You have the title  
20 report.

21 MS. PRUSINOWSKI: It doesn't go  
22 that far.

23 MR. SCHEYER: We'll get you one.  
24 It's not a problem.

25 MR. ROMAINE: I think it's 54 that

1 it has to go back to in that particular  
2 aerial.

3 MR. MILAZZO: It doesn't include  
4 that adjacent parcel lot 36.

5 MR. SCHEYER: If you read it, I'll  
6 get a statement from the title company that  
7 they don't have, never had any adjacent  
8 parcel.

9 MR. WALTER: Anything that we would  
10 fashion would have to come under as near,  
11 single, and separate.

12 MR. SCHEYER: I will get it for  
13 you.

14 MS. PRUSINOWSKI: My question is:  
15 How did he take them?

16 MR. SCHEYER: I'll get it for you.

17 MR. PAVACIC: Mr. Milazzo, at this  
18 point --

19 MR. MILAZZO: I'll have a motion in  
20 the second to close the hearing --

21 MS. THRON-HOLST: I would like your  
22 input on this.

23 MR. AMPER: Before you close it --

24 MR. WALTER: We're not going to  
25 close it until you speak.

1 MR. AMPER: The Commission can also  
2 deny this application on the basis of the  
3 fact that the hardship was created by an  
4 inaction of the applicant and allow the  
5 matter of the allocation to be visited  
6 separately. Just another option.

7 MS. PRUSINOWSKI: In the matter of  
8 the credit?

9 MR. AMPER: Huh?

10 MS. PRUSINOWSKI: You mean the  
11 matter of the credit?

12 MR. AMPER: Uh-huh.

13 MR. WALTER: We don't want to go  
14 through another public hearing.

15 MR. SCHEYER: It's going to be  
16 nothing but a lawsuit.

17 MR. PAVACIC: I'd like to hear Mr.  
18 Milazzo.

19 MR. MILAZZO: The only issue with  
20 respect to giving -- the staff wasn't  
21 prepared to address a Clearinghouse appeal  
22 and they haven't reviewed the arguments  
23 that you would make and how you would make  
24 different arguments on a Clearinghouse  
25 appeal or LOI appeal to the Commission.

1           So that's not part of our analyst  
2     to date. If this came in as an LOI  
3     interpretation appeal, there would be  
4     different analyses of different reviews of  
5     cases that may be on point that --

6           MR. WALTER: That's fair.

7           MR. MILAZZO: -- haven't been  
8     addressed today because that wasn't what we  
9     expected today.

10          MR. SCHEYER: I didn't either.

11          MR. FRELENG: To that point,  
✓12     there's about a half of dozen parcels just  
13     on this map section 5-29 that are within  
14     the 153 feet that could also be developed  
15     or could also come in for a credit appeal,  
16     so when staff looks at that, I'd like them  
17     to try to look at that area, which is in  
18     the immediate area of the subject area, and  
19     give us some discussion on the history of  
20     those lots that are precedent. That might  
21     be important by what we're doing.

22          MR. ROMAINE: I think Brenda also  
23     will have her work cut out for her because  
24     the Brookhaven Planning Department will  
25     began an extensive search, and I'd like you

1 to involve the official examiner of title  
2 for Suffolk County in the clerk's office.

3 MR. AMPER: One other alternative:  
4 If the Town of Brookhaven offered to  
5 purchase the property, would the applicant  
6 now agree to sell it?

7 MS. PRUSINOWSKI: Yeah.

8 MR. SCHEYER: Where did that come  
9 from?

10 MR. MILAZZO: Mr. Amper --

11 MR. AMPER: Well --

12 MS. THRON-HOLST: Didn't you say  
13 that you have way in the past?

14 MR. AMPER: But he did not  
15 previously challenge the appeal and he's  
16 now willing to consider taking the credit.  
17 Is he open now to sell the property to buy?

18 MR. MILAZZO: There's a motion by  
19 Supervisor Romaine to close the hearing and  
20 leave the written comment period open  
21 for how --

22 MR. ROMAINE: Leave the written  
23 comment period open for 30 days and place  
24 this on our decision calendar for our next  
25 regularly scheduled meeting in January.



1 MR. PAVACIC: The next meeting is  
2 January --

3 MR. MILAZZO: It would have to be  
4 30 days.

5 MR. ROMAIN: February.

6 MR. PAVACIC: The decision deadline  
7 on this is --

8 MR. MILAZZO: February 6th, so we  
9 need an extension through the February  
10 meeting.

11 MR. SCHEYER: What is the February  
12 date?

13 MR. ROMAIN: February 6th.

14 MR. MILAZZO: Third Wednesday of  
15 February.

16 MR. ROMAIN: Oh, is it the third  
17 Wednesday?

18 MR. MILAZZO: February goes quickly  
19 though because of the schools.

20 MR. PAVACIC: Mr. Scheyer says he  
21 consents.

22 MR. SCHEYER: We consent. It is --  
23 your decision time is put off until  
24 February 6th?

25 MR. MILAZZO: Yes.

1 MR. WALTER: I'll second the  
2 motion.

3 MR. PAVACIC: Seconded by  
4 Supervisor Walter.

5 MR. ROMAINE: Okay.

6 MR. PAVACIC: All in favor?

7 MR. WALTER: I.

8 (Whereupon, there was a unanimous  
9 affirmative vote of the Board.)

10 MR. PAVACIC: Any opposed? Any  
11 extension? Motion carried.

12 (Whereupon, this hearing was  
13 adjourned at 4:11 p.m.)  
14  
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25

C E R T I F I C A T I O N

STATE OF NEW YORK     )  
                                      ) SS  
COUNTY OF SUFFOLK     )

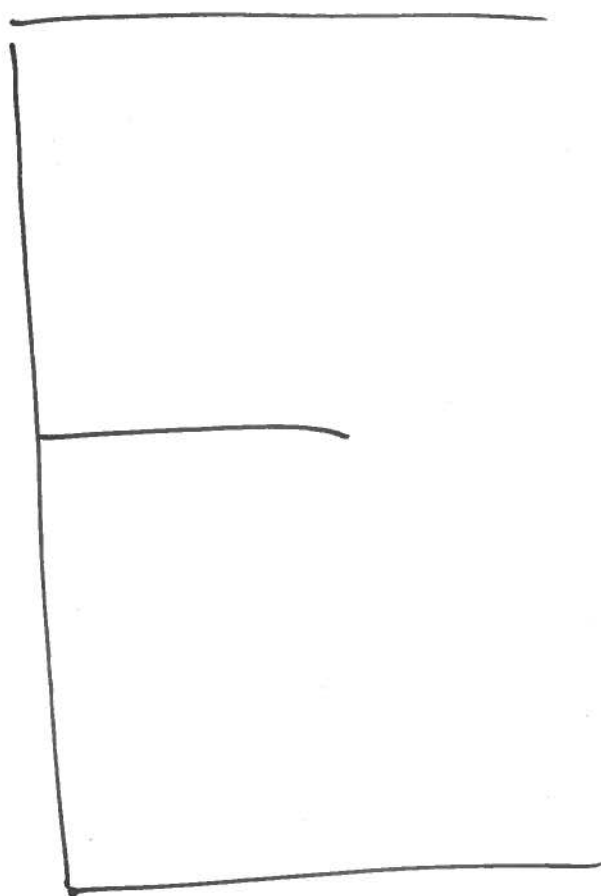
I, JAMIELEE PIGNOTTI, a Shorthand Reporter  
and Notary Public within and for the State of New  
York, do hereby certify:

THAT the foregoing transcript is a true  
and accurate transcript of my original stenographic  
notes.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 21st day of July, 2015.



JAMIELEE PIGNOTTI



**PECONIC ABSTRACT, INC.**

**Agent for**

**FIRST AMERICAN TITLE INSURANCE COMPANY**

**P.O. BOX 1267 405 OSTRANDER AVENUE**

**RIVERHEAD, NY 11901-0902**



(631) 369-0222 ~ Fax: (631) 369-4020

PECONICABSTRACT@VERIZON.NET

January 12, 2016

John P. Oliver, Esq.  
1552 Stony Brook Road  
Stony Brook, NY 1170  
mainstlaw@optonline.net

Re: Title No. PAC-4147  
Richard Dittmer  
0200-529.00-05.00-035.000

  
1/27/16  


Dear Mr. Oliver:

Enclosed herewith, please find updated Single & Separate Search pertaining to the above captioned matter.

Fee for said Search is...\$250.00. Please forward your check in this amount to my attention at the above address. Payment is due upon receipt. Thank you

Very truly yours,

  
Jeanne Anstett,  
Office Manager

JA/mv

Encl.



*First American Title*

January 11, 2016

Town of Brookhaven  
1 Independence Hill  
Farmingville, NY 11738

RE: Title No. PAC-4147  
Owner: RICHARD DITTMER  
Premises: 0200-529.00-05.00-035.000

Dear Sir or Madam:

Please be advised that **PECONIC ABSTRACT, INC.** is a duly constituted and authorized agent of First American Title Insurance Company. As such agent, said Company can act fully on our behalf and in our stead and has the authority to prepare and issue Certificate and Report of Titles, omit title exceptions, collect title insurance premiums and issue Title Insurance Policies and Endorsements thereto.

If you have any questions in this regard, please feel free to call me at any time.

Very truly yours,

Vincent L. Plaia  
Senior Underwriting Counsel  
Eastern Division Agency

VLP/nc0

cc: **Peconic Abstract, Inc.**  
405 Ostrander Avenue  
P. O. Box 1267  
Riverhead, NY 11901

140 East 45<sup>th</sup> Street, 44<sup>th</sup> Floor, New York, NY 10017

TEL 212.381.6600 • FAX 212.381.6615

[www.firstamny.com](http://www.firstamny.com)

Title No. PAC-4147

**V A R I A N C E   S E A R C H**  
**JEANNE ANSTETT, BEING DULY SWORN DEPOSES AND SAYS:**

THAT SHE RESIDES AT 386 MARCY AVENUE, RIVERHEAD, NEW YORK AND IS OVER THE AGE OF 21 YEARS AND THAT SHE IS THE OFFICE MANAGER OF PECONIC ABSTRACT, INC., AN AUTHORIZED AGENT FOR FIRST AMERICAN TITLE INSURANCE COMPANY OF NEW YORK, AND THAT UNDER HER SUPERVISION AND DIRECTION, TITLE WAS EXAMINED TO THE PARCELS OF LAND DESCRIBED ON THE ANNEXED SCHEDULE THAT SAID EXAMINATION MADE TO INCLUDE 1/11/16 AND DETERMINED THAT SUBJECT PREMISES IS IN FACT SINGLE AND SEPARATE OWNERSHIP AS APPEARS FROM THE CHAINS OF TITLE ANNEXED HERETO AND THAT THE EFFECTIVE DATE OF THE APPLICABLE ZONING ORDINANCE 1/1/54.

AND THAT THIS AFFIDAVIT IS MADE TO ASSIST THE TOWN OF BROOKHAVEN BOARD OF APPEALS TO REACH ANY DETERMINATION WHICH REQUIRES AS A BASIS THERETOFORE THE INFORMATION SET FORTH HEREIN AND KNOWING FULL WELL THAT SAID BOARD WILL RELY UPON THE TRUTH THEREOF.

LIABILITY OF THIS COMPANY IS LIMITED TO \$25,000.00 FOR ANY REASON.

DATED: 1/11/16

SWORN TO BEFORE ME THIS  
11<sup>th</sup> DAY OF JANUARY, 2016

  
\_\_\_\_\_  
NOTARY PUBLIC

PECONIC ABSTRACT, INC.

BY: \_\_\_\_\_

  
JEANNE ANSTETT,  
OFFICE MANAGER

MICHELLE VAIL  
Notary Public, State of New York  
No. 01VA4989798-Suffolk County  
Commission Expires Dec. 16, 2017

TITLE NO. PAC-4147

PREMISES ON THE NORTH: 0200-529.00-05.00-003.001

Middle Island Realty Corp  
To  
Louise Wilkerson

Liber 1782 page 248  
Dated: 7/27/34  
Recorded: 9/27/34  
(Lots 17-19)

(Assessed to: L. Wilkerson)  
Chester Jacobs, County Treasurer  
To  
Herman Karp, 50% interest,  
Martin Goldman, 25% interest and  
Theodore Goldman, 25% interest

Liber 4614 page 448  
Dated: 3/24/59  
Recorded: 4/21/59  
(Lots 17-19)

Emil, Henry & George Karp, as Executors  
of Herman Karp, as to 50% interest,  
Martin Goldman, 25% interest,  
Theodore Goldman, 25% interest, who legally  
changed his name to Theodore Mann dba  
HMT Company  
To  
Theodore Mann, 50% interest, Martin Goldman,  
25% interest, Samuel Shauer, 25% interest

Liber 8216 page 573  
Dated: 3/28/77  
Recorded: 4/7/77  
(Lots 17-19)

Theodore Mann, 50% interest, Martin Goldman,  
25% interest, Samuel Shauer, 25% interest  
To  
Theodore Mann

Liber 8567 page 374  
Dated: 11/13/78  
Recorded: 1/15/79  
(Lots 17-19)

Jean H. Tuthill, County Treasurer  
To  
County of Suffolk

Liber 8977 page 422 (437)  
Dated: 3/23/81  
Recorded: 3/23/81  
(Lots 17-19)

LAST DEED OF RECORD (FOR LOTS 17-19 INCL.)

Ellis T. Terry, County Treasurer  
To  
County of Suffolk


Liber 1798 page 01 (50)  
Dated: 1/14/35  
Recorded: 1/14/35  
(Lots 11-16)

County of Suffolk  
To  
New York Lien Corp.

Liber 3848 page 32  
Dated: 3/2/55  
Recorded: 3/4/55  
(Lots 11-16)

Continued.....

SWORN TO BEFORE ME THIS  
11<sup>th</sup> DAY OF JANUARY, 2016

  
NOTARY PUBLIC

MICHELLE VAIL  
Notary Public, State of New York  
No. 01VA4989798-Suffolk County  
Commission Expires Dec. 16, 2017

PECONIC ABSTRACT, INC.

by:   
JEANNE ANSTETT, OFFICE MANAGER



TITLE NO. PAC-4147

PREMISES ON THE NORTH: 0200-529.00-05.00-003.001  
Continued.....

New York Lien Corp.  
To  
Menashi J. Saleh

Liber 3953 page 247  
Dated: 6-1-55  
Recorded: 8/19/55  
(Lots 11-16)

Norma & Joseph Saleh, as Executors of  
Menashi Saleh, who died 12/26/69 in  
Westchester County  
To  
Bravo Lands Corp.

Liber 7109 page 326  
Dated: 12/10/71  
Recorded: 2/18/72  
(Lots 11-16)

Kevin Seaman, Referee (foreclose mortgage  
Liber 6287 page 496)  
To  
Norma & Joseph Saleh, as Executors of  
Menashi J. Saleh

Liber 8104 page 516  
Dated: 9/8/76  
Recorded: 9/15/76  
(Lots 11-16)

Jean Tuthill, County Treasurer  
To  
County of Suffolk  
(assessed to Bravo Lands Corp.)

Liber 8266 page 01 (65)  
Dated: 7/8/77  
Recorded: 7/8/77  
(Lots 11-16)

Jean Tuthill, County Treasurer  
To  
County of Suffolk

Liber 8390 page 186 (206)  
Dated: 2/17/78  
Recorded: 2/17/78

LAST DEED OF RECORD (FOR LOTS 11-16 INCL.)

SWORN TO BEFORE ME THIS  
11<sup>th</sup> DAY OF JANUARY, 2016

  
NOTARY PUBLIC

PECONIC ABSTRACT, INC.

by:   
JEANNE ANSTETT, OFFICE MANAGER

MICHELLE VAIL  
Notary Public, State of New York  
No. 01VA4989798-Suffolk County  
Commission Expires Dec. 16, 2017

TITLE NO. PAC-4147

PREMISES ON THE EAST: 0200-529.00-05.00-034.000

County of Suffolk  
To  
Ralph Zerul and Celia Zerul, his wife

Liber 3545 page 362  
Dated: 7/6/53  
Recorded: 7/13/53

(Ralph Zerul died on 2/6/84.)

Joseph Sawicki, County Treasurer  
To  
County of Suffolk  
(Assessed to Ralph and Celia Zerul)

Liber 12129 page 300  
Dated: 7/5/01  
Recorded: 7/12/01

LAST RECORD OWNER

SWORN TO BEFORE ME THIS  
11<sup>th</sup> DAY OF JANUARY, 2016

  
NOTARY PUBLIC

PECONIC ABSTRACT, INC.

by:   
JEANNE ANSTETT, OFFICE MANAGER

MICHELLE VAIL  
Notary Public, State of New York  
No. 01VA4989798-Suffolk County  
Commission Expires Dec. 16, 20\_\_17

TITLE NO. PAC-4147

PREMISES ON THE SOUTH: CHESTERFIELD STREET

SWORN TO BEFORE ME THIS  
11<sup>th</sup> DAY OF JANUARY, 2016

  
NOTARY PUBLIC

PECONIC ABSTRACT, INC.

by: 

JEANNE ANSTETT, OFFICE MANAGER

MICHELLE VAIL

Notary Public, State of New York  
No. 01VA4989798-Suffolk County  
Commission Expires Dec. 16, 2017

TITLE NO. PAC-4147

PREMISES ON THE WEST: 0200-529.00-05.00-036.000

Middle Island Realty Corp  
To  
Thomas Accordino

Liber 1826 page 163  
Dated: 1/14/35  
Recorded: 8/23/35

Thomas Accordino  
To  
Thomas Accordino and Beatrice Accordino,  
his wife

Liber 5559 page 360  
Dated: 6/15/64  
Recorded: 6/16/64

(No proof of death found on Thomas Accordino)  
Beatrice Accordino Eklund  
fka Beatrice Accordino  
to  
Ida Dittmer

Liber 6772 page 235  
Dated: 7/9/70  
Recorded: 7/13/70


LAST RECORD OWNER

SWORN TO BEFORE ME THIS  
11<sup>th</sup> DAY OF JANUARY, 2016

NOTARY PUBLIC

  
\_\_\_\_\_

PECONIC ABSTRACT, INC.

by:   
JEANNE ANSTETT, OFFICE MANAGER

MICHELLE VAIL  
Notary Public, State of New York  
No. 01VA4989798-Suffolk County  
Commission Expires Dec. 16, 2017

TITLE NO. PAC-4147

SUBJECT PREMISES: 0200-529.00-05.00-035.000

Middle Island Realty Corp  
To  
George D. Chapman

Liber 1732 page 223  
Dated: 8-29-33  
Recorded: 9/7/33

(Assessed to G.D. Chapman)  
Chester F. Jacobs, County Treasurer  
To  
Lewis C. Bollenbach

Liber 5890 page 114  
Dated: 1/6/66  
Recorded: 1/6/66

Lewis C. Bollenbach  
To  
Richard Dittmer

Liber 6746 page 201  
Dated: 5/21/70  
Recorded: 5/22/70

LAST RECORD OWNER

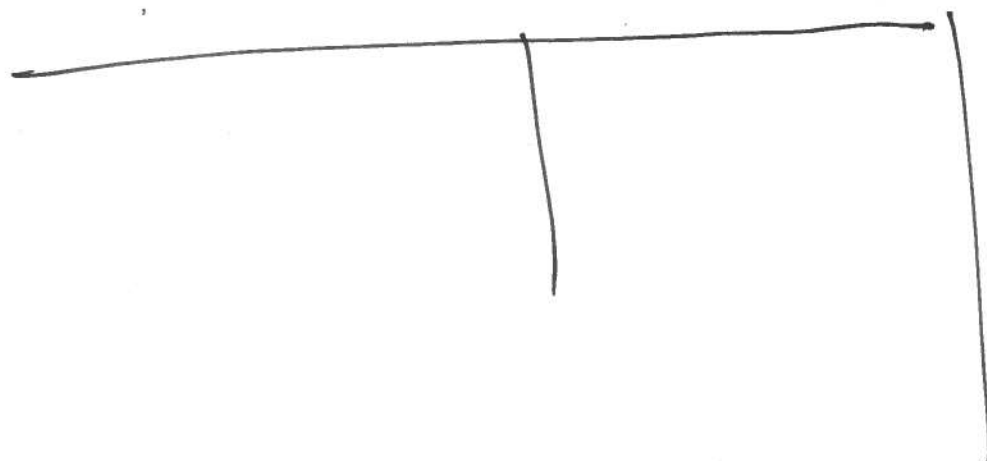
SWORN TO BEFORE ME THIS  
11<sup>th</sup> DAY OF JANUARY, 2016

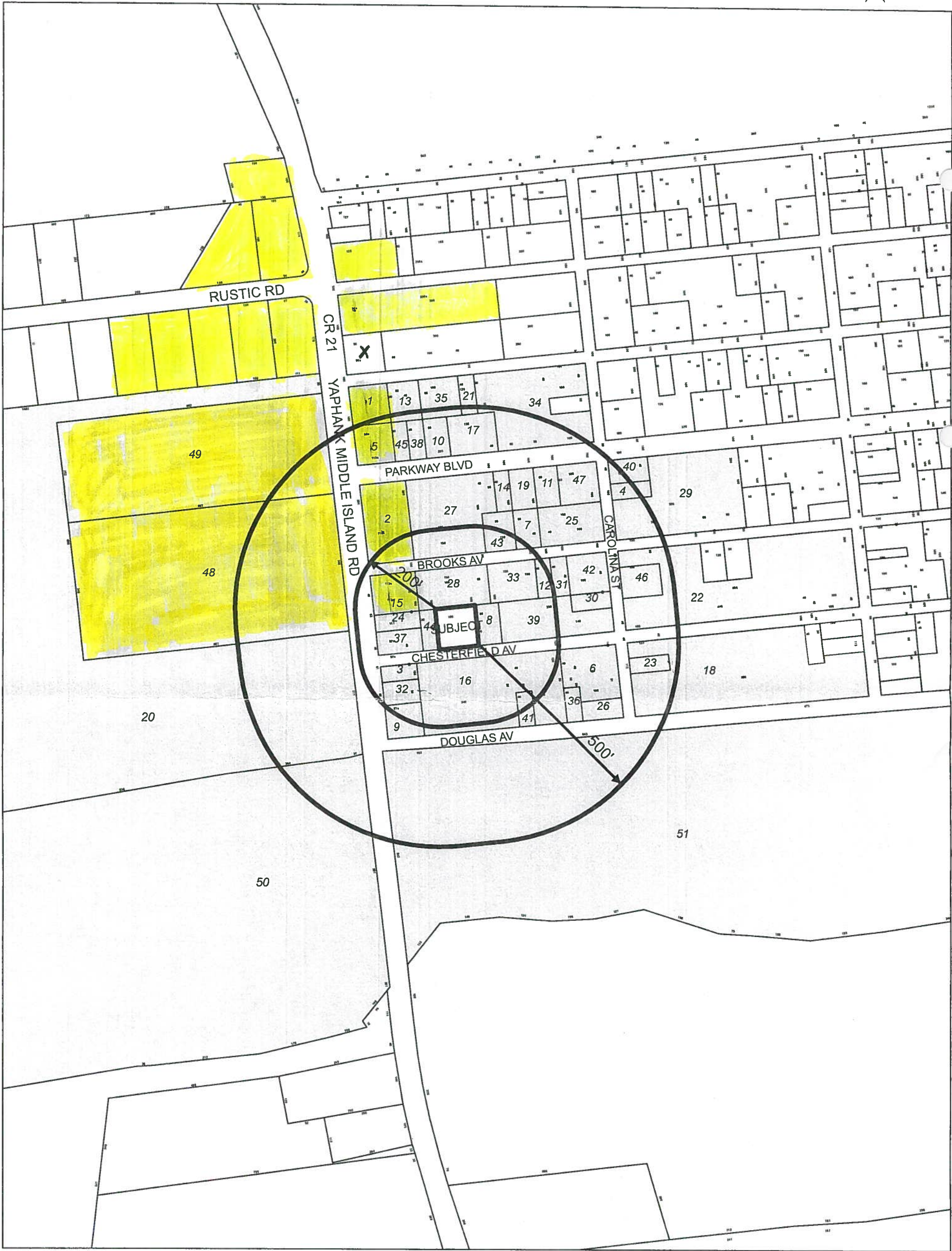
  
NOTARY PUBLIC

PECONIC ABSTRACT, INC.

by:   
JEANNE ANSTETT, OFFICE MANAGER


MICHELLE VAIL  
Notary Public, State of New York  
No. 01VA4989798-Suffolk County  
Commission Expires Dec. 16, 2017





ITALIC NUMBERS APPLY TO LIST

LOTS ON MAP OF  
FLOWER CITY PARK  
FILE# 58 SEC B  
LOTS 52 - 56 INCL

 = *RESIDENTIAL*  
*HOUSES*

THIS MAP PREPARED BY THE ASSESSORS  
OFFICE OF THE TOWN OF BROOKHAVEN  
By: L.H.C.  
Date: 3/1/2016



ID	SCTM	Property Code - Description	Parcel Acreage	Owner Name	Owner Address	City	State	Zip		
Subject Parcels										
0200	52900	0500 035000	311	Residential Vacant Land	0.2300	DITTMER RICHARD C	139 W MAIN ST	BAY SHORE	NY	11706
Buffered Parcels										
1	0200	52900 0300 001000	220	Two Family Year-Round Residence	0.2300	STERLING CONSULTING ASSOCIATES INC	777 N RAINBOW BLVD STELAS VEGAS		NV	89107
2	0200	52900 0400 001000	210	One Family Year-Round Residence	0.4600	LORANDINI GARY A & LAUREN	323 YAPHANK MIDDLE ISL.YAPHANK		NY	11980
3	0200	52900 0500 039000	311	Residential Vacant Land	0.0900	LUBIN LILLIAN C/O BEDER	123 BERKSHIRE RD	ROCKVILLE CENTER	NY	11570
4	0200	52900 0400 009000	311	Residential Vacant Land	0.0900	SUFFOLK COUNTY	330 CENTER DR	RIVERHEAD	NY	11901
5	0200	52900 0300 036000	220	Two Family Year-Round Residence	0.2300	MANGINO JOHN JR & ELAINE	9 HEATHER CRES	COMMACK	NY	11725
6	0200	52900 0500 046000	311	Residential Vacant Land	0.4100	SUFFOLK COUNTY	330 CENTER DR	RIVERHEAD	NY	11901
7	0200	52900 0400 034000	311	Residential Vacant Land	0.1400	COUNTY OF SUFFOLK	330 CENTER DR	RIVERHEAD	NY	11901
8	0200	52900 0500 034000	311	Residential Vacant Land	0.1400	SUFFOLK COUNTY	330 CENTER DR	RIVERHEAD	NY	11901
9	0200	52900 0500 017000	311	Residential Vacant Land	0.1800	COUNTY OF SUFFOLK	330 CENTER DR	RIVERHEAD	NY	11901
10	0200	52900 0300 033000	311	Residential Vacant Land	0.1400	SUFFOLK COUNTY DEPT REAL EST	10 OVAL DR	HAUPPAUGE	NY	11788
11	0200	52900 0400 006000	129	Acquired Development Rights	0.1400	COUNTY OF SUFFOLK PLAN DEPT C/O S KARCZEWSKI	PO BOX 6100	HAUPPAUGE	NY	11788
12	0200	52900 0500 005000	311	Residential Vacant Land	0.0900	EASLEY WM & WM EASLEY JR & ESTATE OF CASSANDRA	57 CORNELL AVE	YONKERS	NY	10705
13	0200	52900 0300 002000	311	Residential Vacant Land	0.1800	SUFFOLK COUNTY DEPT REAL EST	10 OVAL DR	HAUPPAUGE	NY	11788
14	0200	52900 0400 004000	311	Residential Vacant Land	0.0900	COUNTY OF SUFFOLK	330 CENTER DR	RIVERHEAD	NY	11901
15	0200	52900 0500 001000	210	One Family Year-Round Residence	0.2300	CORRADO CONO & JOAN	327 YAPK MIDDLE ISL RD	YAPHANK	NY	11980
16	0200	52900 0500 075001	311	Residential Vacant Land	1.5300	SUFFOLK COUNTY DEPT REAL EST	10 OVAL DR	HAUPPAUGE	NY	11788
17	0200	52900 0300 032000	942	Co Owned Reforested Land	0.2700	SUFFOLK COUNTY DEPT PARKS REC & CONSERVAT	NO MONTAUK HWY	SAVILLLE	NY	11782
18	0200	52900 0500 068001	311	Residential Vacant Land	2.1900	SUFFOLK COUNTY DEPT REAL EST	10 OVAL DR	HAUPPAUGE	NY	11788
19	0200	52900 0400 005000	311	Residential Vacant Land	0.1400	SUFFOLK COUNTY DEPT REAL EST	10 OVAL DR	HAUPPAUGE	NY	11788
20	0200	52900 0100 028002	311	Residential Vacant Land	12.8800	SUFFOLK COUNTY	COUNTY CTR	RIVERHEAD	NY	11901
21	0200	52900 0300 004000	311	Residential Vacant Land	0.0900	SUFFOLK COUNTY	330 CENTER DR	RIVERHEAD	NY	11901
22	0200	52900 0500 030001	311	Residential Vacant Land	2.2000	SUFFOLK COUNTY DEPT REAL EST	10 OVAL DR	HAUPPAUGE	NY	11788
23	0200	52900 0500 048000	129	Acquired Development Rights	0.0900	SUFFOLK COUNTY	310 CENTER DR	RIVERHEAD	NY	11901
24	0200	52900 0500 037000	311	Residential Vacant Land	0.0900	DITTMER RICHARD	139 W MAIN ST	BAY SHORE	NY	11706
25	0200	52900 0400 033000	129	Acquired Development Rights	0.3700	COUNTY OF SUFFOLK SUFFOLK COUNTY CENTER	CENTER DR	RIVERHEAD	NY	11901
26	0200	52900 0500 069000	311	Residential Vacant Land	0.0900	SUFFOLK COUNTY	330 CENTER DR	RIVERHEAD	NY	11901
27	0200	52900 0400 036001	311	Residential Vacant Land	0.9100	SUFFOLK COUNTY DEPT REAL EST	10 OVAL DR	HAUPPAUGE	NY	11788
28	0200	52900 0500 003001	311	Residential Vacant Land	0.4100	SUFFOLK COUNTY DEPT REAL EST	10 OVAL DR	HAUPPAUGE	NY	11788
29	0200	52900 0400 032001	311	Residential Vacant Land	1.2400	SUFFOLK COUNTY DEPT REAL EST	10 OVAL DR	HAUPPAUGE	NY	11788
30	0200	52900 0500 031000	311	Residential Vacant Land	0.0900	MC GOVERN MICHAEL	259 10 HILLSIDE AVE 2D	FLORAL PARK	NY	11001
31	0200	52900 0500 006000	311	Residential Vacant Land	0.0900	SUFFOLK COUNTY	330 CENTER DR	RIVERHEAD	NY	11901
32	0200	52900 0500 040000	311	Residential Vacant Land	0.1400	COUNTY OF SUFFOLK	330 CENTER DR	RIVERHEAD	NY	11901
33	0200	52900 0500 004000	129	Acquired Development Rights	0.2700	COUNTY OF SUFFOLK C/ T LAGATTA PLAN DEPT	PO BOX 6100	HAUPPAUGE	NY	11788
34	0200	52900 0300 031001	311	Residential Vacant Land	1.0900	SUFFOLK COUNTY DEPT REAL EST	10 OVAL DR	HAUPPAUGE	NY	11788
35	0200	52900 0300 003000	129	Acquired Development Rights	0.2300	COUNTY OF SUFFOLK PLANN DEPT C/O C WREDE	PO BOX 6100	HAUPPAUGE	NY	11788
36	0200	52900 0500 070000	311	Residential Vacant Land	0.0900	SUFFOLK COUNTY	330 CENTER DR	RIVERHEAD	NY	11901
37	0200	52900 0500 038000	311	Residential Vacant Land	0.1400	DITTMER IDA	52 SUNSET RD	BAY SHORE	NY	11706
38	0200	52900 0300 034000	942	Co Owned Reforested Land	0.0900	SUFFOLK COUNTY DEPT PARKS REC & CONSERVAT	NO MONTAUK HWY	SAVILLLE	NY	11782
39	0200	52900 0500 033001	311	Residential Vacant Land	0.5400	SUFFOLK COUNTY DEPT REAL EST	10 OVAL DR	HAUPPAUGE	NY	11788
40	0200	52900 0400 008000	311	Residential Vacant Land	0.1400	SUFFOLK COUNTY	330 CENTER DR	RIVERHEAD	NY	11901
41	0200	52900 0500 073000	962	County Owned Public Parks and Rec	0.0900	SUFFOLK CTY NAT PRESERVE DEPT PARKS RECREAT & C	MONTAUK HWY	SAVILLLE	NY	11782

\* The names, addresses and cartographic display of property and owners within the indicated radius of the subject parcel(s) have been obtained from the Town of Brookhaven records. The Office of the Assessor and the Town of Brookhaven make no warranties or guarantees as to the accuracy of the information. Further the information provided does not constitute a legal document for any purpose.



ID		SCTM		Property Code - Description		Parcel Acreage	Owner Name	Owner Address	City	State	Zip
42	0200	52900	0500	007000	311	Residential Vacant Land	0.2300	COUNTY OF SUFFOLK C/O SUFFOLK COUNTY DEPT PARK	PO BOX 144	NY	11796
43	0200	52900	0400	035000	311	Residential Vacant Land	0.1800	COUNTY OF SUFFOLK	330 CENTER DR	NY	11901
44	0200	52900	0500	036000	311	Residential Vacant Land	0.0900	DITTMER IDA	52 SUNSET RD	NY	11706
45	0200	52900	0300	035000	311	Residential Vacant Land	0.0900	SUFFOLK COUNTY	330 CENTER DR	NY	11901
46	0200	52900	0500	008000	962	County Owned Public Parks and Rec	0.1800	SUFFOLK CTY NAT PRESERVE DEPT PARKS RECREAT & C	MONTAUK HWY	NY	11782
47	0200	52900	0400	007000	311	Residential Vacant Land	0.2300	SUFFOLK COUNTY DEPT REAL EST	10 OVAL DR	NY	11788
48	0200	52900	0100	028003	210	One Family Year-Round Residence	5.3300	BIANCA DANA & PAULA K	326 YAPHANK-MIDDLE ISL YAPHANK	NY	11980
49	0200	52900	0100	028004	210	One Family Year-Round Residence	3.8600	MCKENNA CHARLES	318 YAPHANK-MIDDLE ISL YAPHANK	NY	11980
50	0200	52900	0100	029001	942	Co Owned Reforested Land	36.0300	SUFFOLK COUNTY	COUNTY CTR	NY	11901
51	0200	55100	0100	001000	942	Co Owned Reforested Land	31.2900	SUFFOLK COUNTY	COUNTY CTR	NY	11901

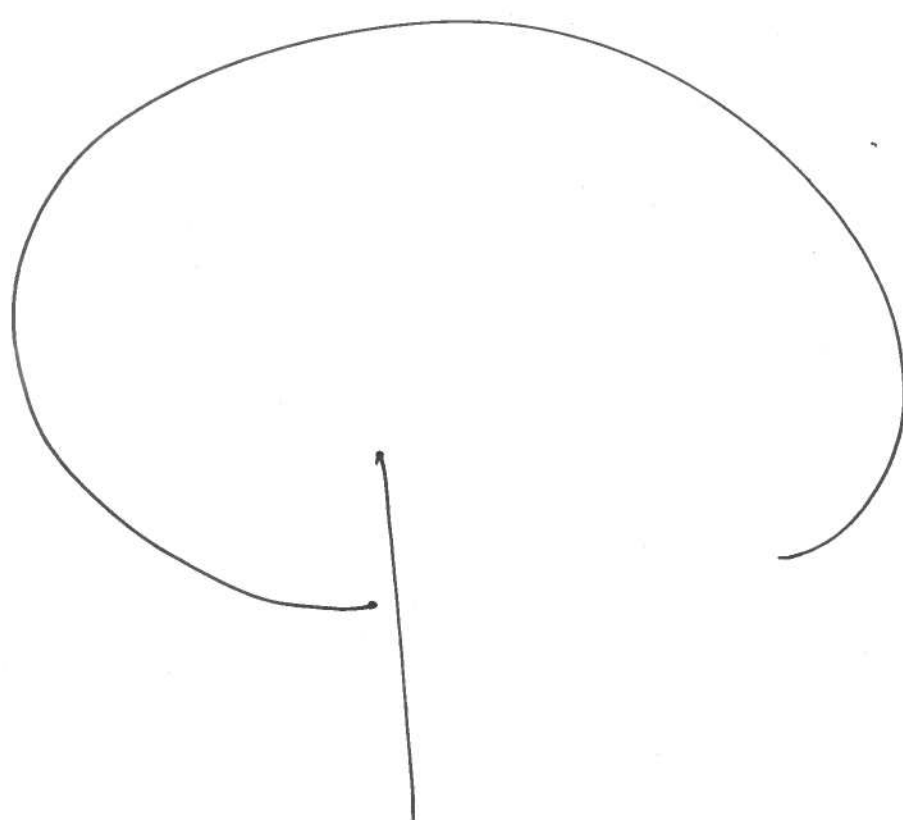
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0200	52900 0500 006000	311 Residential Vacant Land	0.0900	SUFFOLK COUNTY	330 CENTER DR	RIVERHEAD	NY	11901
0200	52900 0500 040000	311 Residential Vacant Land	0.1400	COUNTY OF SUFFOLK	330 CENTER DR	RIVERHEAD	NY	11901
0200	52900 0500 004000	129 Acquired Development Rights	0.2700	COUNTY OF SUFFOLK C/ T LAGATTA PLAN DEPT	PO BOX 6100	HAUPPAUGE	NY	11788
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0200	52900 0500 073000	962 County Owned Public Parks and Re	0.0900	SUFFOLK CTY NAT PRESERVE DEPT PARKS RECREAT & C	MONTAUK HWY	SAYVILLE	NY	11782
0200	52900 0400 035000	311 Residential Vacant Land	0.1800	COUNTY OF SUFFOLK	330 CENTER DR	RIVERHEAD	NY	11901
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0200	52900 0300 032000	942 Co Owned Reforested Land	0.2700	SUFFOLK COUNTY DEPT PARKS REC & CONSERVAT	NO MONTAUK HWY	SAVILLLE	NY	11782
0200	52900 0500 068001	311 Residential Vacant Land	2.1900	SUFFOLK COUNTY DEPT REAL EST	10 OVAL DR	HAUPPAUGE	NY	11788
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0200	52900 0100 028002	311 Residential Vacant Land	12.8800	SUFFOLK COUNTY	COUNTY CTR	RIVERHEAD	NY	11901
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0200	52900 0400 033000	129 Acquired Development Rights	0.3700	COUNTY OF SUFFOLK SUFFOLK COUNTY CENTER	CENTER DR	RIVERHEAD	NY	11901
0200	52900 0500 069000	311 Residential Vacant Land	0.0900	SUFFOLK COUNTY	330 CENTER DR	RIVERHEAD	NY	11901
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0200	52900 0300 003000	129 Acquired Development Rights	0.2300	COUNTY OF SUFFOLK PLANN DEPT C/O C WREDE	PO BOX 6100	HAUPPAUGE	NY	11788
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0200	52900 0500 007000	311 Residential Vacant Land	0.2300	COUNTY OF SUFFOLK C/O SUFFOLK COUNTY DEPT PARK	PO BOX 144	WEST SAVYVILLE	NY	11796
0200	52900 0300 035000	311 Residential Vacant Land	0.0900	SUFFOLK COUNTY	330 CENTER DR	RIVERHEAD	NY	11901
0200	52900 0500 008000	962 County Owned Public Parks and Rei	0.1800	SUFFOLK CTY NAT PRESERVE DEPT PARKS RECREAT & C	330 CENTER DR	RIVERHEAD	NY	11782
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Permission Granted, Town of Brookhaven  
3/6/81 to use the Suffolk County Tax Map  
for Town Base Mapping purposes by the  
Suffolk County Real Property Tax Service  
Agency, Riverhead, New York 11901.

This map may not reflect current tax map  
configurations. Current parcel and ownership  
information is available at the Suffolk County  
Real Property Tax Service Agency,  
Riverhead, New York 11901.

**0200-529000-0500-035000**  
**2010 Aerial**

Project: NewZoningMap7292013.mxd

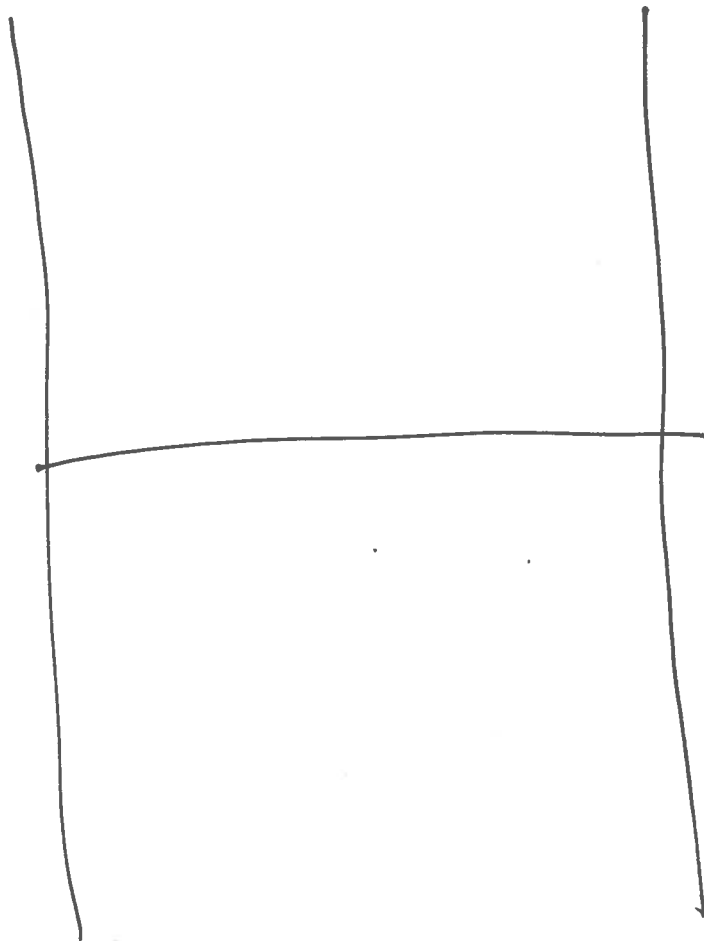
NOTE:  
Parcel(s) highlighted as per Suffolk County Tax Map number provided  
in written form by the applicant, whether in person, by email or by fax.  
The Town of Brookhaven assumes no responsibility for incorrect  
Suffolk County Tax Map numbers as provided by the Applicant.

11/06/2015  
Map created by:  
Isabel Morris,  
Engineering Aide  
Division of Engineering  
PELM

BASE MAP



Town of Brookhaven  
Suffolk County, New York







Permission Granted. Town of Brookhaven  
3/5/01 to use the Suffolk County Tax Map  
for Town Base Mapping purposes by the  
Suffolk County Real Property Tax Service  
Agency, Riverhead, New York 11901

This map may not reflect current tax map  
configurations. Current parcel and ownership  
information is available at the Suffolk County  
Real Property Tax Service Agency.

0200-29400-0400-014000  
2010 Aerial

Project NewZoningMap10\_29\_2016.mxd

NOTE:  
Parcel(s) highlighted as per Suffolk County Tax Map number provided  
in written form by the applicant, whether in person, by email or by fax.  
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Suffolk County Tax Map numbers as provided by the Applicant.

02/22/2016  
Map created by:  
Isabel Morris,  
Engineering Aide  
Division of Engineering  
PELM



**Commission Meeting of July 16, 1997  
Brookhaven Town Offices**

**Present:** Mr. Cowen (for the State of New York) Ms. Wiplush (for Town of Brookhaven), Mr. Freleng (for Southampton), Mr. Dragotta (for Suffolk County), Ms. Filmanski (for Town of Riverhead)

**Resolution on Application of Dolores Blake  
Core Preservation Area Hardship  
Property located at east side of William Floyd Parkway, north of Route 25  
Ridge, Town of Brookhaven  
SCTM # 200-294-4-14**

**Whereas**, on March 24, 1997, Dolores Blake submitted a Core Preservation Area hardship exemption application to subdivide 5.23 acres into three lots containing under two acres each in an A2 zoning district; and,

**Whereas**, on April 28, 1997, pursuant to the New York State Environmental Quality Review Act ("SEQRA") Part 617.6, the Commission hereby determines that the application is an Unlisted action and coordinated lead agency review and,

**Whereas**, on May 14, 1997 a public hearing on the Core Preservation Area hardship was held by the Commission and a transcript was thereafter made available to the Commission; and,

**Whereas**, the Commission has considered the staff report dated July 16, 1997 and all materials submitted in connection with the Core Preservation Area hardship exemption; now therefore be it,

**Resolved**, that the Commission hereby designates itself as lead agency and determines that the proposed action will not have a significant impact on the environment pursuant to SEQRA; and be it further,

**Resolved**, that the Commission hereby determines that the application, as submitted, does meet all of the requirements for extraordinary hardship pursuant to New York State Environmental Conservation Law 57-0121 (10)(a)(c) and be it further

**Resolved**, that the application for a Core Preservation Area hardship exemption is granted, subject to the following conditions:

1. If the Town of Brookhaven Zoning Board of Appeals grants approval for three lots, they shall be clustered to the front of the subject parcel with a minimum of one to two acres of preserved area at the rear of the parcel.
2. If only two lots are approved, they need not be clustered.
3. Clearing of native vegetation be limited as per the lot size to those standards set forth in Figure 5-1 of the *Central Pine Barrens Comprehensive Land Use Plan*.



4. Upon completion of a revised and approved land division map, a copy be submitted for the Commission's records.

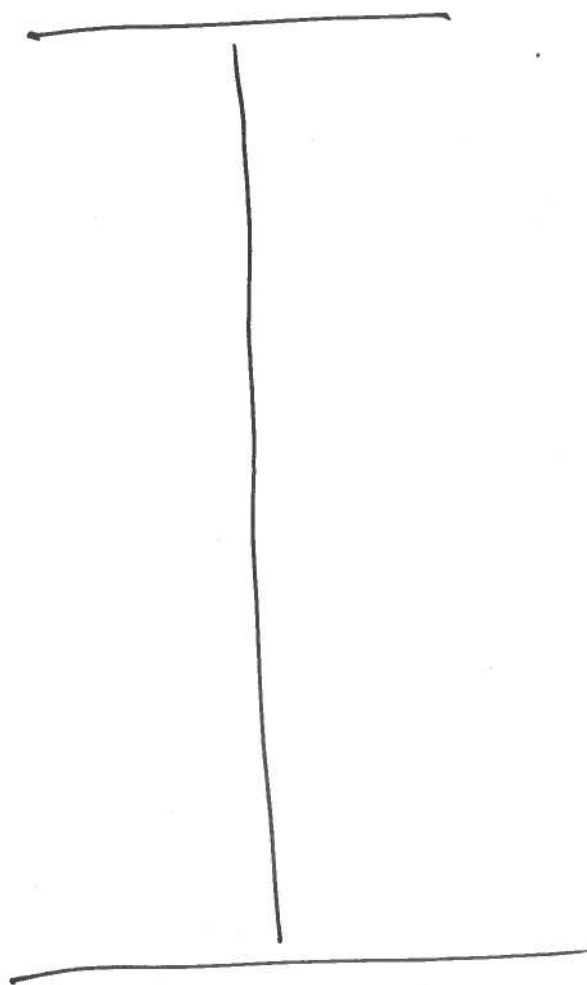
**Record of Motion:**

Motion by Mr. Cowen

Seconded by Ms. Filmanski

**Yea Votes:**

Unanimous





Permission Granted, Town of Brookhaven  
06/01 to use the Suffolk County Tax Map  
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0200-46000-0100-006003  
2010 Aerial

Project NewZoningMap10\_29\_2016.mxd

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02/17/2016  
Map created by:  
Isabel Morris,  
Engineering Aide  
Division of Engineering  
PELM

BASE MAP



Town of Brookhaven  
Suffolk County, New York



**CENTRAL  
PINE  
BARRENS**

**JOINT  
PLANNING  
&  
POLICY  
COMMISSION**

Robert J. Gaffney  
*Chair*

Vincent Cannuscio  
*Member*

Ray E. Cowen  
*Member*

Robert F.  
Kozakiewicz  
*Member*

John Jay LaValle  
*Member*

P.O. Box 587  
3525 Sunrise  
Highway  
2<sup>nd</sup> Floor

Great River, NY  
11739-0587

Phone (631) 224-2604

Fax (631) 224-7653

Internet:

<http://pb.state.ny.us>

**Resolution on the Core Preservation Area Hardship  
Application of Katherine Foster Screven  
Property located on the north side of North Street, west of Wading River Road,  
Manorville, Town of Brookhaven**

**Originally passed at the Commission Meeting of July 18, 2001  
Southaven Park Police Headquarters, Yaphank, NY  
and subsequently amended at the Commission meeting on August 8, 2001**

**Tax Map Numbers 200-460-1-6.1 & 6.2  
(2 lots are merged and renumbered as 200-460-1-6.3)**

**Whereas**, on June 13, 2001 Harold Screven on behalf of his wife Katherine Foster Screven, filed with the Commission, a request for a core preservation area hardship exemption permit to construct a single family home with septic system on 3.48 acres in a A-5 Residential zoning district; and

**Whereas**, a public hearing on the core preservation hardship request was held by the Commission on July 18, 2001; and

**Whereas**, the Commission has considered all materials submitted in connection with the application; and

**Whereas**, lot 6.2 that is on the pending road front exemption list has been merged with lot 6.1 and will be renumbered to lot 6.3; now therefore be it

**Resolved**, pursuant to the New York State Environmental Quality Review Act ("SEQRA") Part 617.5, the Commission hereby determines that the application is a Type II action, and be it further

**Resolved**, that the clearing allowed for the site for a single family home shall be in accordance with the regulations of the Town of Brookhaven, and be it further

**Resolved**, that the Commission hereby determines the application, as submitted meets the requirement for extraordinary hardship pursuant to New York State Environmental Conservation Law 57-0121 (10)(a) and (c) and be it further

**Resolved**, that the application for a Core Preservation Area hardship exemption is approved.

**Record of Original Motion at Commission meeting of July 18, 2001:**

Motion by Mr. MacLellan

Seconded by Mr. Murphree

5:0 approval by: Mr. Cowen (for New York State), Mr. Proios (for Suffolk County), Ms. Wiplush (for Brookhaven), Mr. Murphree (for Southampton)

**Record of Motion at Commission meeting of August 8, 2001 to amend original motion of July 18, 2001:**

Motion by Ms. Prusinowski

Seconded by Mr. MacLellan

4:0 approval by: Ms. Kohn (for Suffolk County), Ms. Prusinowski (for Brookhaven), Mr. Murphree (for Southampton), Mr. MacLellan (for Riverhead)

**CENTRAL PINE BARRENS JOINT PLANNING & POLICY COMMISSION  
STAFF REPORT**

prepared by: Judy Jakobsen, Environmental Analyst

Issue Date: 7/18/01

Field Visit: 6/20/01

**APPLICATION REC'D/HEARING DATES:**

6/13/01 - Receipt

7/18/01 - Public Hearing

10/11/01 - Decision Deadline

**APPLICANT:**

Katherine Foster-Screven

**LOCATION:**

North side of North Street, west of Center Moriches Road and Wading River Road, Manorville, Town of Brookhaven

**TAX MAP:**

200-460-1-6.1 & 6.2

**REQUEST:**

Core preservation area hardship permit to build a single family home with septic system.

**ZONING:**

A-5 Residence

**LAND USE:**

The property is currently vacant wooded site, horse farm borders the west side of the property and there are single family residence to the east and on south side of North Street.

**SITE DESCRIPTION:**

**Topography:** Generally flat, approximately 100 ft above mean sea level.

**Soils:** PlB(Plymouth loamy sand, 3-8% slopes)

**Vegetation:** Primarily oak overstory with a few walnut and hickory trees, smaller red maples, thick cat brier understory w/ small cherry and sassafras trees 1-2 ft high, few blueberry.

**REQUIRED APPROVALS:**

- SEQRA Unlisted Action, uncoordinated review
- Town of Brookhaven: Building Permit
- Town of Brookhaven Zoning Board - variance
- Town of Brookhaven Planning Board: Site Plan
- Suffolk County Dept of Health - Article 6 Permit

**HARDSHIP CRITERIA:**

Information to be presented by applicant at hearing scheduled for July 18, 2001.

**Items to Consider:**

- According to the applicant lots 6.1 & 6.2 have been merged and new tax map # will be assigned.
- Lot 6.2 is on the revised roadfront exemption list that is legislation pending the Governor's signature.

**Commission Meeting of September 26 , 2001**

**Commission Office, Great River, NY**

**Present:** Mr. Proios (for Suffolk County), Mr. Murphree (for Southampton),  
Mr. Hanley (for Riverhead), Ms. Prusinowski (for Brookhaven)

**Resolution on the Core Preservation Area Hardship Application  
of Anna and Alexander Czanecki**

**Property located on the north side of North Street, west of Wading River Road,  
Manorville, Town of Brookhaven**

**Tax Map Number 200-460-1-9**

**Whereas**, on July 17, 2001 Robert Pino on behalf of the property owners, Anna and Alexander Czanecki, filed with the Commission, a request for a core preservation area hardship exemption permit to construct a single family home with septic system on .92 acres in a A-5 Residential zoning district; and

**Whereas**, a public hearing on the core preservation hardship request was held by the Commission on September 26, 2001; and

**Whereas**, the Commission has considered all materials submitted in connection with the application; and

**Whereas**, the house will be situated on North Street and therefore placed at the furthest distance from within the Peconic River Wild Scenic and Recreational Rivers corridor;

**Now therefore be it resolved**, pursuant to the New York State Environmental Quality Review Act ("SEQRA") Part 617.5, the Commission hereby determines that the application is a Type II action, and be it further

**Resolved**, that the clearing allowed for the site for a single family home shall be in accordance with the regulations of the Town of Brookhaven, and be it further

**Resolved**, that the Commission hereby determines the application, as submitted meets the requirement for extraordinary hardship pursuant to New York State Environmental Conservation Law 57-0121 (10)(a) and (c) and be it further

**Resolved**, that the application for a Core Preservation Area hardship exemption is approved.

Motion by Mr. Murphree

Seconded by Ms. Prusinowski

Vote: 4 to 0 in favor (Unanimous approval)

J





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3/6/01 to use the Suffolk County Tax Map  
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Riverhead, New York 11901.

0200-51000-0100-011000  
2010 Aerial

Project: NewZoningMap10\_29\_2016.mxd

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02/17/2016  
Map created by:  
Isabel Morris,  
Engineering Aide  
Division of Engineering  
PELM

BASE MAP



Town of Brookhaven  
Suffolk County, New York



Commission Meeting of September 17, 1997  
Quogue Wildlife Refuge

Present: Mr Proios (for Suffolk County), Ms. Talmage (for Riverhead) Ms. Wiplush (for Brookhaven),  
Mr. Duffy (for Southampton)

Resolution on the Core Preservation Area Hardship  
Application of Evan Goldstein

Property located west of Hot Water Street just west of its intersection with County  
Road 111, Manorville, Town of Brookhaven  
SCTM # 200-510-1-11

**Whereas**, on March 17, 1997, Evan Goldstein filed with the Commission, a request for a core preservation area hardship exemption to construct one single family dwelling and associated sanitary system on a lot containing 75,714 square feet, and,

**Whereas**, on May 5, 1997 the applicant requested an adjournment of the public hearing until after July 21, 1997 and,

**Whereas**, on June 4, 1997 the Commission accepted a request for an extension of the decision deadline until 60 days after the public hearing and,

**Whereas**, a public hearing on the core preservation hardship request was held by the Commission on August 6, 1997 and a transcript was thereafter made available to the Commission, and,

**Whereas**, the Commission has considered all materials submitted in connection with the application, now, therefore, be it

**Resolved**, pursuant to the New York State Environmental Quality Review Act ("SEQRA") Part 617.5, the Commission hereby determines that the application is an Unlisted action and makes a determination of non-significance, now therefore be it,

**Resolved**, that the Commission hereby determines that the application, as submitted does meet all of the requirements for extraordinary hardship pursuant to New York State Environmental Conservation Law 57-0121 (10)(a) and (c) and be it further

**Resolved**, that the application for a core preservation area hardship exemption is granted subject to the following condition:

- clearing of existing vegetation combined with the existing clearing shall not exceed 20% of the total lot area.

**Record of Motion:**

Motion by Mr. Duffy

Seconded by Ms. Talmage

Abstension: Ms. Wiplush

# PRE-APPLICATION/GENERAL INQUIRY CHECKLIST

Page One of Three - For Phone Calls and Initial Inquiries - ALL TYPES

PROJECT/INQUIRY NAME - Evan Goldstein INQUIRY # \_\_\_\_\_

PROJECT LOCATION - Manorville, Town of Brookhaven

DATE INQUIRY RCVD - 1-19-10 (NOT A COMPLETE APPLICATION DETERMINATION)

TOWN of - Brookhaven TOWN STAFF PERSON - R. Mills

TAX MAP #(s) - 0200 - 510.00 - 01.00 - 011,000

\* Residential use

\* Hardship exemption issued: 9-17-97 - (Constructing dwelling)

IS THIS INQUIRY RELATED TO - Circle One

DEVELOPMENT CREDIT PROGRAM STEWARDSHIP VIOLATION (1 - Family home)

CIRCLE ONE - CORE CGA NOT IN PINE BARRENS

CIRCLE ONE - CRA DESIGNATED RCNVG SITE N/A

PROPOSED ACTION/ACTIVITY DESCRIPTION - Wants to fence in property and plant Christmas or fruit trees - agriculture -

PRELIMINARY ASSESSMENT OF PARCEL - (Circle all that apply)

Is the parcel - Developed Partially Developed Undeveloped/Vacant

Is the parcel - Actively in Use No Apparent Use Dormant

Is the vegetation - Undisturbed Partially Disturbed Completely Cleared

Is it - Planted/Ornamental Natural/Old Growth Successional None Present

Is the topography - Flat Uneven Heavily Sloped

Does the parcel have open and improved road access - Yes No

32.5 footage on City Rd 111 -

GOALS AND OBJECTIVES REVIEW - (Does this project...)

Clear Native/Undisturbed Vegetation - NO YES UNCERTAIN

Develop a Vacant or Natural Parcel - NO YES UNCERTAIN

Have Potential to Impact Water Resources - NO YES UNKNOWN

Have Potential to Impact Historic/Cultural Sites - NO YES UNKNOWN

Affect Open Space/Recreation - NO YES UNKNOWN

Affect Wetlands or River Systems - NO YES - Which one \_\_\_\_\_

## DEVELOPMENT OR NON-DEVELOPMENT REVIEW

DEVELOPMENT - 57-0107(13)(a-f)

Explain - Meet Hardship to clear in base

NON-DEVELOPMENT - 57-0107(13)(i-xv)

Explain -

CONFIRM 1995 ZONING -

CONDUCT AERIAL COMPARISON - 1994-CURRENT -

REVIEW 1993 TAX MAP TO CONFIRM PARCEL STATUS -

Is the parcel on Roadfront exemption list? - See CLUP Appendix

## ACTION TAKEN/QUESTION POSED/OTHER NOTES -

fruit trees on Christmas trees more conducive to

DATE OF RESPONSE - 1/19/2010

sent applic for base hardship

NOTE - CREATE MASTERFILE RECORD NOW

NOTE - If DEVELOPMENT go to Page 2 of 3 If STEWARDSHIP/PBC/VIOLATION forward to response staff member

**CENTRAL PINE BARRENS JOINT PLANNING & POLICY COMMISSION  
STAFF REPORT**

Issued: September 16, 1997

Field Visit: 7/8/97

**APPLICATION REC'D/HEARING/DECISION DEADLINE DATES:**

- 3/17/97 receipt
- 5/5/97 request for adjournment of hearing til after 7/21/97
- 6/2/97 request for decision deadline extension til 60 days after hearing
- 8/6/97 public hearing
- 10/6/97 decision deadline

**APPLICANT:** Evan Goldstein  
144 Weaver Street  
Larchmont, NY 10538

**LOCATION:** North side of County Road 111 just west of its intersection with Hot Water Street, Manorville, Town of Brookhaven.

**TAX MAP:** 200-510-1-11

**REQUEST:** Construction of one single family residence and associated septic system on a lot containing 75,714 square feet.

**ZONING:** A5 Residence (one unit per 200,000 square feet).

**LAND USE:** Vacant with public land to the north and east. Vacant private land to the west and bounded on the south by the highway.

**SITE DESCRIPTION**

**Topography:** Generally flat approximately 100' above mean sea level.

**Vegetation:** Disturbed and previously cleared areas with areas of successional old field. There may be some areas of pitch pine - oak woods at the rear of the parcel, however it is not possible to determine this without a vegetative survey.

**REQUIRED APPROVALS :**

- **SEQRA:** see attached determination of significance.
- **Town of Brookhaven Building Permit**
- **SC Dept. of Health Services Article 6 Permits**
- **SC Dept. of Public Works:** curb cut permit

## **HARDSHIP CRITERIA**

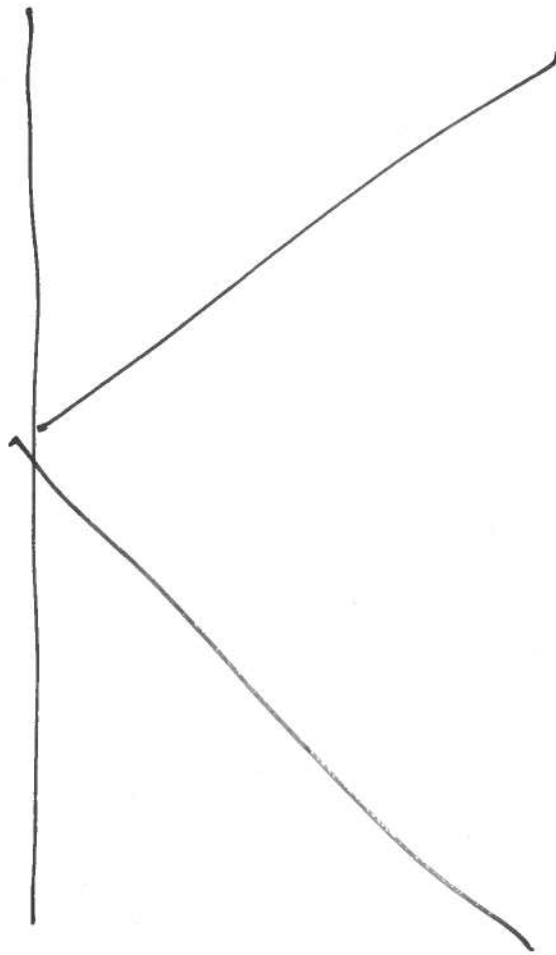
The applicant did not *specifically* address the hardship criteria during the public hearing or subsequently in writing, as outlined in ECL Article 57(10)(a) , although staff had provided that information. However staff has addressed the standards under ECL57-0121(10)(c) based on the information submitted and finds that they have been met for the following reasons:

The granting of the permit for the subject lot will not result in substantial impairment of the resources of the core preservation area, given that one house on the size of this parcel in an area that is already disturbed will not have a negative impact. The granting of the waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of the core preservation area. The waiver requested is the minimum relief necessary to relieve the extraordinary hardship.

## **RECOMMENDATION**

Commission declare lead agency and make a determination of non-significance as per the attached and the application be approved with the following condition:

- that clearing of additional vegetation combined with the existing clearing not exceed 20%.



WALKWAY

1 inch = 110 feet

RUSTIC RD

VERBANK MIDDLE ISLAND RD

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0200-529000-0300-035000  
2010 Aerial

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11/05/2015  
Map created by:  
Isabel Morris,  
Engineering Aide  
Division of Engineering  
PELM

BASE MAP



Town of Brookhaven  
Suffolk County, New York



40 x 100

# PINE BARRENS CREDIT CLEARINGHOUSE

JAMES T.B. TRIPP, ESQ., CHAIRMAN  
ALLAN D. GRECCO, ESQ., VICE CHAIRMAN  
VINCENT CANNUSCIO, MEMBER  
JOHN F. HANLEY, MEMBER  
MITCHELL H. PALLY, ESQ., MEMBER

## LETTER OF INTERPRETATION

Re: Suffolk County Tax Map Number: 200-529-3-35

Applicant: The Woodstock Company

Date: July 7, 1998

### Findings of Fact

The applicant by its representative applied for a Letter of Interpretation for the above-referenced 0.09 acre parcel. The parcel is in the Town of Brookhaven. It was in the A Residence 5 District at the adoption of the *Central Pine Barrens Comprehensive Land Use Plan* (the "Plan") on June 28, 1995. Pursuant to the Plan, the applicant requested and received a Letter of Interpretation concerning the number of Pine Barrens Credits which are allocated to this parcel. The Letter, issued on March 30, 1998 allocated 0.10 Pine Barrens Credits to the parcel. The applicant appealed this allocation.

Pursuant to a Central Pine Barrens Joint Planning and Policy Commission resolution of June 24, 1998 the number of Pine Barrens Credits allocated to this parcel is 1.00.

**The total number of Pine Barrens Credits allocated for this parcel is 1.00.**

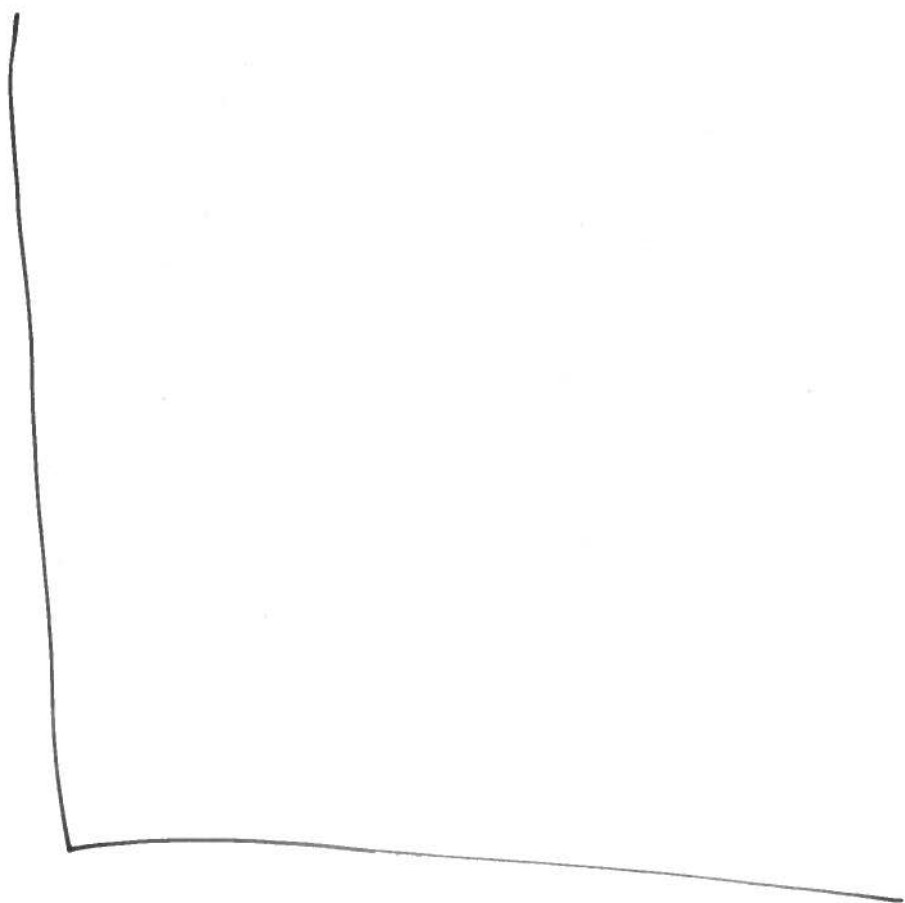
This Letter of Interpretation replaces and renders void any and all Letters of Interpretation issued for this parcel.

This Letter of Interpretation expires in one year from the above date. In order to obtain a Pine Barrens Credit Certificate the applicant must complete the Pine Barrens Credit Certificate Application and follow the instructions contained in the Pine Barrens Credit Handbook.

If there is a mortgage or other lien on this parcel, the applicant will have to make an arrangement with the lender or other party holding the lien before the Clearinghouse can issue a Pine Barrens Credit Certificate for this tax map parcel.

P.O. BOX 587, 3525 SUNRISE HIGHWAY, 2ND FLOOR, GREAT RIVER, NEW YORK 11739-0587,  
516-224-2604 / FAX 516-224-7653

BUEA





200-383-1-6.1 JALCY LA.

Stuart Osleeb - Core  
200-383-1-6.1

7/27/94 - Commission approved application.

Excerpts from the minutes of this meeting follows.

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

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

**COMMISSION MEETING SUMMARY - JULY 27, 1994 (DRAFT)  
BROOKHAVEN TOWN OFFICES, MEDFORD**

*Present: Mr. Proios (for Commissioner Gaffney), Commissioner Thiele, Ms. Filmanski (for Commissioner Janoski), Ms. Pines (for Commissioner LaMura), Ms. Swick (alternate), Mr. Rigano (counsel), Mr. Corwin (director), Ms. Trezza (administrator), Ms. Greene (assistant to the Advisory Committee), plus additional attendees on attached sign-in sheet.*

*Osleeb/Ridge application: Coordinated review and 7/31 decision deadline*

*Summary: This application has not gone completely through the SEQR review process at this time. The Commission staff conducted coordinated review with the Suffolk County Department of Health Services, the Town of Brookhaven, and the New York State Department of Environmental Conservation. The coordination process has been completed, and the three agencies have no objection to the Commission acting as lead agency. The Commission may designate itself as the lead agency.*

*A motion was made by Ms. Filmanski and seconded by Commissioner Thiele designating the Commission as lead agency. The motion was carried unanimously.*

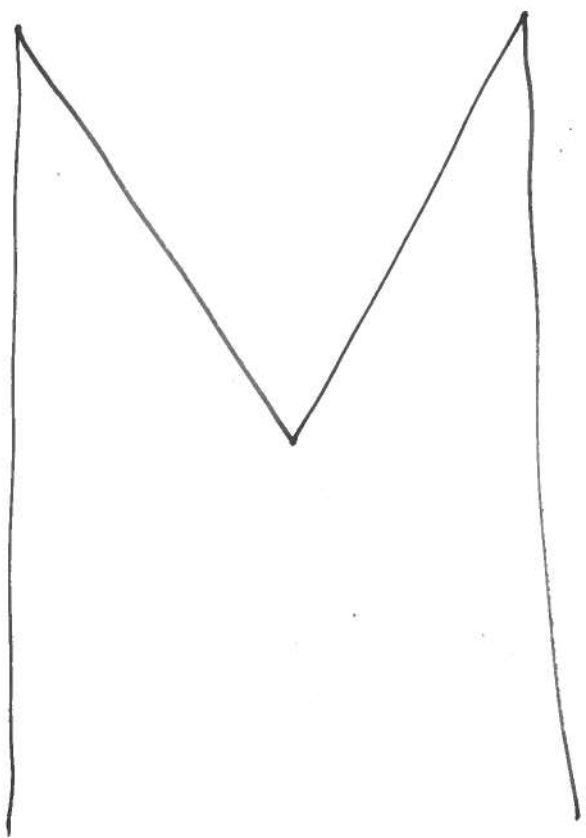
*Jim Bagg from Suffolk County Planning reviewed the Environmental Assessment Form, the application materials pertaining to this, and the project summary. An adoption of a negative declaration and a decision on this application will take place later in this meeting.*

*The following is out of sequence due to a review of the Environmental Assessment Form completed by Jim Bagg which took place during this meeting.*

*A motion was made by Ms. Pines and seconded by Ms. Filmanski adopting a Negative Declaration on the Osleeb application. The motion was carried unanimously.*

*A further motion was made by Ms. Pines and seconded by Ms. Filmanski to grant the requested hardship on the Osleeb application. The motion was carried unanimously.*

50





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02/17/2016  
Map created by:  
Isabel Morris,  
Engineering Aide  
Division of Engineering  
PELM

BASE MAP



Town of Brookhaven  
Suffolk County, New York

Commission Meeting of October 2, 2002

Riverhead Town Hall, Riverhead, NY

Present: Mr. Proios (for Suffolk County), Mr. Shea (for Southampton),  
Mr. MacLellan (for Riverhead), Ms. Compitello (for Brookhaven)

SINGLE  
FAMILY  
HOME.

**Resolution on the Core Preservation Area Hardship Application  
of Harold Marshall**

Property located north of East Bartlett Road., west of Line Road,  
Middle Island, Town of Brookhaven

**Tax Map Number 200-481-1-5**

**Whereas**, on May 30, 2002 Harold Marshall, filed with the Commission, a request for a core preservation area hardship exemption permit to construct a single family home with septic system on 3.99 acres in a A-5 Residential zoning district; and

**Whereas**, a public hearing on the core preservation hardship request was held by the Commission on July 10, 2002; and

**Whereas**, the Commission has considered all materials submitted in connection with the application; and

**Now therefore be it resolved**, pursuant to the New York State Environmental Quality Review Act ("SEQRA") Part 617.5, the Commission hereby determines that the application is a Type II action, and be it further

**Resolved**, that the Commission hereby determines the application, as submitted meets the requirement for extraordinary hardship pursuant to New York State Environmental Conservation Law 57-0121 (10)(a) and (c); the clearing allowed for the site for a single family home shall be in accordance with the clearing regulations of the Town of Brookhaven; the house will be situated in the southeast corner of the property, and therefore placed near an existing road; and be it further

**Resolved**, that the application for a Core Preservation Area hardship exemption is approved subject to the conditions set forth herein.

Motion by Mr. Proios  
Seconded by Mr. MacLellan  
Vote: 3 -0- 2 in favor

80