



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

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

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

Carrie Meek Gallagher  
*Chairwoman*

Steven Bellone  
*Member*

Edward P. Romaine  
*Member*

Jay H. Schneiderman  
*Member*

Sean M. Walter  
*Member*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Record of Motion:**

Motion by: B. Prusinowski

Seconded by: M. Shea

In Favor: 5

Opposed: 0

Abstention: 0

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