

1 CENTRAL PINE BARRENS JOINT PLANNING  
2 AND POLICY COMMISSION

3 -----X

4 In the Matter of the,

5

6 LETTER OF INTERPRETATION APPEAL

7

8 RE: ROBERT GREGORY and DONNA FERRARA

9

10 -----X

11 South Haven Park  
12 Yaphank, New York

13

14 February 18, 2004

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3:05 P.M.

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19 Taken by: Donna L. Spratt,

20

Court Reporter

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24

ORIGINAL

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

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3 STEVEN LEVY, Member

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Suffolk County Executive

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BY: Michael Deering

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PETER SCULLY, Member

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Representing GEORGE PATAKI

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JOHN J. LA VALLE, Member

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Supervisor, Town of Brookhaven

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BY: GEORGE HOFFMAN

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PATRICK HEANEY, Member

12

Supervisor, Town of Southampton

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BY: JEFFERSON MURPHREE

14

PHIL CARDINALE, Member

15

Supervisor Town of Riverhead

16

BY: JILL LEWIS

17

18

Ed Randolph, Staff to Commission

19

20

MC MILLAN, RATHER, BENNETT &amp; RIGANO

21

Attorneys for Commission

22

BY: JOHN MILAZZO, Esq.

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24

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1 MR. SCULLY: I'd like to call the  
2 public hearing to order. In the matter  
3 of the application of Robert Gregory and  
4 Donna Ferrara for a Letter of  
5 Interpretation for miscellaneous parcels  
6 in Southampton.

7 I have the legal notice in my  
8 hand.

9 I'd like to, for the record, have  
10 the Commissioners present indicate who  
11 they are and who they represent.

12 MS. LEWIS: Jill Lewis,  
13 representing Supervisor Cardinale from  
14 the Town of Riverhead.

15 MR. HOFFMAN: George Hoffman,  
16 representing Supervisor John J. Lavallo.

17 MR. DEERING: Michael Deering,  
18 representing County Executive Steve  
19 Levy.

20 MR. SCULLY: Peter Scully,  
21 representing Governor Pataki.

22 MR. RANDOLPH: Ed Randolph,  
23 Commission staff.

24 MR. MURPHREE: Jeff Murphree  
25 representing the Town of Southampton.

1 MR. BALIN: Herman R. Balin,  
2 Certilman, Balin, East Meadow,  
3 representing the applicants, Mr. and  
4 Mrs. Gregory or Donna Ferrara and Robert  
5 Gregory.

6 MR. RANDOLPH: This appeal  
7 involves 14 parcels which the applicant  
8 received a Letter of Interpretation for  
9 14 credits and for ten parcels in  
10 Southampton, and what happened was there  
11 was an error made and the applicant was  
12 sent an adjusted Letters of  
13 Interpretation that equaled 1.54 credits  
14 because neither of the -- none of the  
15 parcels totaled 4,000 square feet which  
16 is what the threshold is for road front  
17 parcels to receive one full credit in  
18 either of the three towns when it comes  
19 to Pine Barrens credits according to  
20 Clearing House rules.

21 The applicant is requesting today  
22 nine Pine Barrens credits because of the  
23 fact that all of the parcels add up to  
24 in excess of 36,000 square feet which  
25 they believe would give them the right

1 to receive nine Pine Barrens credits,  
2 considering the 4,000 square foot rule  
3 that the Clearing House has put in  
4 place.

5 I'll let the applicant go ahead  
6 and make a presentation.

7 MR. BALIN: Mr. newly elected  
8 Chairman, Mr. Scully, may I say  
9 congratulations.

10 Mr. Chairman, members of the  
11 Commission, my name is Herbert Balin.  
12 I'm representing the applicants and I  
13 have brought here pictures, copies which  
14 you have in your folder of what we're  
15 talking about. I always think it is  
16 better to see what we're talking about  
17 rather than do it in the abstract.

18 This is a picture of the land in  
19 question and this road, Old West Hampton  
20 Road, is the legal frontage on that  
21 road. That is the picture of it. That  
22 is the actual picture taken by Mr.  
23 Gregory just a few weeks ago.

24 Over here is a picture of what  
25 this road fronts around. That's

1 Wildwood Lake. It is absolutely  
2 gorgeous, and over here is a house  
3 that's built on this, owned by the  
4 Gregorys. This is a little hyperbolic.  
5 I figured I would show you by showing  
6 this beautiful sunset, and the final one  
7 is Kathleen, their daughter, fishing in  
8 Wildwood Lake.

9 That is what we're dealing with,  
10 and for once I'm on the side of the  
11 angel. Dick Amper knows me for many,  
12 many years. Rarely am I on the side of  
13 the angel but I want to be here.

14 MR. AMPER: On the record, amen to  
15 that.

16 MR. BALIN: I want to be here to  
17 protect this, and what we're doing here,  
18 we're not trying to protect the core  
19 area by awarding somebody 1.45 Pine  
20 Barrens credits for 14 tax parcels.  
21 Until you put that conservation easement  
22 on the core property, there is always a  
23 chance that somebody will do something  
24 and somehow get out of the core and  
25 build.

1                   As a matter of fact, I have some  
2 pictures here sadly to show you that in  
3 the past few years there have been homes  
4 constructed within a stone's throw of  
5 this property which we also believe is  
6 in the core area. I have here one  
7 picture of this parcel on Ann Avenue  
8 which has no CO. We have other pictures  
9 here of 45 Ann Avenue. This is 55 Ann  
10 Avenue and Ten Lake View.

11                   These are on the adjoining street,  
12 just on the other side of Old West  
13 Hampton Road where there have been  
14 constructions and permits issued in the  
15 past six or seven years.

16                   MR. CORWIN: Are you saying that  
17 what you said is true about this one is  
18 true about the others?

19                   MR. BALIN: No, only that one.  
20 The others have received permits. This  
21 one has not. Therefore, it is my hope  
22 that the Commission will not only for  
23 this application but for others  
24 encourage people to submit to the  
25 conservation easements so this property

1 can be forever protected.

2 What happened here? We made an  
3 application for Pine Barrens credits.  
4 The lots involved are very small, under  
5 4,000 square feet; no question about  
6 it. Each is single and separately  
7 owned, and we received a Letter of  
8 Interpretation for 14 Pine Barrens  
9 credits. We said fine, send us the  
10 paperwork. We got the paperwork, we got  
11 the paperwork for the conservation  
12 easements for the consent of  
13 mortgagees. A few weeks later we got  
14 another letter saying whoops, we made a  
15 mistake. We're going to give you 1.54  
16 credits not 14.

17 We said this can't be right. If  
18 you value -- you want to try to give  
19 close to some type of market value, fair  
20 market value to encourage people to put  
21 in these conservation easements. I have  
22 some papers that I have submitted in  
23 this envelope I've given every one of  
24 you.

25 A building plot is worth

1 approximately \$80,000 to \$120,000 in  
2 this area. Fronting on this gorgeous  
3 lake, I suspect it is probably a little  
4 more but for the fact it is in the core  
5 area. A Pine Barrens credit today, and  
6 I'll give you the computer printout,  
7 from what I understand every transaction  
8 involving Southampton Pine Barrens  
9 credits over the last years is about \$30  
10 odd thousand. It has increased  
11 substantially.

12 True that these parcels are so  
13 small although -- and we've given you a  
14 brief on it -- we're entitled to a  
15 building permit to build a very tiny  
16 house, but there is nothing to prevent  
17 us from combining two, three or four of  
18 those lots and make it a buildable lot.  
19 Those are worth if you get five or six,  
20 we're talking about a value, according  
21 to the information I've given you, of  
22 \$500,000, \$600,000; \$450,000.

23 Pine Barrens credits one half is  
24 at most \$50,000. There is something  
25 very, very unfair here, disparaging.

1 I've asked you and set forth a number of  
2 methods that you can judge this.

3 One is you could reverse the  
4 reversal of taking away the 14 credits  
5 that were awarded and I think you can do  
6 that. If you don't want to do that, you  
7 can go by the basis of square footage;  
8 just if a plot is entitled one Pine  
9 Barrens for 4,000. Are you saying if it  
10 is 3,999, it is not entitled to anything  
11 or 0.1 as we were told? That doesn't  
12 make sense.

13 What I've done is -- one alternate  
14 method -- I added up all the square  
15 footage, taking a percentage of the  
16 4,000 and came to a little over ten Pine  
17 Barrens credits. That's another  
18 valuation that you can do.

19 A third valuation -- without going  
20 into that, you can just add up all of  
21 the square footage which now I've  
22 recalculated about 41,000 square feet  
23 and that's ten Pine Barrens credits, so  
24 something has to give here to make this  
25 fair for everyone and to encourage

1 people to use the system because the  
2 system originally wasn't working.

3 Originally Pine Barrens credits  
4 were a drug on the market. Now they've  
5 become very valuable and let people go  
6 ahead and come to you and say okay,  
7 fine. I'm going to put this property  
8 away forever so we prevent people from  
9 abusing the system despite being in the  
10 core area, continuing build on it.

11 I'm here for any questions. My  
12 clients are here if they need to answer  
13 anything.

14 MR. SCULLY: Are there any  
15 questions from any Commissioners?

16 (No response).

17 I just ask staff to explain this  
18 was just an inadvertence, oversight  
19 regarding the road frontage issue?  
20 Explain what that boils down to at the  
21 crux of the issue.

22 MR. RANDOLPH: All the parcels  
23 fall short of the 4,000 square foot  
24 threshold, so they would each be  
25 eligible for the amounts laid out on the

1 forms you see before you basically.  
2 Yes, they were first initially given the  
3 credit but after the oversight was  
4 discovered, the amount was readjusted,  
5 and in the end they ended up with 1.54  
6 credits.

7 MR. SCULLY: Is there any  
8 precedent with regard to interpretation  
9 of credits and inadvertent errors?

10 MR. CORWIN: I can't tell you how  
11 many times we have in the past -- maybe  
12 not at this level -- made occasional  
13 errors and they were intended to be  
14 estimates of credit allocations. Is  
15 that the reason they're estimates and  
16 the appeal process exists.

17 MR. SCULLY: There have been  
18 appeals?

19 MR. CORWIN: There have, and I  
20 would have to look at the percentage of  
21 whatever you want to call it.

22 MR. SCULLY: Any other questions?  
23 If not, we'll close this hearing.

24 MR. MILAZZO: The applicant  
25 applied for credits originally. In

1 their original application, how many did  
2 they seek?

3 MR. MURPHREE: Fourteen.

4 MR. MILAZZO: Why?

5 MR. BALIN: I made a mistake in  
6 adding. I got to 36,000 instead of  
7 41,000.

8 MR. HOFFMAN: But they were  
9 granted fourteen?

10 MR. BALIN: Yes. One for each of  
11 the single and separate parcels, and  
12 they are single and separately owned.

13 MR. MILAZZO: Are they owned by  
14 your clients, husband and wife?

15 MR. BALIN: They're owned  
16 individually by Donna Ferrara,  
17 individually by Mr. Gregory or together  
18 and single and separate. They don't  
19 touch each other. I submitted all the  
20 deeds.

21 MR. MURPHREE: I see that we have  
22 an action deadline today.

23 MR. SCULLY: Is there a deadline  
24 for action today?

25 MR. MILAZZO: The plan speaks of

1 within 30 days of hearing an appeal you  
2 to have decide it. It is not a firm  
3 deadline like in the law where the  
4 Commission has to make a resolution  
5 determination or a permit is granted  
6 with a default.

7 What happens is we ask the  
8 applicant for an extension when we're  
9 backed up to the deadline, and they've  
10 always been gracious enough to give us  
11 enough time to go back and research it.

12 Typically what happens is we would  
13 hear a presentation, we would review --  
14 he has given us a ton of material to  
15 review, analyze it, look at the  
16 arguments and then make a recommendation  
17 to the Commission.

18 MR. SCULLY: We need the applicant  
19 to agree to an extension.

20 MR. BALIN: If I refuse to be  
21 gracious?

22 MR. SCULLY: Thirty days?

23 MR. BALIN: Yes.

24 MR. SCULLY: Thank you. Is there  
25 anything further on the matter?

1                    If not, we'll close the hearing  
2                    and move on to the next one.

3                    (TIME NOTED: 3:15 P.M.)  
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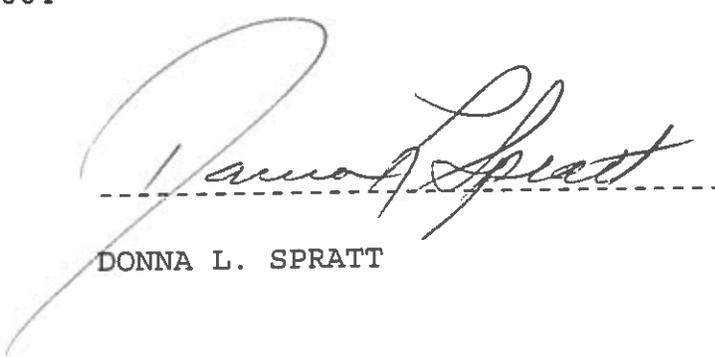
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CERTIFICATION

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 26th day of  
February 2004

  
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DONNA L. SPRATT

