

Resolution on the Gherardi Determination of Jurisdiction

**Central Pine Barrens Commission Meeting of June 21, 2006
Brookhaven Town Hall, Farmingville, NY**

Commission members present:

Mr. Scully (for New York State),

Mr. Deering (for Suffolk County),

Ms. Prusinowski and Mr. Turner (for Brookhaven Town),

Mr. Kent (for Riverhead Town), and

Mr. Shea (for Southampton Town).

Whereas, Gladys Gherardi by her attorneys, Certilman Balin, submitted a proposal dated March 20, 2006 to develop a vineyard on a 57 acre parcel of land located on the north/east side of County Road 111 in the Core Preservation Area of the Long Island Central Pine Barrens in the Town of Brookhaven, and

Whereas, the proposed vineyard will occupy approximately 37 acres of the parcel which is currently covered with native vegetation and uncleared, and

Whereas, Gherardi maintains that the development of the vineyard, including clearing some or all of the parcel, preparing the parcel for plantings and operating the vineyard does not constitute development as the term is defined by Article 57 of the Environmental Conservation Law and thus is not within the jurisdiction of the Commission, and

Whereas, Gherardi further maintains that Section 5.2 of the Central Pine Barrens Comprehensive Land Use Plan is “without any basis” in Article 57 or its legislative history, and

Whereas, Gherardi and her attorney, Glenn Gruder of Certilman Balin, appeared at the Commission’s April 19, 2006 meeting, made a presentation concerning the Gherardi proposal re-alleging that the proposal is not within Commission jurisdiction and not subject to Commission review, and has requested that the Commission issue a determination of non-jurisdiction, and

Whereas, the Commission finds that pursuant to Article §57-0119(1) the Central Pine Barrens area is a “major resource area of statewide significance where the hydrological and ecological integrity is endangered,” and

Whereas, pursuant to Article §57-0103 it was within the public interest to establish



Peter A. Scully
Chair

Philip J. Cardinale
Member

Brian X. Foley
Member

Patrick A. Heaney
Member

Steve A. Levy
Member

P.O. Box 587
3525 Sunrise Highway
2nd Floor
Great River, NY 11739-0587

the Commission to “prepare, oversee and participate in the implementation of a comprehensive land use plan for the Central Pine Barrens area to guide development therein in a manner suitable to the needs for the preservation of the Core Preservation Area,” and,

Whereas, pursuant to Article §57-0119 the Commission is “necessary and appropriate to plan, manage and oversee land use” within the Central Pine Barrens “in the public interest for present and future generations,” by preparing, adopting, enforcing and implementing a Comprehensive Land Use Plan for the Central Pine Barrens, and

Whereas, development is defined as “without limitation” activities involving the “material increase in the intensity of use land or environmental impacts as a result thereof,” and further includes the “commencement of mining, excavation or material alteration of grade or vegetation on a parcel,” (ECL §57-0107(13)(b) and (c)), and

Whereas, the Comprehensive Land Use Plan is designed to “protect and preserve the ecologic and hydrologic functions of the [Core Preservation Area] by (a) preserving the Pine Barrens area in [its] natural state thereby insuring the continuation of Pine Barrens environments which contain the unique and significant ecologic, hydrogeologic and other resources representative of such environments, (b) promoting compatible agricultural, horticultural . . . uses within the framework of maintaining a Pine Barrens environment and minimizing the impact of such activities thereon; . . . (e) protecting preserving the quality of surface and groundwaters; (emphasis added) (ECL §57-0121(3)), and

Whereas, the Commission adopted a Comprehensive Land Use Plan which contained each of the required elements as set forth in Article 57 on June 12, 1995 and such Plan was adopted by the Towns of Brookhaven, Riverhead, Southampton, the County of Suffolk and the State of New York on June 28, 1995, and

Whereas, the Commission to satisfy the requirements of Article 57 to promote compatible agriculture in the Core Preservation Area declared at Section 5.2 of the Plan that “any existing, expanded, or new activity involving agriculture or horticulture in the Core Preservation Area is an allowable use if it does not involve material alteration of native vegetation,” and,

Whereas, the Comprehensive Land Use Plan is designed to “protect, preserve and enhance the functional integrity of the Pine Barrens ecosystem and the significant natural resources, including plant and animal populations and communities thereof” and to “protect the quality of surface water and groundwater,” (ECL §57-0121(2)(a) and (b)), now, therefore be it

Resolved, that the Commission in its review of the proposal and the materials submitted by Gherardi in support thereof, the Comprehensive Land Use Plan and Article 57 determines that site preparatory elements necessary for development of a vineyard on a currently vegetated and uncleared parcel within the Core Preservation Area constitute development as defined by Article 57, is within the jurisdiction of the Commission, and requires the grant of a hardship

exemption before any activities associated with the proposal may commence, and be it further,

Resolved, that the Commission finds that Section 5.2 of the Plan is an appropriate and reasonable balancing of the purposes of Article 57 to protect and preserve the ecologic and hydrologic functions of the Core Preservation Area and the requirement that the Plan promote compatible agricultural, horticultural uses within the framework of maintaining a Pine Barrens environment and minimizing the impact of such activities thereon; and be it further,

Resolved, the Commission determines that the site preparation activities required for the Gherardi proposal such as clearing, excavation or the material alteration of grade or vegetation or activities which will result in a material increase in the intensity of use of land or environmental impact thereof would constitute development and would require a hardship exemption before any such activities may commence on the site, and be it further,

Resolved, that this resolution shall not be construed in any manner to affect current active agricultural operations in the Core Preservation Area which are operated in a manner consistent with Article 57 and the Central Pine Barrens Comprehensive Land Use Plan.

Motion by: Mr. Turner

Second by: Mr. Kent

Ayes: Unanimous

Nays: None