

2 MR. COWEN: Next on the agenda is Amy and
3 Donald Madelung. It is a proposed single family
4 dwelling on a 0.9 acre site along the east side
5 of Yaphank-Middle Island Road (County Route 21)
6 in Yaphank.

21 We further wish to state that the inclusion
22 of our property on Yaphank-Middle Island Road
23 (part of Flower City Park) and the adjoining
24 Warbler Woods was a political boundary, not a
25 natural one. By "political," I mean man made,

2 for example, an ocean would be a natural
3 boundary. This land is essentially on the
4 Ronkonkoma Moraine and consists of rolling land
5 with heavy, well-developed soils and a
6 redeveloping oak hickory climax forest. About
7 one and a half miles east of Yaphank-Middle
8 Island Road, this land begins to become sandy
9 and sterile with the development of the pine
10 barrens with its pitch pine - scrub oak
11 vegetation. There are no pitch pines in our
12 area.

13 In our letter to you dated September 1,
14 1994, we requested a hardship exemption. In
15 this letter, we stated that in 1962 we purchased
16 approximately two acres of land, 200 feet by 400
17 feet, and built our house on 100 feet by 400
18 feet. The house was built and is listed under
19 Donald Madelung. We satisfied all Brookhaven
20 Town and Suffolk County Health Department rules
21 and received a certificate of occupancy. The
22 other acre (.92 in two separate parcels), the
23 one in question, was listed in single and
24 separate ownership under Donald and Amy
25 Madelung. We did this to give ourselves future

2 options.

3 We have one child, a daughter, who will be
4 marrying next year. One option was to offer her
5 this property to build a home on. Another
6 option was to build a small retirement home on
7 this property and to let our daughter move into
8 our larger home. A third option, if needed, was
9 to build a small retirement home on this
10 property and sell or rent our larger home for
11 additional retirement income. These options
12 will be denied us if we are not granted a
13 hardship exemption.

14 We have no buildings on this property but
15 are using part of it for gardening and have it
16 partially fenced because of the deer. This
17 property was an important part of our retirement
18 planning eight years ago.

19 Our property has no endangered species,
20 according to the Pine Barrens ecological survey.
21 It is in one of the numerous natural zones
22 included in the core area. This zone includes
23 Schuster's farmland, the Middle Island Country
24 Club, Flower City Park, Warbler Woods, and
25 Breslin's undeveloped property, and parts of the

2 Yaphank Historic District. Only Flower City
3 Park (including its developed Yaphank-Middle
4 Island Road strip), and Warbler Woods have been
5 included in the core area from what I could read
6 or follow with the map that was presented in the
7 Pine Barrens law, the actual guide. The
8 inclusion and exclusion of the various parcels
9 seem to have been done in an inconsistent manner
10 and are the results of political, by that,
11 again, I mean it's done because lines were drawn
12 this way, not because it was republican or
13 democratic or whatever, and not ecological
14 considerations.

15 This property that we seek to exempt from
16 the core area is bordered by Yaphank-Middle
17 Island Road on the west. Our home is north of
18 the property and there are homes along the
19 southern border. The east side of the property
20 abuts the land owned by the County and is
21 "forever wild." On the west side of
22 Yaphank-Middle Island Road, across from our
23 property, is a development of 30 plus homes
24 known as Rustic Acres. This area is generally
25 developed along Yaphank-Middle Island Road, a

road which is traveled by thousands each day going to and from the Long Island Expressway.

To the north about 300 feet (and including three houses), is the Middle Island Country Club and its road, which forms the north border of the core area. This extends eastward for about a mile and a half.

The property that we seek to exempt from the core area is nearly surrounded by developed land. It is on the western edge of core area and is 300 feet from the northern edge of the core area. We do not believe it would be of significant benefit to the Central Pine Barrens Land Use Plan.

For 32 years, we have been good stewards of the land and have nurtured and cared for it. For us not to be able to use this land at this stage of our life, after owning and paying taxes for 32 years, would be a hardship. Since we comply with (a) i, ii, iii and (c) i, ii, iii of Section 10 of the core area hardship provision, we feel the only fair, honorable, and humane action for reasonable minds to take is to grant us this hardship exemption. Thank you.

2 We would appreciate a copy of the minutes
3 of this meeting when available. On the next
4 page, I have kind of put a map together. You
5 got a copy of it. It was taken from a zoning
6 map in Carole Swick's office. It was enlarged
7 somewhat so I could get some kind of dimension
8 to it. If you look at the shaded area, that
9 would be Flower City Park and below that is the
10 area called "Warbler Woods." To the west of
11 Yaphank-Middle Island Road, which runs roughly
12 north and south in a curvey manner, is Carmens
13 River and the Carmens River Basin, I guess you
14 would call it a Carmens River flood plan. South
15 of that is an extensive piece of property owned
16 by Breslin which was not included in the Pine
17 Barrens Core Area. I understand the Town of
18 Brookhaven is trying to do something to get it
19 acquired, however, it is exactly the same type
20 of property that we have. If you walk from one
21 area to the other, you would never be able to
22 find a place that you could say this property is
23 different. Below that is the Yaphank Historic
24 District and that has been excluded, and, I
25 believe, some of that land probably fits in it

2 also. So that is essentially the map that we
3 have there.

4 The final page, I have a copy of my 1964,
5 1965 tax levy showing how I maintained the
6 property and separate ownership. You will see
7 that the place for the house, or the piece for
8 the house, was done, and I'm sorry that I
9 flipped these over, the one under my name was
10 with the Union Savings Bank with the mortgage,
11 as you can see, that was one through five and 46
12 through 50, and the other one's separate, they
13 are two separate pieces, under joint names,
14 which we are talking about now. Now, I had a
15 problem at the beginning with the Pine Barrens
16 and the Pine Barrens Act, because the Pine
17 Barrens Act is apparently an umbrella covering
18 many different natural zones. The Pine Barrens
19 being one of them. We are in the Pine Barrens,
20 capital P, capital B. We are not in pine
21 barrens, small p, small b. Mr. Amper had
22 mentioned something about applying for the
23 necessary permits to build a house. We are not
24 in that position yet to attempt to do that. We
25 would question that if we waited until that

2 point, after we had gotten some kind of transfer
3 development rights, whether it would be possible
4 for us to get an exemption from the Pine Barrens
5 Act. It is to our benefit to get an answer as
6 soon as possible. We appreciate your
7 consideration in the matter. If there are any
8 questions, I would be happy to answer them.

9 MS. FILMANSKI: How many tax bills do you
10 currently receive?

11 MR. MADELUNG: I currently receive three
12 bills now. Just like that. Except the one
13 under my name comes directly to me, it does not
14 include the Union Savings Bank because the
15 mortgage is paid off.

16 MS. FILMANSKI: Have you ever taken any
17 permits on the vacant property at all?

18 MR. MADELUNG: No. Nothing.

19 MS. MADELUNG: We have held that for 32
20 years.

21 MR. MADELUNG: It's been partially cleared,
22 and it is essentially about two-thirds of this
23 is surrounded by developed land, homes, our
24 home, across the way it's not the Pine Barrens.
25 It's on the border. Indeed, when I was going

2 through the Pine Barrens Act and trying to find
3 the limit of the Pine Barrens, I was trying to
4 find the written description of where the border
5 was because I did not have a map. The map in
6 the Pine Barrens Act was reduced to a point you
7 couldn't possibly use it. I followed those
8 descriptions as well as I could, and it bothered
9 me because it seems to me it's inconsistent.

10 MS. SWICK: Could you clarify the tax
11 parcels number for the property that is
12 developed and the property that is not
13 developed?

14 MR. MADELUNG: It's 6 to 10 and 11 through
15 25. Ours is 1 through 5 and 46 through 60.

16 MR. CORWIN: It's a problem there. Those
17 not are not Suffolk Tax Map numbers. Those are
18 the lot numbers.

19 MS. SWICK: That's what I'm asking for.
20 The tax numbers are listed in the hearing, but
21 it looks like lots 2 through 9 and 18 through
22 26.

23 MR. MADELUNG: I didn't pick that up if we
24 have it. I think I put it down on the map that
25 I drew, and I simply took that from this legal

2

notice.

3

MR. COWEN: Ray, did you research these
4 numbers?

5

MR. CORWIN: Donna had done it for me. I
6 have 18 and 36 are the numbers here.

7

MR. COWEN: We can clarify that.

8

MR. MADELUNG: It's from our tax receipts.
9 You can see what the numbers are.

10

MR. CORWIN: I show it as 18 and 36. Those
11 are the lot numbers on the tax maps.

12

MS. SWICK: It has 29.

13

MR. CORWIN: I think the two just got mixed
14 up. The 2 and 9 refers to the existing
15 residence and one refers to the adjacent lot.

16

MR. MADELUNG: So we don't confuse this any
17 more, on the tax map, I copied those same
18 numbers down, not on the tax map, on the map I
19 drew in the upper left-hand corner there are a
20 series of numbers that don't fit.

21

MR. CORWIN: We will pin it down.

22

MR. COWEN: Any other questions from the
23 floor or statements from the floor?

24

MS. SWICK: You are proposing to build one
25 house on a 100 by 396 foot parcel.

2 MR. MADELUNG: I'm not proposing to build
3 anything yet, but I would hope to sometime in
4 the future. It would be a single-family home.

5 MR. COWEN: Maybe we should clarify what
6 the application is in front of the Commission
7 for at this point. Can you enlighten us on
8 that?

9 MR. MADELUNG: I'm interested in having my
10 house, this piece of property, exempt from the
11 restriction of the core area so that I have
12 options in the future.

13 MR. COWEN: Do I understand you are looking
14 for a boundary change?

15 MR. MADELUNG: No. Not at all. I'm just
16 asking for the right, it's in the core area.
17 I'm asking for the right to be able to develop
18 it if I so choose in the future, as was part of
19 my retirement plan.

20 MR. COWEN: I'm not sure that sort of
21 request is something that can be brought in
22 front of the Commission.

23 MR. CORWIN: I'm not sure it can't be
24 either. It's not a boundary change request. We
25 have a different procedure for handling that.

2 When we looked at it, we realized what he was
3 asking for is the right to build and we would
4 probably be safe to get clear, at least on a
5 decision to grant or not to grant to build that
6 home, and the fact that he doesn't intend to do
7 it this month or next year or even the following
8 year, to be conservative, we decided to treat it
9 as if it was an application to build. The fact
10 he might do it next year or in ten years became
11 irrelevant.

12 MS. SWICK: Do you have single and separate
13 lot status? Is that what you are asking for
14 single and separate lot status?

15 MR. MADELUNG: I have two single and
16 separate lots, which together add up to .92
17 acres. Those two lots are joined, and, I
18 believe, I would be forced to join both of them
19 together to get a building permit from the Town
20 of Brookhaven since they abut one another.

21 MS. SWICK: That's why I'm asking about
22 single and separate.

23 MS. FILMANSKI: Could you give us any
24 definition of the future? What are your plans,
25 a couple of years, 20 years?

2 MS. MADELUNG: We have a daughter. We were
3 married 12 years before she was born. She is
4 our only child. She is getting married in
5 August. We would like the right to offer this
6 property to her. If you are aware of how hard
7 it is for young people to have a home, to get
8 money together to have a home, and this, we
9 felt, would be something that we could offer
10 her. Whether she will be able to even afford to
11 build on that land, if we offer it to her, we
12 don't know. We will have to see. We can't, at
13 this point, say, yes, she is definitely going to
14 build a home. If she doesn't, we would like the
15 option to do what we said in the letter, that
16 perhaps we could build a small home and use it
17 and she could use our larger home.

18 MS. FILMANSKI: The earliest any
19 development could occur would be August of next
20 year?

21 MR. MADELUNG: Probably further than that.

22 MR. COWEN: Let me ask you a question. Are
23 you aware that at this moment in time the
24 Commission is working under interim rules and
25 standards, and we are going to come out with a

2 plan in March of next year; are you aware of
3 that?

4 MR. MADELUNG: I'm aware vaguely of what
5 you are talking about. I do find myself in the
6 core area. I see where it might be more
7 applicable to the area which is not the core. I
8 have a feeling that being place inside the core
9 area is extremely restrictive on the owner.
10 Since it has been in our possession for thirty
11 some odd years, that we have some kind of, I'm
12 not saying "grandfather," I'm saying certain
13 consideration we would expect to be able to get.

14 MR. COWEN: Let me further my question.
15 Would it be a tremendous hardship upon you for
16 you to hold your application in abeyance in
17 front of this Commission for, say, six months to
18 allow us to come out with a plan, for you to
19 read the plan, and decide whether you need to
20 come back in front of us?

21 MR. MADELUNG: When I was here at the last
22 meeting, they did not have a forum, and I wanted
23 to get this completed.

24 MR. COWEN: Let me clarify. I'm not asking
25 to have this Commission delay. I'm asking to

2 make sure that you have in front of you all of
3 the information you need to make a decision as
4 to whether or not you want to bring your project
5 into this forum, because there may be
6 information forthcoming in March of 1995 that
7 may obviate the need for you to come before this
8 commission. It's possible. It seems premature
9 at this point for you to be bringing this to us
10 in this interim period.

11 MR. MADELUNG: I was advised that if I did
12 not grab an extension, at the last meeting, that
13 the Pine Barrens Commission would go along and
14 deny me it simply on the basis of not having
15 presented enough information. I didn't like
16 that attitude. I'm not sure how I like to
17 continue on with that, but I thought that was
18 intimidating, and I personally found it
19 offensive. I would like to have this done if I
20 could. If it was rejected, then I would have to
21 carry it on further. I think, rather than wait
22 for something that may or may not come in the
23 future and may not exist, I think I would like
24 to have an answer.

25 MR. COWEN: In the event that nothing does

2 come from this commission by March 15th, you
3 would not be subject to it at all.

4 MR. MADELUNG: If it does go through, and
5 it is denied, and I'm not sure whether it would
6 be or not, I would like to know whether it has
7 been denied and take it from there.

8 MR. COWEN: Fair enough. Any questions or
9 statements from the floor?

10 MR. AMPER: This is a troubling case that
11 comes before you because it deals with an
12 individual that's affected and that deserves
13 consideration. The Pine Barrens Society is
14 uncomfortable with a member and person who
15 supports the Pine Barrens preservation. I want
16 the Commission to understand the applicant has
17 not approached the Pine Barrens Society at any
18 time.

19 Commissioner Swick raises the question:
20 What exactly are we looking at? The question
21 comes back to haunt us. This man more than the
22 American Physical Society wants to know where he
23 stands at the earliest possible point and with
24 the least possible expense, and, yet, the
Commission doesn't know whether we are looking

2 for a house on a half acre, we don't know what
3 the application is. The Commission, as we view
4 it, doesn't know whether it's looking at a
5 hardship or core boundary application, not the
6 fault of the applicant. Maybe that's our fault
7 in designing the legislation. It is indeed a
8 man made boundary. All of these political
9 boundaries and jurisdictional boundaries are man
10 made. The applicant acknowledges it is adjacent
11 to public land, it is in the core, however,
12 whether that was designed properly or
13 improperly, the applicant acknowledges that
14 Brookhaven is seeking acquisition of adjacent
15 parcels and the County has already done so. In
16 this case, the disturbance is applicant induced.
17 These are activities the applicant engaged in
18 and not something he inherited. There is no
19 political consideration against the applicant in
20 the design of the boundaries. There is no
21 desire to interfere with the legitimate interest
22 of private property owners, especially of this
23 family and their offspring. We do have a
24 sincere desire to prevent a bustling market in
25 private homes in what we think has been created

2 to be a national park quality nature preserve.

3 We think the hardship definition is very
4 clear. This application doesn't meet the
5 hardship application, but, rather than merely
6 denying a hardship application, we reinforce the
7 desirability of declaring the application
8 premature in the hopes that, when we settle
9 this, we are not delaying or intimidating or
10 creating a unnecessary personal hardship, by the
11 time we get a good working law in place next
12 March, that we have to give this applicant an
13 opportunity to approach on the best, correct,
14 and just adjudication of what he is bringing
15 before you. He shouldn't have to have an
16 attorney. He shouldn't have to be
17 confrontational in doing what he wants to do.
18 We have a chance of deciding what we can let him
19 do if we have a chance to go through the
20 process, then, if he comes and says he falls
21 into the category of undeveloped land, if we are
22 all trying do right by him, the best we can do
23 is not merely deny the hardship application or
24 change a boundary, declare the application
25 premature or incomplete. If counsel finds

2 something more appropriate to give these people
3 a chance to come back and address a bona fide
4 problem when the Commission is best equipped to
5 respond to it, fine.

6 MR. MADELUNG: I think I would like to
7 respond to that, the postponing of it. I don't
8 know what's going to be clarified. We are
9 talking something I'm not privy to any
10 information on, and it is a restriction on my
11 rights to use the property. Even if it's only
12 tentative, you are telling me what I can't do
13 right now. I suppose I'm willing to accept that
14 if I'm forced to, however, just to say "please
15 wait," I think really denies me the use of my
16 property.

17 I expect I'll be going to the Town Board
18 and asking for reduction of taxes. My taxes
19 last year on that piece of property were \$800.
20 It's a significant amount of money, and, if I'm
21 denied use of that land, I feel that I am far
22 over taxed on that, maybe to a point where there
23 should be no taxation or little taxation. I
24 think, if I am denied it, then I would have that
25 right to go in and ask for a reduction. If I'm

2 not denied, I could see how the Town will say
3 everything is tentative. We will not do
4 anything for several years, so I'm in a bind
5 that way again.

6 I would hope that reasonable people would
7 make up their minds, and I hope to be reasonable
8 myself over it. I do feel that, not through my
9 actions, through someone else's actions, that my
10 future has been somewhat changed or at least
11 threatened. I have been told what I can't do.
12 We are restricted on what I can do and would
13 have been able to do.

14 MR. AMPER: For the record, we also
15 acknowledge the families entitlement to just
16 compensation at any time.

17 MR. COWEN: Any further statements? Thank
18 you, Mr. Madelung. I'll hold this hearing open
19 until close of business Friday, November 4th.
20 Not notwithstanding your public statement, I would
21 appreciate it if you would think about holding
22 this in abeyance until after the plan is
23 released.

24

25 (Continued on page 57.)