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CENTRAL PINE BARRENS

JOINT PLANNING AND POLICY COMMISSION

-----X

In the Matter of the Public Hearing of:

The appellant Joseph Gazza was allocated 0.10 Pine Barrens Credits in a Letter of Interpretation dated January 11, 2000 for Suffolk County Tax Map Parcel #900-239-2-6. The appellant Joseph Gazza was allocated 0.66 Pine Barrens Credits in a Letter of Interpretation dated January 11, 2000 for Suffolk County Tax Map Parcel #900-239-2-7. The appellant Joseph Gazza was allocated 0.18 pine Barrens Credits in a Letter of Interpretation dated November 24, 1999 for Suffolk County Tax Map Parcel #900-241-1-32. The parcels are located to the north of Sunrise Highway (New York State Route 27).

-----X

Brookhaven Town Offices
3233 Route 112
Medford, New York

February 16, 2000
3:00 p.m.

P U B L I C H E A R I N G

ACCURATE COURT REPORTING
6 Frances Lane
Port Jefferson, New York 11777
631-331-3753

A P P E A R A N C E S :

GEORGE PROIOS
Chairman
County of Suffolk

RAY COWAN
State of New York
Representing the Governor's Office

RAYMOND CORWIN, Executive Director Central Pine
Barrens Joint Planning and Policy
Commission

DORIS ROTH, ESQ.
General Counsel for the Commission

MARTIN E. SHEA
Chief Environmental Analyst

WILLIAM SPITZ,
State of New York

JOEY MAC LELLAN
Executive Assistant

ANNETTE EADERESTO, ESQ.
Town Attorney, representing Felix Grucci

A L S O P R E S E N T :

MARK H. RIZZO
Environmental Analyst

DONNA PLUNKETT
Staff to Commission

LORRAINE TREZZA

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MR. PROIOS: This is our third
public hearing.

For the record I will read the
Notice.

"Please take notice that two
hearings will be held concerning the
credit allocations given in Letters of
Interpretation for Robert Weinstein and
Joseph Gazza. The hearings have been
scheduled for February 16, 2000 at 3:00
p.m., at the Brookhaven Town Offices,
which is located at 3233 New York State
Route 112, Medford, New York. Said
appeals are made pursuant to Section
6.7.3.3 of the Central Pine Barrens
Comprehensive Land Use Plan (the Plan).
The Central Pine Barrens Joint Planning
and Policy Commission will be holding
the appeals hearing pursuant to Section
6.7.3.4 of the Plan.

"The appellant Joseph Gazza was
allocated 0.10 Pine Barrens Credits in a
Letter of Interpretation dated
January 11, 2000 for Suffolk County Tax

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Map Parcel #900-239-2-6. The appellant Joseph Gazza was allocated 0.66 Pine Barrens Credits in a Letter of Interpretation dated January 11, 2000 for Suffolk County Tax Map Parcel #900-239-2-7. The appellant Joseph Gazza was allocated 0.18 pine Barrens Credits in a Letter of Interpretation dated November 24, 1999 for Suffolk County Tax Map Parcel #900-241-1-32. The parcels are located to the north of Sunrise Highway (New York State Route 27).

Mr. Rizzo, do you wish to enter some exhibits into the record and make a presentation.

MR. RIZZO: Yes, I do.

I would like to mark some exhibits in evidence.

The first items I will mark as Exhibits 1 and 2, are the appeal letters from Mr. Gazza; the first one dated January 17, 2000, the second letter being January 21st, 2000.

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(WHEREUPON, the above-referred to document, appeal letter January 17, 2000, was marked as Commission's Exhibit 1, as of this date.)

(WHEREUPON, the above-referred to document, appeal letter January 21, 2000, was marked as Commission's Exhibit 2, as of this date.)

MR. RIZZO: Exhibits number 3, 4, and 5 are the actual staff reports for the three parcels in question.

The first staff report is tax map number 900-239-26.

(WHEREUPON, the above-referred to document, tax map, was marked as Commission's Exhibit 3, as of this date.)

MR. RIZZO: the next one is for tax map number 900-239-27.

(WHEREUPON, the above-referred to document, tax map, was marked as Commission's Exhibit 4, as of this date.)

MR. RIZZO: And the third one is for tax map number 900-241-132.

(WHEREUPON, the above-referred to

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document, tax map, was marked as Commission's Exhibit 5, as of this date.)

MR. RIZZO: I just want to note for the record, staff reports the acreage amounts on these three tax parcels.

On parcel 239-26, the acreage is 49 acres.

Tax Parcel 239-27 is 4.10 acres.

On Parcel 241-132 is 1.15 acres.

All three parcels are in Southampton zoning district country residence 200 which is five acre residential zoning.

I will enter my next two exhibits, which are the two Suffolk County tax maps for the parcels in question.

The first is Suffolk County tax map section 239 from the Town of Southampton, and the second one is section 241 from the Town of Southampton.

(WHEREUPON, the above-referred to document, tax map 239, was marked as Commission's Exhibit 6, as of this date.)

(WHEREUPON, the above-referred to document, tax map 241, was marked as

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Commission's Exhibit 7, as of this date.)

MR. RIZZO: Mr. Gazza's parcels are noted by the black line that are filled in.

On Section number 241, is the north part of the map, black lines.

On Section number 239 - there are actually two parcels in that black slot. You will see to the right hand side, lot number 6, and to the left is lot number 7.

I will now introduce the actual letters of interpretation. First I will introduce the two letters of interpretation for tax map 239-26.

The first letter of interpretation is dated December 15, 1999, and allocates one credit to the parcel.

The second letter of interpretation for Section 239, Block 2, lot 6, is dated January 11, 2000. It revokes the letter of interpretation from December 15, 1999 and gives the parcel the application of 0.10 credits.

(WHEREUPON, the above-referred to

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2 document, letter of interpretation dated
3 12/15/99, for 900-239-2-6, consisting of two
4 pages, was marked as Commission's Exhibit 8,
5 for identification, as of this date.)

6 (WHEREUPON, the above-referred to
7 document, letter of interpretation, dated
8 January 11, 2000, for 900-239-2-6, consisting
9 of two pages, was marked as Commission's
10 Exhibit 9, as of this date.)

11 MR. RIZZO: I just want to mark
12 two more letters of interpretation for tax
13 parcel 239, block 2, lot number 7.

14 The first one is dated
15 December 15, 1999, with the allocation of one
16 Pine Barren credit to the parcel.

17 The second letter of
18 interpretation for that same lot tax map
19 number 239-2-7, dated January 11, 2000,
20 revoking the first letter of interpretation
21 and allocating parcel .66 Pine Barrens
22 credits.

23 (WHEREUPON, the above-referred to
24 document, letter of interpretation dated
25 December 15, 1999, was marked as Commission's

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Exhibit 10, as of this date.)

(WHEREUPON, the above-referred to document, letter of interpretation dated January 11, 2000, was marked as Commission's Exhibit 11, as of this date.)

MR. RIZZO: The final letter of interpretation for tax parcel 241-132, dated November 24, 1999, with an allocation of 0.18 Pine Barrens credits.

The reason for the two different letters of interpretation for tax parcels 239-26 and 239-27, is that clearinghouse staff erred (sic) in the December 15, 1999 letters of interpretation for those two parcels by granting one full credit for each parcel under Section 6.7.6.6 of the plan allowing the clearinghouse to allocate one full Pine Barren Credit for parcels to have road frontage on existing improved road with over 4,000 square feet of lot area.

In previous letters of interpretation of that type, clearinghouse has elected not to grant the one full credit to parcels on New York State Route 27, which is

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Sunrise Highway and Interstate 495 of the Long

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Island Expressway indicating that they are

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limited access highways and should not receive

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that allocation.

6

I have two more items to enter in

7

as exhibits. The first is a staff report

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dated November 28, 1995, for tax map number

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900-241-1-17 for Edward Trombetta, the

10

applicant.

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(WHEREUPON, the above-referred to

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document, staff report dated November 28,

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1995, was marked as Commission's Exhibit 12,

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as of this date.)

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MR. RIZZO: My final exhibit is

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the letter of interpretation dated

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November 28, 1995 for 900-241-1-17 with

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allocation of 0.20 Pine Barren credits.

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(WHEREUPON, the above-referred to

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document, staff report, dated November 28,

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1995, was marked as Commission's Exhibit 13,

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as of this date.)

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(WHEREUPON, the above-referred to

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document, letter of interpretation dated

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November 28, 1995, was marked as Commission's

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Exhibit 14, as of this date.)

MR. RIZZO: The reason why you received staff report and letter of interpretation from November, 1995, it is one of the first cases where clearinghouse decided not to allocate full credit for parcels with road frontage on Sunrise Highway and the Long Island Expressway indicting that they are limited access highways and should not receive one full credit.

That's all the exhibits I have.

Does anybody have any questions?

MR. COWAN: You indicated that the 1995 decision was the first time that --

MR. RIZZO: One of the first times.

MR. COWAN: One of the first times -- do you know, offhand, how many times we visited this issue?

MR. RIZZO: Maybe two or three more times, but I don't have an exact number. This first decision was made by the clearinghouse itself. It was made when the

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board was making decisions on allocations. It was not staff decision. The clearinghouse board made the decision.

CHAIRMAN: Mr. Gazza, do you wish to address the Commission.

J O S E P H F R E D E R I C K G A Z Z A,

appearing as a witness herein, residing at 5 Ogden Lane, Quogue, New York 11959, having been duly sworn by a Notary Public of the State of New York, upon being examined, testified as follows:

MR. GAZZA: My name is Joseph Frederick Gazza. I'm the applicant before the Commission this afternoon. It's late in the afternoon.

Good afternoon, board members. I have three pieces of property that are before you and they are related. I have outlined the three pieces in a much more concise map but hopefully you can see. they're labeled lots 32, lots 7 and lot 6 on mine, applicant's Exhibit 1, which I will leave with the stenographer, and they're located on the north side of Sunrise Highway

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2 just to the west of Exit 63 in Westhampton.

3 Parcels four and a half acres, a

4 half acre and acre and a half approximately.

5 The issue: Whether New York
6 State, Route 27, improved highway, constitutes
7 an existing improved road as defined in your
8 code, section 6.7.6.6 which would allow your
9 Commission to allocate one credit to each of
10 these road front parcels.

11 Now, of course, I would like to
12 get the one credit for each of them. That's
13 why I'm here. My review of the code
14 section -- initially I thought it was a
15 shoe-in from my reading of the code.

16 I have provided you each with a
17 copy of the code. I think Mr. Rizzo initially
18 agreed with me because there was an allocation
19 of one credit per parcel. However, something
20 has changed between the initial determination
21 back in December of '99 and January of 2000
22 where the allocation was reduced.

23 Now, I believe that the code which
24 was put together and which we all worked by --
25 it was put together by the Commission, by the

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Commission's attorneys, adopted by the State. There is a rule among the constructionists, a statute rule, that talks about when we have a law and there's an ambiguity in the law, that it should be construed against the party who drew the law and in favor of the party who is subject to the law.

Now, we have a statute, call it a statute, it's part of your code, it says that a Pine Barrens credit clearinghouse may elect to allocate one full Pine Barren credit for a parcel of land consisting of at least 4000 square feet with frontage on an existing improved road.

Well, there is no question that I qualify with the area, 4,000 square feet being a tenth of an acre and I'm four acres, an acre and a half and a half.

The issue is: Does Sunrise Highway constitute an existing improved road? Well I drove on it here this afternoon, and as far as I know it's been there since 1973, and it is a state highway and it is improved. It is limited access I agree, but the statute

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doesn't say that we are going to eliminate parcels that front on existing improved roads of limited access. It doesn't say that.

Your Commission will have to interpret this. We have a -- Mark was able to find only one decision for me, the 1995 clearinghouse decision. Were you able to find if that applicant accepted that determination, Mark? You were going to look into that.

MR. RIZZO: I haven't looked into it. I will let you know.

MR. GAZZA: We don't even know if it was accepted or just a decision that was made at that time by a different Board but maybe your Board could explain to me, has this issue come up on point before today or are we on virgin ground here?

MR. COWAN: We are not on virgin ground. Apparently there was at least one decision?

MR. RIZZO: A conservation easement in 1996 for two parcels. It doesn't look like he appealed that decision.

MR. GAZZA: Possibly another

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gentleman like the predecessor to me here
earlier this afternoon from Massachusetts.

Well, your Commission will decide
whether I get the one credit or the tenth of a
credit that's been offered.

I have been in negotiations with
the -- Alan Grecco, Suffolk County Department
of Real Estate, they wanted to acquire these
properties. They have gone so far as to
prepare a contract for acquisition. I brought
it with me. I resisted selling the land to
the county pending the allocation, final
determination of allocation, because if I can
get the one credit are for each parcel, then I
will take it and I will not sell the land to
the County. I will deed the fee title to the
County as a donation. The County will get the
land for free. It will be preserved. I will
get a tax benefit, yes, for the residual value
after the rights have been lifted off of it,
but the land will be preserved, the County
will not have to spend the money to acquire
this property, they can use that money for
acquiring it from other people, for more

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acquisitions of Pine Barrens land and Joe
Gazza will get three credits.

Now, I will use the credits. I
have used credits in the Town of Southampton
under a transfer of development rights program
before there was a Pine Barrens program. I
have used more credits in the Town of
Southampton than any other applicant put
together under the transfer of development
rights program. I am familiar with the
process. I want to see it work. I haven't
been able to make it work with the Pine
Barrens program yet -- I have tried, but I
haven't been successful but I'm not quitting.
I want to work. I want to work within the
system, I want to work with the credits, but
I'm not going to work with a little tiny crumb
of credit. That's not going to work. I have
got to have three credits at least for three
parcels of land to get involved with this
program.

So the decision -- we look at the
statute, you read it, consider it, make a
decision on the road issue. If it's an

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existing improved road, I think you should rule it deserves one credit for each parcel. Work with me and you will get the land preserved, the County will get it for free.

That's my offer, my presentation.

MR. SHEA: Joe, if you look at the Commission's plan the key words are that the credit clearinghouse may allot. What they have got to do is look at circumstances surrounding that parcel, particularly whether or not you have legal access from that improved road front.

Have you ever sought legal access from Sunrise Highway to the Town Zoning Board of Appeals?

MR. GAZZA: There's been no application to the Town Zoning Board of Appeals. However, Sunrise Highway does have a service road which is proposed. Its entire length has not been opened. It exists on paper only. Some time in the future that could be opened. If there's a need. They've opened Sunrise Highway service roads as far east as maybe Patchogue I think is the last

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section of service road they've opened. It's not there now. It's slated to be there by the State Department of Transportation.

MR. SHEA: I would say that the response to that is extremely unlikely that a service road would be bought there. There's no comprehensive plan in place that calls for building of that service road, not in the present or the predicted future is there a service road at this time.

MR. COWAN: Mr. Gazza, would you care to put on the record your understanding of what a limited access highway means?

MR. GAZZA: Well, a limited access highway does not preclude you from access, it limits your access by its very definition. So it may be possible through an appeals process to get access onto a limited access highway. It doesn't say forever prohibited limited access road. I have an application pending right now in Nassau County for access to the Bethpage State Parkway, which is a limited access highway, to open up a nine and a half tract of land for multi-family senior citizen

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2 housing. Big, big project. So it's not
3 impossible. It's costly, it's time consuming,
4 but the road is there. It's a state road,
5 it's paid for with state tax dollars and it's
6 there for the people of New York State and
7 others and certain property owners like myself
8 for legal access. State improved roads.

9 There's a fence, small fence to
10 keep deer from running out to Sunrise Highway.
11 It's a high deer kill area, this area of the
12 Pine Barrens.

13 MS. PLUNKETT: Just for your
14 historical overview, staff has consistently --
15 just to answer your previous question --
16 consistently allocated parcels that are on
17 Sunrise Highway and the LIE. Their
18 allocation -- not an improve road -- and one
19 of the factors that goes into that -- in the
20 previous case was that -- what you're fronting
21 on here is actually the right of way. You are
22 not fronting on the road itself.

23 So within the right of way there
24 may be a service road at some point but that
25 is the fact that both of these roads, that the

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right of ways are larger and the road itself is much -- you know, within this area.

But just so you know -- I know there have been several cases -- to answer your question previously -- that -- where we have done that. Not all of those people have sought letters of credit, but in letters of interpretation, we have consistently allocated as though they were not an improved road, for those properties that front on the right of way of the LIE and Sunrise Highway

MR. GAZZA: Maybe this is the time to focus on the issue, to focus on the law and to clarify a policy.

MS. ROTH: I would like to make one technical comment. The document which you have been describing as a statute, from which you quoted, 6.7.6.6. is, in fact, not a statute but it is a document entitled the Central Pine Barrens Comprehensive Land Use Plan, Volume 1, adopted by this Commission, never adopted by the State Legislature.

THE CHAIRMAN: And I would like to

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2 add that in terms of how we arrived at that
3 decision to include road front parcels,
4 because I was the only one who was pushing
5 this, involved out of the failure of having to
6 identify all of the individual parcels that we
7 thought should have been exempt when they were
8 submitted to us by the Town, and we were
9 constantly being faced with projects where if
10 a property owner still has property to the
11 left and to the right of him, he saw
12 development, and his property was one of the
13 few left on that improved road that wasn't
14 developed, and so we proposed language that
15 was later adopted by the State -- or in the
16 plan -- I'm sorry -- that actually tried to
17 encapsulate the hardship hearing that we were
18 consistently seeing, and never at any time did
19 we ever see, or in my case envision, one in
20 terms of the road which is Sunrise Highway or
21 the Long Island Expressway but rather these
22 other parcels on this map where you see there
23 are many areas where there are improved homes
24 and other areas, vacant parcels, and going on
25 there with what we call in-filing. You would

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not see that kind of in-filling occurring on

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either of these two large roads. There just

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aren't any other homes along these areas

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where other homes could be built.

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So at least in my mind, I have a

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very clear cut idea of what constitutes road

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front parcels in areas for streets where there

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was already existing development even though

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that may not be clearly articulated in the

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statute. It was where we saw existing homes

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there and these fill-ins could occur and were

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not identified by the Town so we wanted to

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find a mechanism to do that.

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MR. COWAN: Mr. Gazza, is there

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any other access to these properties from

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another roadway?

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MR. GAZZA: Yes, the parcels

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referred to in the Gazza exhibit, they run to

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the north, to the Middle Line Highway which is

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a -- could be an old division line between the

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great north and great south division when the

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lands were first subdivided in this area and

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that is a dirt road, it provides physical

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access but it's in an unimproved state - just

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2 dirt - and it goes right out to the Speonk
3 Riverhead Road, goes to the college. They
4 have it fenced off right now because of
5 trails -- motorcycle riders go in there and
6 dirt bikes.

7 MR. COWAN: Who has title to that
8 road?

9 MR. GAZZA: Middle Line Highway?
10 I know that east of the Shinnecock Canal, the
11 Middle Line Highway is owned by the Town of
12 Southampton.

13 West of the Shinnecock Canal, I'm
14 not sure. I know there is some dispute about
15 that with the Town, the Town Trustees, the
16 Town of Southampton that was an issue. It was
17 an original division line that later became a
18 highway -- it's 66 feet. Is that three rods?

19 MR. COWAN: Four rods.

20 MR. GAZZA: Four rods.

21 MR. MAC LELLAN: The dispute is
22 between the Village and the Town, so a
23 Municipality owns it?

24 MR. GAZZA: The Town trustees. In
25 the Town of Southampton we have the Town

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Trustees and then we have the Town Board.

MR. MAC LELLAN: Right.

MR. GAZZA: So Middle Line Highway to the west of the Shinnecock Canal, I don't know if that's been determined who the owner of that road is.

MR. SHEA: It depends on what portion you are looking at. Some areas are public ownership, some areas are private ownership. At the same time it's not managed to maintain the public road, it's not considered a public road. It's not open as a public road.

MR. COWAN: Just for the record, 66 feet is four rods.

How long have you owned this property?

MR. GAZZA: Mark, do you have the deed? I don't want to give you a misdate (sic).

I'm going to guess that parcel six and seven maybe seven or eight years and parcel 32 maybe 15 years.

MR. RIZZO: Parcel six and seven

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January 25th, 1993 is the date of the deed.
And parcel 42 is October 5th, 1988.

MR. COWAN: So in both cases,
State Route 27 was in its present state when
you purchased these properties; correct?

MR. GAZZA: It was built in 1973,
so the answer would be yes.

MR. COWAN: Did you buy it from an
owner that happened to own it when the highway
was put through; do you know offhand?

MR. GAZZA: Parcel 32 was owned by
the Estate of Herbert H. Bellringer.

That's a tough question.

MR. COWAN: Let me ask you the
next question.

Are you aware of any compensation
paid by the state to any of these owners?

MR. GAZZA: No, there was no
compensation paid. I am aware of that because
that would affect any type of an action
with the property, a variance
application, from a land use point of view.
This property, in particular, the Bellringer
parcel, they didn't even identify Herbert H.

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Bellringer for compensation because of the mix up of the properties in this area at that time. He owned a long strip of land that extended all the way south to the railroad tracks. This parcel 32 is the tail end of a ten-acre parcel. It was nine acres that existed south of it and it's only recently that it's accurately shown on the tax maps the last two or three yeas.

MR. RIZZO: As far as I know, parcel 32 is considered by the Pine Barrens to be an overlapped area. As such Mr. Gazza was given our standard overlap language where you have to prove that the overlap does not exist.

MR. GAZZA: I believe I did do that, correct?

MR. RIZZO: Almost.

MR. COWAN: So then you're not aware that any permanent easements have been filed on these properties by the State Department of Transportation?

MR. GAZZA: Well, the state has taken, by condemnation, the full width of their --

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MR. COWAN: Other than the right of way, so --

MR. GAZZA: That's all I know of.

MR. COWAN: The deeds reflect no such permanent easement on the parcel --

MR. GAZZA: On the remaining parcels?

MR. COWAN: Right.

MR. GAZZA: I have examined the title and I would have picked that up and there's no mention about anything -- title for either of these parcels.

MR. MAC LELLAN: Is there any road access, dirt or otherwise, to the southern one?

MR. GAZZA: Well, this one is not before you today. I have another similar application which would be dependent upon these three that I would pursue next. I have another parcel, just a continuation of this one. Same situation. And the same pattern would follow; if I was allocated the one credit, I would deed the fee title to the County. The land would be preserved and I

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would just get the credit.

THE CHAIRMAN: Could you tell us the widths of these two parcels?

MR. GAZZA: I think the tax maps would be the accurate portrayal of the width.

MR. SHEA: Have you ever established the yield for those parcels?

MR. GAZZA: A yield in which respect?

MS. PLUNKETT: They're all less than five acres. They're all single lots.

MR. SHEA: None of the lots are combined?

MR. GAZZA: Well, they're -- each lot is a separate tax lot.

MR. SHEA: It's hard to see in that . . .

THE CHAIRMAN: I'm trying to determine whether it would be possible for you to put a structure on it.

MR. GAZZA: It's a four acre lot. Certainly could accommodate a structure with the necessary permits to build. Four acres is quite a substantial lot and the other one --

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2 lot 32 -- being an acre and -- Mr. Chairman,
3 I've built on 4,000 square feet a number of
4 times and these lots are far in excess of
5 that. In fact, I built on 2500 square feet on
6 one occasion.

7

THE CHAIRMAN: What's the
8 geometrical size of the lot? You could
9 have --

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MR. GAZZA: It was the shape of a

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diamond.
MR. CHAIRMAN: It looks quite
13 narrow.

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MR. GAZZA: That's not impossible
15 to build on, narrow lots.
MR. SHEA: So, Joe, you've never
17 sought relief from the zoning board of
18 appeals?
MR. GAZZA: I have made no
20 application to the zoning board of appeals in
21 connection with these lots.

These lots should be preserved.
23 They're in the middle of the core area. You
24 could get them for free. You could use the
25 money to buy other parcels. You've got that

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opportunity right on the table here. I'm asking for a little interpretation. You have somebody that's willing to work with you.

MR. COWAN: How come you keep looking at me.

MR. GAZZA: You're the only one who's looking back.

MS. ROTH: Mark, did you look through the history and find at least one or two other decisions on similar --

MR. RIZZO: I think we can.

MS. ROTH: And what's the decision deadline for this?

MR. RIZZO: Definitely after the next meeting. I think it's around the 20th of March.

MR. GAZZA: Mark, you looked for me for two weeks. You had almost five months.

MR. RIZZO: Well, we were looking for something else, too.

MR. MAC LELLAN: Could I ask a technical question here?

What does it cost us for a credit, a unit?

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MR. COWAN: It doesn't cost us anything.

MR. MAC LELLAN: I was just curious because Mr. Gazza has thrown that phrase at us several times "it won't cost us anything, we will get the land free."

MR. GAZZA: What I meant was that the County of Suffolk has expressed an interest in contract form to purchase from me these three parcels. They want to buy it with the clean drinking water money that they have allocated for this purpose, and it's going to cost the County that money to buy it from me. I'm proposing to donate it to the County, donate the land. So it would cost the County nothing, but I do want the three credits. So the county would save the acquisition costs, it would get the land preserved, Joe Gazza would have three credits that I could use from furtherance of this program to try to make it work. This is what I thought everyone was trying to do.

MR. COWAN: Let me just ask, when the environmental impact statement was

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2 written, land use plan that Doris referred to
3 earlier, and we had to quantify the number of
4 credits that were going to be generated from
5 core property, is it not true that we did not
6 visualize properties that bounded limited
7 access highways as being contributing a full
8 credit each, that they were allocated under a
9 forearm, the way that Mr. Gazza --

10

MS. PLUNKETT: We probably
11 weren't able to single those out at the time.
12 I'm not sure whether we allocate -- whether we
13 said they would have the one credit or not. I
14 am not sure whether we singled those out.

15

Is that what your question is?

16

MR. COWAN: Well --

17

MS. PLUNKETT: Have we figured
18 that already?

19

MR. COWAN: I think that when we
20 calculated the number of credits that came
21 from the core, those properties that boarded
22 on limited access highways were not allocated
23 full credit.

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MS. PLUNKETT: You're right.
25 That's exactly -- they were not. They were

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not allocated because that would have added additional credit to the total amount.

MR. COWAN: I would like to offer, for the record, also a little clarification of Mr. Gazza's response with respect to limited access highways and what they mean.

Although what he said is more or less correct, in a previous life I happened to be a design engineer for the New York State Department of Transportation. So I have a little bit of understanding what a limited access highway is, and in fact, what it means is that the access is limited to duly engineered and designed interchanges which are built, generally, to federal highway standards and, as you know, they become very expensive to build, and you referenced a situation on the Bethpage Parkway, and I have no doubt that if your development is of a significance, that would warrant the construction of an interchange, those sorts of situations can occur. No doubt they can. They're based upon traffic analyses, and again, they're always designed to certain standards for high speed

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egress and ingress to the highway, and I have never heard of one for a single family residence and I think that would probably be beyond the pail, quite frankly. I just wanted to make that clear.

THE CHAIRMAN: Any other questions from the commission?

(WHEREUPON, there was no response.)

THE CHAIRMAN: Are there any members in the public wishing to address the Commission?

MR. OLSEN: I can't resist. Again, my name is Walter Olsen, president of the Civil Property Rights Association, Incorporated.

I find it a little troubling at this point that the Commission is splitting hairs over what constitutes a developed road and to make a differentiation now between Sunrise Highway and 495 and a regular town road and to say that one fits in the criteria and the other one doesn't. It's troubling to me that you do that at this point or even back

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2 a little a ways when you started making other
3 decisions based on this. I think if that was
4 the intention then that should have been
5 spelled out originally in the plan when it was
6 put together, and I don't see anything on that
7 that makes that differentiation that says that
8 this improved highway is not an improved road.

9 The reason -- the additional
10 reason I find it a little troubling is
11 because I would think that this Commission
12 would be trying to work with the property
13 owners and taxpayers as much as possible to
14 try to relieve them as much as they can for
15 the loss they have experienced over what
16 happened with the Pine Barrens. Particularly
17 in light of the fact that now you're trying to
18 sell another Pine Barrens situation to the
19 people east of the canal in Southampton Town
20 and in Easthampton Town.

21 I would think that you could set a
22 good example at this point, if you were to
23 take the wording of this plan literally, and
24 it doesn't say, as Marty Shea pointed out, it
25 doesn't say that it's not law. What it is

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2 seeming to say is that you have the ability to
3 give one full credit. It doesn't say that you
4 have to or that you can't, but you have the
5 ability to do it, and I think that you should
6 exercise that ability particularly in this
7 case.

8 You have a parcel that one of them
9 is four acres and you are able to allocate
10 only one credit for a four acre parcel, and
11 then have the county not to spend that money
12 on it to preserve that property. I think it's
13 a no-brainer that by being a little more
14 generous with the allocations of these credits
15 you can make the program work better, you can
16 make the property owners more supportive of
17 your program, and everybody comes out a
18 winner.

19 To suggest, as Donna has, that
20 this happened in the past and you used this
21 allocation method on other parcels, that may
22 be true, but again that may have been people
23 who were not astute enough and did not have
24 the fight in them to come before you and
25 appeal those decisions and they just let it

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happen to them. That certainly doesn't make it right.

I think that you need to exercise the latitude that you have here and start to make this program friendly to the property owner particularly in light of the new endeavor you are talking on east of the canal. I'm going to be attending a meeting on that tomorrow night and I would like to have nice things to say. Unfortunately, so far, my experience with this program hasn't given me a whole lot of nice things to say.

I think that you would be doing everybody a service by allocating at least one credit for every parcel that Mr. Gazza has shown you here and show that you can be compassionate with the property owner, not use this whole bureaucratic mess to work against the property owner. I would urge you to do that.

Thank you.

MR. MAC LELLAN: I have a question to either counsel or staff.

What limits our generosity with

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the credits? There is something; isn't there?

MS. ROTH: An appeal of the credit allocation from clearinghouse to the Commission triggers a hearing. And the commission is authorized to either let the credit allocation remain as it was issued by the clearinghouse, reduce the allocation, increase the allocation without limitation as to the number.

MR. MAC LELLAN: It was just inferred that we're being stodgy with our credits but is there not something that limits us? Don't we have to have -- we have an allocation to send them some place and that restricts us to how many credits the Pine Barrens has?

MS. ROTH: I'm not sure I understand what you're saying.

THE CHAIRMAN: Is there a limitation as to how many credits for the land some place?

MS. ROTH: Well, that may be a whole separate issue that was raised by Ray Cowan.

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When the generic environmental impact statement was written and adopted by this Commission with regard to the TDR program, it was assumed that a certain number of credits would come out of the core area and we had to find landing sites for those credits. If we were to now suddenly create -- allow more credits to come out of the core than had been anticipated and considered in the impact statement, that would raise a whole speculative to have the obligation of me opening the impact statement and amending a whole bunch of other decisions. So there is some limitation out there but it's not an exact number.

I don't know whether that helps you or not.

MR. MAC LELLAN: Well, it takes me in that direction.

If we agree to this request here, down the road that puts us in a bind with other credits by having them or not having them.

MS. ROTH: Well, you are always

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2 looking at your prior -- have to look to your
3 prior decisions to see if there's some
4 difference -- some rationale for making the
5 decision.

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Of course, every time you increase
7 the number of credits above and beyond that
8 which is considered in the GEIS, you are
9 running the risk of opening up the GEIS.

10

MR. COWAN: And the impact -- with
11 all due respect -- would not be limited to
12 what Mr. Gazza has in front of us today.
13 There is obviously "X" number of parcels in
14 similar situations that would have to be
15 treated the same way which would have "X"
16 number of more credits.

17

MR. GAZZA: If I may just continue
18 with what Doris was saying about the
19 credits -- most of the credits that have been
20 used to date, if I'm correct, have been used
21 for sanitary waste gallons not even for
22 development lots; is that correct?

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MS. PLUNKETT: I'm not certain of
that.

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MS. EADERESTO: There's been

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credits used in Brookhaven Town for development purposes, absolutely. I can speak for Brookhaven.

MR. GAZZA: But was it also used for sanitary gallonage?

MS. EADERESTO: There's been areas outside the core that have been used that way, yes, but we have also used them to develop houses.

MR. GAZZA: So the initial idea of having, I don't know how many credits, is supposed to be made available -- thousands and thousands -- is there anyone who can -- several thousand credits were supposed to be created to date in Southampton. How many have been created: Four?

MR. SHEA: I don't know.

MR. GAZZA: How many credits have been allocated and landed somewhere? We're talking about an infinitesimal amount. And the people who come to me and talk to me about credits, they don't talk about using credits for additional houses or building additional lots. They talk about using the

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credit to get 15 extra seats in a Burger King,

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or eight extra seats in a McDonald's or where

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in Hampton Bays to get extra seating in the

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multi-type movie theater. That's when they

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use the credits for. It's not like there's a

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big fear of giving three credits for three

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parcels of land that should be preserved

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forever.

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MR. CHAIRMAN: I will recognize

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Mr. Olsen and after that we are closing the

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hearing.

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MR. OLSEN: If I could just make

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one final point about the credits. Maybe I'm

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interpreting this wrong but yes, there was an

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original estimate of how many credits was

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going to come out on the core, how they would

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be absorbed into the sending areas and that

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sort of thing, but isn't it true that with the

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amount of purchasing that has been going on by

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the State and the County and the Town as far

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as acquiring open space, hasn't that dissolved

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some of those credits that will never be

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realized so that you never have to really

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worry about an over accumulation of credits.

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2 I think that with the acquisitions that have
3 been taking place, that's already offset in
4 anything that you may encounter in the future
5 as far as being a little more generous with
6 the property owners trying to make this work.
7 I may be wrong, but it's my interpretation
8 that those credits are now gone and you don't
9 have to be concerned about that.

10 THE CHAIRMAN: That would occur
11 only if we need the 75 percent acquisition
12 goal that we established -- the expectation
13 that 25 percent would be developed through the
14 TDR program and we would acquire 80 percent,
15 90 percent. You're right that would occur.

16 MR. OLSEN: Then I don't know
17 where you stand at this point. But maybe that
18 should be given some consideration. Thank
19 you.

20 THE CHAIRMAN: Anyone else who
21 wishes to address the Commission?

22 (WHEREUPON, there was no
23 response.)

24 THE CHAIRMAN: Close - make a
25 motion at this time -- hold it open? I'm not

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sure --

MS. ROTH: Don't we want to check other decisions in the record?

THE CHAIRMAN: It's the general consensus to hold it open until our next meeting.

At this time, I will just adjourn the hearing to our next meeting and hold the comment period open.

(WHEREUPON, this hearing was concluded at 4:55 p.m.)

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I N D E X

WITNESS

PAGE

Joseph Gazza

12

* * *

E X H I B I T S

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C E R T I F I C A T E

I, LORRAINE D. BERARDI, certify that the foregoing transcript of the proceedings in the Central Pine Barrens Hearing, County of Suffolk, was prepared by me and is a true and accurate record of the proceedings, to the best of my ability.


LORRAINE D. BERARDI

Dated: February 29, 2000