



**Commission Meeting of December 21, 2011
Riverhead Town Hall, Riverhead**

Present: Mr. Scully (New York State), Mr. Culhane (Suffolk County),
Mr. Lesko (Brookhaven), Mr. Walter (Riverhead), Ms. Throne-Holst (Southampton)

**Adopted Resolution Island Water Park
Compatible Growth Area Hardship
Hamlet of Calverton, Town of Riverhead, SCTM #: 600-135-1-7.34**

Whereas, Island Water Park owns a 41.9 acre parcel of land located approximately 440 feet south of NYS Route 25, 2,376 feet east of Wading River Manorville Road, in the Compatible Growth Area, in the hamlet of Calverton, Town of Riverhead (the "Project Site"), designated as # 600-135-1-7.34 on the Suffolk County Tax Map; and

Peter A. Scully
Chair

Whereas, the Project Site is in the Town of Riverhead's Planned Recreational Park (PRP) Zoning District; and

Mark Lesko
Member

Steve A. Levy
Member

Anna E. Throne-Holst
Member

Whereas, previously, in 2003, the Town Board of the Town of Riverhead adopted a conditional approval for the Site Plan application of Island Water Park (resolution #175) and the New York State Department of Environmental Conservation (NYSDEC) approved a new Article 23 Title 27 Mine Land Reclamation Permit #1-4730-01022/00001 for the excavation and construction of two private recreational lined water ski ponds covering 18.70 acres on the project site and the operation of motor boats for the use, as per the Site Plan prepared by Hawkins Webb Jaeger Associates, P.C. dated August 5, 2002; and

Sean M. Walter
Member

Whereas, the Project Site is disturbed due to the previously approved clearing and mining activities; specifically, 36.8 acres or 87.83% of the Project Site is currently cleared, and 5.10 acres or 12.17% of the Project Site is naturally vegetated; and

Whereas, Island Water Park proposes to clear an additional 1,700 square feet or 0.09% of the Project Site's existing natural vegetation to develop a commercial water ski park; the development includes construction of an 11-acre unlined, groundwater-fed lake on which water skiers and wake boarders will be towed using a series of electric cable systems; a passive use trail, construction of a 55,200 square foot facility for use as a restaurant, fitness center/spa, warehouse/maintenance facility, and office; an on-site septic system; parking for 94 cars and related infrastructure with site access via a curb cut on Middle Country Road (NYS Route 25); and revegetation of a total area of 19.74 acres of the Project Site (the "Project"), as shown on the Site Area Plan Sheet SP-0 prepared by Cramer Consulting Group, dated February 26, 2011; and

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Whereas, the Project must conform to the provisions of the Central Pine Barrens Comprehensive Land Use Plan (CLUP), including CLUP Standard 5.3.3.6.1, Vegetation Clearance Limits, which authorizes Island Water Park to clear up to 65% of the Project Site based upon the Project Site's inclusion in the "Commercial, Industrial and Other or Mixed Use" category in Figure 5-1 of the CLUP on the date of the CLUP's adoption; and

Whereas, the Project does not comply with CLUP Standard 5.3.3.6.1 because Island Water Park proposes an additional, de minimus amount of clearing of 1,700 square feet on the Project Site in excess of the Standard, resulting in the total clearance of 36.84 acres or 87.92% of the Project Site (36.8 acres or 87.83% of the Project Site is currently cleared which, when combined with the proposed clearing of 1,700 square feet (0.09%), results in total clearing of 36.84 acres or 87.92% of the Project Site); and

Whereas, as the Project does not comply with the CLUP, Island Water Park, through its consultant, Cramer Consulting Group, submitted an application dated September 14, 2011 (the "Application") to the Central Pine Barrens Joint Planning and Policy Commission (the "Commission") for a Compatible Growth Area ("CGA") Hardship exemption to obtain a waiver from CLUP Standard 5.3.3.6.1 Vegetation Clearance Limits to enable development activity to occur on the Project Site; and

Whereas, pursuant to the ECL Article 57, in determining whether to grant Island Water Park a CGA hardship exemption for the Project, the Commission shall consider, among other things, the criteria set forth in New York State Town Law §267-b(2) and determine whether the Project is consistent with the purposes and provisions of the Act and whether the Project will result in a substantial impairment of the resources of the Central Pine Barrens area, pursuant to ELC §57-0123(3)(b); and

Whereas, the Island Water Park Hardship application included an analysis of the hardship criteria contained in ECL §57-0121 in support of its Waiver application; and

Whereas, the Commission held a public hearing on the Project on November 17, 2011 and a stenographic transcript of the public hearing was received on November 30, 2011 and distributed to the Commission; and

Whereas, in considering the criteria set forth in Town Law §267-b(2)(2), the Commission finds that the hardship, as it relates to the Project Site, is unique due to the previously-permitted disturbance on the Project Site and the existing configuration of fragmented existing natural vegetation, the majority of which is on the perimeter and in the center of the Project Site, which constrain the ability to create an unfragmented block of area to remain natural; and

Whereas, the Commission finds that the requested exemption will not alter the essential character of the neighborhood given the pattern of development surrounding the Project Site and that the Project is consistent with the existing zoning of the site in the Planned Recreational Park district and permitted land uses in the vicinity of the Project Site, including the EPCAL property to the east, and with the established community character; and

Whereas, Island Water Park has demonstrated that the Project Site was cleared and excavation occurred under prior approvals, and the current configuration of the existing natural vegetation on the Project Site, although generally situated on the perimeter, will largely be retained in its current location to minimize further fragmentation; and

Whereas, the Commission finds that Island Water Park cannot satisfy the requirements contained in Standard 5.3.3.6.1 (the Vegetation Clearance Limits) while simultaneously satisfying the requirements of Standard 5.3.3.6.2 (the Unfragmented open space) because in order to meet the clearing standard the site plan would require additional fragmentation of open space and natural vegetation on the site, and in order to meet the unfragmented open space standard, the site

plan would require additional clearing of native vegetation, beyond that permitted by the clearing standard; and

Whereas, the Commission finds the Project is consistent with the Act because the Project has been designed to minimize the amount of clearing necessary to complete the Project and the Project's environmental impact on groundwater resources by eliminating the use of motorized boats on the lake proposed in the previous iteration of the Project; and

Whereas, the Project will mitigate potential adverse environmental impacts by revegetating 19.74 acres of cleared areas on the Project Site with native pine barrens vegetation and wildlife habitat. Island Water Park will be required to submit a revegetation plan, subject to Commission review and approval, prior to commencement of activity on the Project Site; and

Whereas, the proposed Project revegetation is consistent with previous Commission approvals which required restoration of vegetation and habitat as mitigation for development projects including the applications of the Long Island Power Authority Riverhead Substation Expansion Core Hardship, Willow Wood at Coram CGA Hardship, and The Meadows at Yaphank Planned Development District Development of Regional Significance; and

Whereas, successful implementation of the Project's mitigation plan will require the preparation, submission, approval, and monitoring of a Revegetation Plan for 19.74 acres of the Project Site; and

Whereas, the Project will comply with all other Standards of the CLUP; and

Whereas, the Project is a Type I Action pursuant to the New York State Environmental Quality Review Act ("SEQRA") for which NYSDEC, the Lead Agency, performed a coordinated review and adopted, on November 10, 2011, a Negative Declaration stating that the Project would not have a significant adverse impact on the environment; and

Whereas, the Commission has considered all of the materials submitted in connection with the Project, now, therefore, be it,

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

Resolved, that the Commission hereby determines the Application, as submitted, meets and satisfies the criteria for a Compatible Growth Area Hardship pursuant to the Act; and be it further

Resolved, that the Application is approved in accordance with the Site Area Plan Sheet SP-0 prepared by Cramer Consulting Group dated February 26, 2011, received by the Commission on September 14, 2011, subject to the following specific conditions:

1. Prior to commencement of development activity, within 60 days of the date of this approval the applicant shall submit a revised Site Area Plan that states:
 - a. "Existing amount of clearing: 36.8 acres or 87.83%."
 - b. "Amount of area to remain natural: 5.1 acres"
 - c. "Amount of additional clearing: 1,700 square feet"
 - d. "Total amount of clearing for the Project including existing and proposed: 36.84 acres or 87.92%."

- e. "Amount of area to be revegetated: 19.74 acres. Note: See separate Revegetation Plan"
- f. "Total natural and revegetated area to be managed by the owner: 24.83 acres"
- g. "Note: See conditions of approval in the Central Pine Barrens Joint Planning and Policy Commission decision dated December 21, 2011."

2. Revegetation Plan.

- a. Within 60 days of the date of this approval, the owner shall submit a Revegetation Plan, subject to Commission review and approval. No activity related to construction or development of the Project Site shall commence until the Revegetation Plan is approved, in writing, by the Commission. The owner shall notify the Commission in writing a minimum of 48 hours prior to the commencement of revegetation activity and no more than 48 hours after revegetation is completed.
- b. The completed revegetated shall be subject to an inspection by the Commission to ensure that it complies with the approved Revegetation Plan.
- c. The Revegetation Plan shall contain: a Revegetation Detail Plan, a Maintenance Plan, and a Reporting Plan.
- d. Revegetation Detail Plan: The Revegetation Detail Plan shall:
 - i. Encompass the 19.74 acre area to be revegetated.
 - ii. Contain a minimum of approximately 9.87 acres of a mix of native tree species including pitch pine, scarlet oak, white oak, Eastern Red Cedar and a minimum of approximately 9.87 acres of native shrubs such as bayberry, lowbush blueberry, inkberry, and American Shadbush, and Long Island Meadow Mix composed of grassland species native to the Central Pine Barrens.
 - iii. Provide planting specifications, composition of species in the meadow mix, and source of seed for review by the Commission.
- e. Maintenance and Monitoring Plan: The Maintenance Plan shall:
 - i. State that the owner of the Project Site is responsible for its implementation. In the case of a change in ownership, the successor shall be the responsible party.
 - ii. Be designed and monitored to ensure that, at a minimum, 85 percent of the plants installed in the revegetated areas, pursuant to the Revegetation Plan, survive for a minimum of three (3) years from the date of completion of revegetation work.
 - iii. Specify how the revegetation area will be maintained, including, but not limited to, irrigation details and mowing specifications.
 - iv. Contain a replanting schedule.
 - v. No herbicides may be used on the project site in the revegetation area for any activity, including the control of invasive species.
- f. Reporting Plan: The Reporting Plan shall:

- i. Set forth a schedule, on at least a biannual basis for three (3) years, for submitting reports to the Commission concerning the status and success of the Revegetation Plan.
 - ii. Set forth the Reporting Plan elements including, but not limited to, the date and time of inspection, name and qualifications of person conducting inspection, color digital photographs of the revegetated area taken at the time of each inspection, relative health of revegetated area including whether or not an 85 percent survival rate of native species is being attained and, if not, corrective methods to be employed and whether or not invasive species are present and, if so, name of invasive species and corrective methods to be employed.
 - iii. Commission Staff shall be permitted site access to perform inspections during the minimum three (3) year maintenance period.
- 3. Prior to the commencement of activities on the Project Site, Island Water Park shall:
 - a. Stake limits of clearing around all areas referenced to “remain” natural, as shown on the Site Area Plan, for inspection by Commission Staff prior to commencement of construction activity.
 - b. Notify the Commission’s Compliance and Enforcement Coordinator a minimum of 48 hours in advance of initial site disturbance to allow for Commission inspection of site disturbance limits.
 - c. Install snow fencing around the existing 5.1 acre area that will remain natural. This area shall be set aside in its current natural state to undergo natural ecological processes. No clearing of the understory, application of herbicides, or other activity is permitted in this area.
- 4. Prior to the commencement of activities on the Project Site, Island Water Park shall prepare covenants and restrictions (the “Covenants”) for the Project Site stating that there shall be no disturbance of the areas designated on the Site Plan to remain natural. Island Water Park shall prepare the Covenants and submit the same to the Commission for its approval. If approved by the Commission, the owner shall promptly file the Covenants with the Suffolk County Clerk. If rejected by the Commission, Island Water Park shall revise the Covenants as per the Commission’s comments and re-submit the same for its approval. This cycle shall continue until the Commission approves the Covenants. Until the Covenants are approved and recorded, no activity may occur on the Project Site.

The Covenants must state:

- a. The area to remain natural, 5.10 acres.
 - b. The area to be revegetated, 19.74 acres.
 - c. Total protected area, 24.84 acres.
 - d. The only 4% of the Project Site may be developed with fertilizer dependent vegetation,
 - e. Fertilizer may only be applied to 4% of the Project Site.
- 5. The proposed “Biofiltration Areas” or “Rain Gardens” shall be constructed in existing cleared areas and not made part of any area in the conservation easement that contains areas to remain natural or revegetated areas.

6. This resolution must be attached to any title or deed transfer when the site changes ownership to ensure the transfer of responsibilities to new owner(s) and notification requirements continue in accordance with this approval. The current owners, successors or assigns shall be responsible for compliance with this approval including completion of revegetation activity and protection thereof.
7. The owner shall obtain additional permits and approvals, as required by law, prior to commencement of the Project. Island Water Park must forward copies of such approvals including, but not limited to the SCDHS approval, SPDES Permit, and any other applicable permits to the Commission Office two weeks prior to commencement of site work.
8. This approval shall expire five (5) years from the date of approval by the Commission. For an extension of this Waiver, the applicant shall seek reauthorization from the Commission, subject to its review.

Resolved, a copy of this resolution shall be filed with the Suffolk County Clerk indexed against the property.

Record of Motion:

Motion by: Mr. Walter
Seconded by: Mr. Lesko
In Favor: 5
Opposed: 0
Abstention: 0

