

1 THE STATE OF NEW YORK: COUNTY OF SUFFOLK

2 CENTRAL PINE BARRENS JOINT COMMISSION

3 -----X

4 In the Matter of,

5 JOSEPH MITTACCHIONE, TRUST

6 c/o CRAMER CONSULTING GROUP

7

8 For an Increase in Pine Barrens Credits.

9 -----X

10 Town Hall
11 Medford, New York

12
13 October 15, 2003

14 3:20 P.M.

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18 Taken by: Donna L. Spratt

19 Court Reporter

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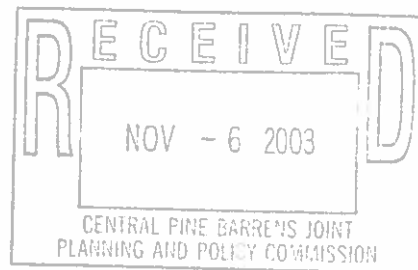
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1 A P P E A R A N C E S:

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ROBERT J. GAFFNEY, Chairman

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Suffolk County Executive

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BY: George Proios, Acting Chairman

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PETER SCULLY, Member

7

DEC Regional Director

8

Representing GEORGE PATAKI

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JOHN J. LA VALLE, Member

10

Supervisor, Town of Brookhaven

11

BY: BRENDA A. PRUSINOWSKI

12

PATRICK HEANEY, Member

13

Supervisor, Town of Southampton

14

BY: JEFFERSON MURPHREE

15

MC MILLAN, RATHER, BENNETT & RIGANO

16

Attorneys for Commission

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BY: JOHN MILAZZO, Esq.

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1 MR. PROIOS: I would like to call
2 this public hearing to order. This is a
3 hearing on a credit appeal. My name is
4 George Proios. I'm Acting Chairman of
5 the Commission, acting on behalf of
6 Robert J. Gaffney, Suffolk County
7 Executive, who is Chairman of the
8 Commission, and I will ask the other
9 members of the Commission to identify
10 themselves and who they represent.

11 MS. PRUSINOWSKI: Brenda
12 Prusinowski, representing Brookhaven
13 Town Supervisor John J. LaValle.

14 MR. SCULLY: Peter Scully,
15 representing the Governor of the State
16 of New York, George Pataki.

17 MR. MURPHREE: Jeff Murphree,
18 representing Southampton Town
19 Supervisor, Patrick Heaney.

20 MR. MILAZZO: John Milazzo,
21 Commission attorney.

22 MR. PROIOS: For the record, the
23 applicant is Joseph Mittacchione Trust,
24 care of Cramer Consulting Corporation,
25 Post office box 5535, Miller Place, New

1 York. The location is in Suffolk County
2 tax map 200-298-4-22 East side of
3 William Floyd Parkway, South of Patrick
4 Lane, Ridge, Town of Brookhaven.

5 Project description: The applicant
6 is requesting an increase to the 2.01
7 Pine Barrens credits allotted for the
8 subject parcel by the Clearing House.

9 MR. RANDOLPH: Hopefully all
10 members here received correspondence
11 regarding this appeal prior to today. I
12 sent a copy of the February 19th
13 transcript earlier today, and the
14 applicant also has a pending core
15 hardship application outstanding which
16 we did receive an extension letter to
17 February of next year because they're
18 looking for the outcome of this
19 particular hearing. They're trying to
20 get an increase from 2.1 credits, but we
21 were not furnished with anything why
22 they should be increased.

23 I would go ahead and turn it over
24 to the applicant to explain why it is.
25 So you know for reference, this is the

1 parcel here. I know we've been dealing
2 with that parcel for almost a year now
3 going back and forth.

4 This is a property that's located
5 on the east side of William Floyd
6 Parkway. The applicant has a core
7 hardship application. He wants to
8 subdivide this parcel to two building
9 lots. It is in the A-1 area in the
10 core, but before us today is a credit
11 increase and he has been --

12 MS. PRUSINOWSKI: A-2.

13 MR. RANDOLPH: Sorry. He has been
14 allocated 2.01 credits for the parcel
15 A-2 because of the zoning.

16 MR. PROIOS: Would the applicant
17 like to introduce themselves for the
18 record.

19 MR. CRAMER: Thomas Cramer,
20 principal of Cramer Consulting Group,
21 with offices at 54 North Country Road,
22 Miller Place. I represent the
23 Mittacchione family.

24 They've owned this parcel since
25 1973. At that time it was zoned A-1,

1 one acre residence, and considering the
2 subdivision to the north, it is likely
3 that they, at that time, could have
4 gotten between five and six building
5 lots on the particular property.

6 In 1986 the Town upzoned it to the
7 A-2, two acre zoning which is the
8 current zoning. In November of 2002 we
9 did submit a hardship application for
10 two lots. I have for the Commission's
11 information, a copy of that layout that
12 we proposed, and this property is the
13 principal asset of Ms. Josephine
14 Mittacchione after the death of her
15 husband. It is currently in an estate,
16 and this is her -- the principal asset
17 of that estate.

18 Originally she had requested three
19 lots when she came to me. After
20 discussions with her, we told her we
21 felt for a case like this, that two lots
22 would be reasonable to seek. This is
23 also in looking at some of the
24 Commission's past decisions,
25 particularly the Doris Blake application

1 that's located approximately 1,000 feet
2 to the north of this particular site.
3 That tax lot number was 200-294-4-14.

4 At that time, the Commission
5 approved a hardship application for a
6 three lot subdivision, provided that it
7 was clustered close to the road, and
8 altogether this particular lot is
9 smaller in size than our particular
10 property and also narrow frontage.

11 MS. PRUSINOWSKI: When was that?

12 MR. CRAMER: In August of 1997.
13 Here's a copy of the decision, and also
14 I have a copy of the portion of the tax
15 map that shows the relationship of the
16 two parcels.

17 MR. RANDOLPH: But that's more
18 developed in that area. Where the Blake
19 application applied, there were some
20 homes existing in the area, whereas this
21 parcel here --

22 MR. PROIOS: Show us on the
23 aerial.

24 MR. CRAMER: It is just to the
25 north of Patrick.

1 MR. RANDOLPH: In the vicinity
2 right here where the existing homes are.

3 MR. CRAMER: It also has publicly
4 owned land.

5 MR. MURPHREE: North of Patrick
6 Lane.

7 MR. RANDOLPH: In the existing
8 developed area.

9 MR. MURPHREE: I'm just trying to
10 get the place on the record.

11 MR. RANDOLPH: Near the existing
12 homes there on the north end of William
13 Floyd.

14 MR. CRAMER: That parcel is
15 surrounded by publicly owned land, as is
16 ours. We do have residential
17 development immediately to the north of
18 ours, so indeed they're similar.

19 As I said, on that particular
20 application the Commission did recognize
21 the possibility of three lots being
22 constructed on that property, provided
23 it was approved by the Town of
24 Brookhaven. We concur with the
25 Commission's position that three lots

1 could be developed, particularly the
2 Mittacchione piece since we do have
3 greater frontage and greater lot area.

4 In that regards, I've just worked
5 up some numbers. We didn't prepare maps
6 for the individual layouts, but
7 essentially what we're talking about is
8 at this point flag lots. Consider three
9 flag lots could be approved by the Town
10 of Brookhaven, the first option would be
11 essentially to make two lots 80,000
12 square feet each which would meet the
13 square footage requirements for the
14 A-2. The remaining lot would be
15 approximately a little bit more than
16 58,000 square feet, this representing a
17 73 percent conformity to land area
18 required under A-2.

19 The second option would be to only
20 make one of the lots 80,000 square feet
21 while the other ones would be almost
22 70,000 or approximately 86 percent of
23 conformity to Town Code.

24 The third one would be to make all
25 three lots almost 73,000 square feet

1 which would represent 91 percent
2 conformity to the Town Code.

3 Of course, there is another
4 option. We could install a tap street
5 running down the side of this piece of
6 property. That road would take up
7 approximately 10,000 square feet at the
8 site leaving 208,000 square feet
9 remaining. Again, these could be
10 divided up into three lots, each one of
11 those lots almost 70,000 square feet or
12 87 percent conformity.

13 MR. PROIOS: Excuse me. With
14 respect to your second and third
15 alternative, what is the access for the
16 rear lot without that road?

17 MS. PRUSINOWSKI: To construct a
18 road.

19 MR. MURPHREE: It is just a flag
20 lot.

21 MR. PROIOS: There would be three
22 lots equal.

23 MR. CRAMER: They would all three
24 be flags but they would be flags -- two
25 of them would be flag lots. One would

1 have a larger section on the road, but
2 they're all three of those options in
3 the beginning would be flag lots and
4 just depending on how you arrange the
5 size of them, whether you would have one
6 two or three nonconforming lots not
7 equaling the 80,000.

8 Then there is really a fourth
9 option which is putting in the tap
10 street, but by putting that in, all
11 three of those lots would have to be
12 less than 80,000 square feet.

13 Now, if you look at the
14 surrounding residential development in
15 the area, all the proposals would be
16 larger than the existing residential
17 development both to the north of us on
18 Patrick Lane and also to the west of
19 William Floyd Parkway.

20 Certainly I've done numerous
21 applications before the Board of Zoning
22 Appeals in similar situations like this
23 and they have been granted. In fact, I
24 would -- again, this is a grandmother
25 that owns it. To be honest with you, I

1 would bring her in, bring her
2 grandchildren in and I'm sure the Board
3 of Appeals would be fighting to approve
4 something like that given that I doubt
5 there would be much opposition to the
6 thing in the area, other than certain
7 organizations that have vested interest
8 in the Pine Barrens in the core area.
9 But, again, I would see this as
10 certainly more than likely being
11 approved in one configuration or
12 another.

13 My client, however, is not a
14 developer. They're not looking to
15 develop this site not even under the
16 core hardship. What she's trying to do
17 is to recuperate or to provide money for
18 her retirement and, in fact, this is why
19 we asked the hardship application be
20 held, because there was discussion on it
21 to provide the Pine Barrens credit, sale
22 of the Pine Barrens credit and also the
23 purchase on the underlying land.

24 There was a proposal or an
25 appraisal done by Suffolk County that we

1 did receive, and I believe New York
2 State still has one out. One of the
3 reasons why we're here today is to look
4 to try to increase the number of Pine
5 Barrens credits so that she can
6 essentially come back in with something
7 a little more viable for her in her
8 retirement years.

9 If these parcels were developed or
10 were approved as two individual lots
11 given the price of land in the area,
12 they would be worth a significant amount
13 of money. She recognizes that through
14 the sale of the Pine Barrens credits and
15 also the purchase of the underlying land
16 once the Pine Barrens credits have been
17 removed, she's not going to get
18 something akin to that, but certainly
19 more than the 2.01 Pine Barrens credits;
20 that is currently using the existing
21 formula.

22 I recognize that the Pine Barrens
23 Law does provide a provision for
24 additional Pine Barrens credits
25 providing that there may be other

1 consideration, certainly in the past
2 history of the Town's Board of Zoning
3 Appeals. I've also spoken to the person
4 that handled the application for Blake
5 to the north. He's informed me that
6 they did, indeed, receive from the Town
7 of Brookhaven a three lot split on that
8 particular Blake application. Again, I
9 have not been able to confirm that yet,
10 but if that's indeed the case, that
11 certainly lends credence to our request
12 here.

13 Again, we would be willing to talk
14 with you as far as three Pine Barrens
15 credits. That certainly is something
16 that I think could be justified under
17 the present application. Just by
18 straight division, we would come out
19 with 2.73 potential building lots on
20 this particular application.

21 Again, the Town of Brookhaven
22 Board of Zoning Appeals has typically
23 looked at applications and has favored
24 flag lots in the past on properties
25 similar to this.

1 I would be glad to try and answer
2 any questions the Commission may have.

3 MR. PROIOS: Do any Commission
4 members have any questions?

5 Are you in agreement with what the
6 applicant states would be the possible
7 action taken by the ZBA?

8 MS. PRUSINOWSKI: Could you go
9 through your three scenarios; the last
10 was building a road and you would get
11 three lots off of that?

12 MR. CRAMER: Option one would be
13 making two lots 80,000 square feet
14 each. That would leave 58,143 square
15 feet for the remaining lot. That would
16 equal approximately 73 percent
17 conformity.

18 Option two would be to make one
19 lot 80,000 square feet and leave -- then
20 the two remaining lots would be 69,071
21 square feet or 86 percent conformity.

22 The third option would be three
23 lots at 72,714 square feet each and that
24 would represent 91 percent conformity.

25 MS. PRUSINOWSKI: Why does the

1 conformity go up as the lot sizes go
2 down as opposed to the reverse?

3 MR. CRAMER: We're talking on the
4 first two options you would have lots
5 that would conform to the zoning, so I'm
6 only --

7 MS. PRUSINOWSKI: To Code, not to
8 area.

9 MR. CRAMER: Right, so that on the
10 option number one, there would only be
11 one lot that you would need to show
12 conformity on.

13 Then, of course, the fourth option
14 is providing a tap street. We could
15 access all three lots with a road that
16 would be approximately 10,000 square
17 feet considering a 50 foot wide easement
18 going down, and the remaining land could
19 be divided up into three lots at 69,380
20 square feet or 87 percent conformity.

21 MR. MILAZZO: No matter what you
22 do, you would only have two conforming
23 lots in the above case scenarios and one
24 lot that doesn't conform.

25 MR. CRAMER: That's correct, or if

1 we went with the other --

2 MR. MILAZZO: Three that are
3 closer but still do not conform.

4 MR. CRAMER: There would always be
5 at least one lot that didn't conform,
6 but as I said, past experience with the
7 Town --

8 MS. PRUSINOWSKI: Excuse me? What
9 did you say?

10 MR. CRAMER: There would always be
11 at least one lot that didn't conform.

12 MS. PRUSINOWSKI: Okay.

13 MR. PROIOS: Does the Clearing
14 House have any questions or have they
15 considered this as a possible option in
16 granting the 2.01 credits?

17 MR. MILAZZO: Janet, you could
18 talk to appeals in the past that are
19 similar. I guess the arguments you
20 could make, you have two lots that
21 conform and one that doesn't. What does
22 the Clearing House do with oversized
23 parcels in granting increases? What
24 have they required?

25 MS. LONGO: That I can't answer.

1 As far as the Blake parcel, DEC
2 purchased the Blake parcel. She got a
3 hardship in 1998, 1996.

4 MR. CRAMER: 1997, I think.

5 MS. LONGO: That was one of the
6 first purchases that I made when I was
7 at DEC, so DEC owns the Blake parcel and
8 I know that they were offered the same
9 value.

10 MS. PRUSINOWSKI: Was it
11 coincidental with the amount of credits
12 allocated?

13 MS. LONGO: It was a fee title
14 purchase, not credits. DEC was buying
15 property around there. When we bought
16 Blake, we offered Mittacchione the same
17 dollar per acre value for that property.

18 MR. MILAZZO: What did the
19 Clearing House or Commission do with
20 respect to Migliore's appeal?

21 He presented a map?

22 MS. LONGO: He had a site plan, a
23 yield map and he had 15 acres.

24 MR. MILAZZO: What was the
25 zoning?

1 MS. LONGO: A-1. He had three
2 road front acres, put a road up the side
3 and had a yield map for fourteen 40,000
4 square foot lots.

5 MR. MILAZZO: So the lots
6 conformed?

7 MS. LONGO: So they conformed.

8 MS. PRUSINOWSKI: What was the
9 location?

10 MR. MILAZZO: East Bartlett Road.

11 MS. LONGO: But all those lots
12 conformed.

13 MR. PROIOS: Were there a number
14 of lots for the Migliore application?

15 MS. LONGO: I don't remember. I
16 was involved with the Clearing House at
17 that time.

18 MS. PRUSINOWSKI: Mr. Cramer
19 indicated there are three. Was that
20 approved or was that a proposal?

21 MR. CRAMER: I understand they
22 were approved as three lots through the
23 Town of Brookhaven ZBA.

24 I've spoken to the expediter that
25 handled that particular application, and

1 as I said, the Commission itself
2 recognized the possibility of three lots
3 on that particular application in their
4 decision of July 16, 1997.

5 MR. MILAZZO: The decision was for
6 a credit approval or hardship?

7 MR. CRAMER: A hardship, issuing
8 three lots on that hardship.

9 MR. MILAZZO: Do you have a survey
10 of the property?

11 MR. CRAMER: There is one up
12 there. As far as --

13 MR. MILAZZO: Is there a
14 difference between the acreage on the
15 tax map and survey?

16 MR. CRAMER: Yes. On the tax map
17 it's 5.6 and the computations all have
18 been done at 5.02, I believe.

19 MR. MILAZZO: The tax map gives
20 you more area.

21 MR. CRAMER: Yes.

22 MR. MURPHREE: Which is accurate.

23 MR. CRAMER: The survey, I
24 certainly hope so. But to our advantage
25 would be to use the tax map, but the

1 computations that were done to equal the
2 2.01 is from the survey area, right.

3 MR. MILAZZO: Okay. So for the
4 2.01 we used a survey for that, but the
5 tax bill is 5.6.

6 MR. CRAMER: Right.

7 MR. MILAZZO: They're paying taxes
8 on 5.6.

9 MR. CRAMER: But it is vacant
10 land. I'm sure that's minuscule.

11 MS. LONGO: I think it has
12 something to do with that road, too.

13 MR. CRAMER: I should mention also
14 there was approximately a 22,000 square
15 foot taking off the front for the
16 service road to William Floyd which is
17 how this property is accessed now.

18 MR. MILAZZO: The tax map doesn't
19 reflect that.

20 MR. CRAMER: That is probably the
21 discrepancy.

22 MS. LONGO: It is.

23 MR. PROIOS: Are there any other
24 questions from the Commission?

25 Are there any members of the

1 public wishing to address the Commission
2 on this matter?

3 MS. PRUSINOWSKI: I do have a
4 question. Were that 22,000 square feet
5 to be added in --

6 MR. CRAMER: We would have full
7 80,000 square foot lots.

8 MS. PRUSINOWSKI: Conformity on
9 three lots?

10 MR. CRAMER: Yes, which if that
11 was a Town road, the Town would give us
12 credit for that. Since it is a County
13 road, it does not.

14 I don't know if the Commission is
15 aware but the Town has a provision if
16 the Town takes a piece of property for
17 road widening or something, you do not
18 lose credit or you do not loss density
19 for that taking by the Town, so --

20 MS. PRUSINOWSKI: The Town gives
21 you that credit even on a State or
22 County road.

23 MR. CRAMER: They do? So we have
24 three lots then.

25 MR. PAVOCIC: Was your client

1 approached by Islander East?

2 MR. CRAMER: Yes. They are
3 talking to them, but there's a question
4 whether that's even going to go
5 through. I know they've spoken.

6 That is a possibility that they
7 could buy the property but at this
8 point, they're unsure as far as where it
9 is going to go, so my client still wants
10 to proceed to protect their interests in
11 case that does fall through which nobody
12 seems to know what happens with that.

13 MR. PAVOCIC: Either Ed or Tom,
14 what is the ownership both north -- the
15 vacant land to the north and to the
16 south?

17 MR. RANDOLPH: I think it is
18 County and --

19 MR. CRAMER: This is from the
20 hardship application. Immediately to
21 the south is -- well, immediately to the
22 south and to the east is County and then
23 further to the north is a lot abutting,
24 it is State land. That is the same
25 thing, only reversed. The Blake

1 property, the State owns abutting to the
2 north and there's private ownership to
3 the south of the Blake property. We
4 have private ownership to the north and
5 public owned to the south.

6 My client is not interested in
7 developing the property. They're just
8 looking to provide retirement for --

9 MR. PROIOS: If there are no
10 further questions, I'm going to close
11 the public hearing.

12 (TIME NOTED: 3:40 P.M.)

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CERTIFICATION

I, DONNA L. SPRATT, a Notary
Public in and for the State of New
York, do hereby certify:

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

IN WITNESS WHEREOF, I have
hereunto set my hand this 2nd day of
November 2003



DONNA L. SPRATT