

FINAL

CENTRAL PINE BARRENS JOINT
PLANNING AND POLICY COMMISSION

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In the Matter of the Violation of Article 57 of the
Environmental Conservation Law of the State of
New York (ECL)

ORDER ON CONSENT
No. CPBJPPC 1-2022

by

Silver Corporate Park, LLC
and WF Industrial XII, LLC
Respondents

-----X

WHEREAS:

1. The Central Pine Barrens Joint Planning and Policy Commission (the “Commission”) has jurisdiction over development, as the term is defined in Article 57 of the New York Environmental Conservation Law (the “ECL”), in the Central Pine Barrens region. The Long Island Pine Barrens Protection Act (the “Act”) is codified in Article 57 of the ECL. The Commission adopted and implements the Central Pine Barrens Comprehensive Land Use Plan (the “Plan”). The Act and the Plan govern “Development” as the term is defined in the Act, in the Central Pine Barrens region.

2. In 2018, Silver Corporate Park LLC (Silver) owned approximately 71.45 acres of undeveloped property in the hamlet of Yaphank, Town of Brookhaven identified on the Suffolk County Tax Map as n 200-662-2-5.016, (the “Property”). In 2018 Silver applied to the Commission to subdivide the Property into 12 lots and construct 12 buildings on the subdivided lots containing a combined area of 550,000 square feet of commercial/industrial land uses (the “Silver Project”).

3. Pursuant to Section 57-0123.2(a) of the Act and Section 4.5.5.1 of the Plan, the Silver Project constituted Development of Regional Significance since the proposed development project exceeded 300,000 square feet. As a DRS the Silver Project required Commission review for conformance with the standards and guidelines in the Plan and pursuant to the Act. The Silver Project also required an extraordinary hardship waiver pursuant to Section 57-0121.9 of the Act since the project would impact 18,948 square feet of area containing slopes with grades equal to or exceeding 10%. On June 17, 2020, the Commission issued a decision to approve the DRS project which contained conditions (the “Silver Decision”).

4. On March 7, 2022 Silver Corporate Park sold the Property to WF Industrial, XII, LLC.

5. On June 18, 2022, WF Industrial XII, LLC, applied to the Commission to develop

three commercial/industrial buildings containing a combined area of 549,942 square feet and related infrastructure on the Property (the “WF Project”).

6. The WF Project constitutes Development and may not proceed unless it conforms with the Act and provisions of the Plan. The WF Project is also a DRS and therefore must conform with the Plan’s Standards and Guidelines. Because the WF Project involves the disturbance of 0.98 acres of area containing slopes with grades equal to or exceeding 10% a hardship exemption is also required.

7. On July 20, 2022 the Central Pine Barrens Commission scheduled a public hearing on the WF Project.

8. On August 11, 2022, Commission staff inspected the site and observed alleged clearing activity and a dirt road on the Property (the Clearing).

9. The Clearing violates the conditions of the Silver Project approval because Silver was not permitted to engage in the Clearing because it had not satisfied any of the conditions in the Commission DRS and extraordinary hardship exemption decision issued for the Silver Project.

10. WF was not permitted to conduct the Clearing because the Commission did not authorize WF to commence any activity on the Property.

11. WF did not disclose the Clearing to the Commission in its application or on its plans stamped by a professional engineer licensed by the State of New York.

13. On or about August 12, 2022, Commission staff had a conference call with the WF Applicant’s counsel Timothy Shea, Certilman Balin to discuss the alleged clearing that was observed.

14. On August 16, 2022, WF’s counsel emailed materials to the Commission office including copies of: the property survey dated June 3, 2021 prepared by Control Point Associates, Inc. depicting the clearing and road on the Project Site; the property deed dated March 7, 2022 indicated that WF purchased the Property from Silver with a recited consideration amount of \$44,000,000; a Town Tree Clearing Permit dated July 22, 2020 listing the percentage of overall clearing of 3% issued to Silver; and a Town Test Hole Plan and Test Hole Permit approved by Brookhaven Town on August 4, 2020 for the stated purpose, “To construct a pathway for the purpose of boring equipment to gain access to three (3) test holes” Issued to Silver.

On August 17, at the regular meeting of the Commission, the Commission determined the WF Project application was incomplete because WF did not disclose the Clearing on its plans and adjourned the public hearing.

12. On September 21, 2022, the Commission authorized by duly adopted resolution the issuance of a Notice of Violation to Silver and WF (collectively the Respondents) alleging the Respondents individually or collectively engaged proscribed conduct in violation of the Silver Decision, the Plan, or the Act, or a combination of the three and the misrepresentation of existing conditions in the Application was proscribed conduct in violation of the Plan, or the Act. The Notice was issued pursuant to Environmental Conservation Law Section 136.

15. In total, Respondents cleared, or allowed to be cleared portions of the Property that collectively aggregate to approximately 1.56 acres of the Property. Of that 1.56 acres, a total of approximately 3,803 square feet of clearing occurred in the Property that was to remain natural under the Decision and in the Application. The remainder of the clearing was in areas that are designated to be disturbed and cleared under the Decision and Application.

16. To avoid the costs and uncertainties of litigation, the parties have agreed to the terms of a settlement as set forth below.

NOW, therefore, it is hereby stipulated and agreed as follows:

17. Respondents' execution and complete satisfaction of the terms of this Consent Order shall resolve the Notice of Violation issued by the Commission on September 21 for the Violations.

18. In consideration of the settlement of all claims arising from or related to the Violations, Respondents agree to pay to the Commission a civil penalty in the amount of \$158,345.00 or the equivalent in Brookhaven Pine Barrens Credits, one credit per acre, based on the average price of Brookhaven Credits in 2022, which is \$101,503 per Credit, as of September 2022, as follows:

- (a) The payment shall be paid by bank check made payable to "Central Pine Barrens Joint Planning and Policy Commission."
- (b) The payment to the Commission must have written on its face: CPBJPPC _- 2022/_.
- (c) The payment to the Commission shall be delivered to:
Central Pine Barrens Joint Planning and Policy Commission 624 Old Riverhead Road, Westhampton Beach, New York 11978, via certified mail, overnight express delivery, or hand delivery no later than October 6, 2022.

19. If the Respondents execute this Order and fully satisfy its conditions by 5 pm prevailing time on October 6, 2022, the Commission will conduct a public hearing on the WF application at its October 19, 2022 meeting. The Commission makes no representation as to the outcome of the hearing and makes no representation as to the merits of the WF application.

20. Respondents' compliance with this Consent Order settles all claims arising from or relating to the alleged violations set forth in the Notice of Violation.

21. Except for resolving the matters described herein, nothing contained in this Consent Order shall be construed as barring, diminishing, adjudicating or in any way affecting any civil, administrative, or criminal rights of the Commission with respect to other action of the Respondents that violates the Act or the Plan or both no matter when it occurred.

22. Respondents expressly waive its rights to bring or pursue any lawsuit, grievance, arbitration, or administrative proceeding, upon any claims it may have or has had against the Commission, its members, staff, representatives, or agents (collectively the "Commission Parties") arising from the Violations, the Notice of Violation, or this Consent Order. Respondents irrevocably and unconditionally release and forever discharge the Commission Parties from any actions, charges, causes of action, suits, obligations, promises, agreements, damages, debts, complaints, liabilities, claims, grievances, arbitrations, costs, losses, rights, expenses or any controversies, or any combination of the same in law or equity of any nature whatsoever asserted or unasserted, known or unknown, suspected or unsuspected, which Respondents ever had or now has against the Commission Parties about the Violations, the Notice of Violation, or this Consent Order.

23. Respondents covenant not to sue, bring, or pursue any lawsuit, grievance, arbitration, or administrative proceeding, upon any claims it may have or has had against the Commission Parties in law or equity of any nature about the Violations, the Notice of Violation or this Consent Order.

24. Respondents' failure to materially comply and in timely fashion with any provision, term, or condition of this Consent Order shall constitute a violation under the Act and shall be deemed to be a violation of both this Consent Order and the Act. Upon such failure to comply, the Commission may commence any action it deems appropriate to resolve the violation.

25. Respondents shall indemnify and hold harmless to the extent permitted by law the Commission Parties for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Consent Order by Respondents and its successors and assigns (including successors in title).

26. If Respondents desire that any of the provisions, terms or conditions of this Consent Order be changed, Respondents must make written application, setting forth the grounds for the relief sought, to the Commission at 624 Old Riverhead Road, Westhampton Beach, New York 11978. No change or modification to this order shall be made or become effective except as set forth by a written order of the Commission.

27. No informal oral or written advice, guidance, suggestion, or comment by the Commission Parties regarding any report, proposal, plan, specification, schedule, comment, or statement made or submitted by Respondents will be construed as relieving Respondents of its obligations under this Consent Order to obtain the approvals or consents required for the Project.

28. The Effective Date of this Order shall be the date upon which it is signed by the Commission's Executive Director or her designee.

29. Respondents acknowledge the authority and jurisdiction of the Commission to issue the Notice of Violation and enter this Consent Order, accepts the terms and conditions set forth in the Consent Order and consent to the issuance thereof and agrees to be forever bound by the provisions, terms and conditions contained therein.

30. Each of the undersigned persons represents and warrants that he or she is fully authorized to enter this Consent Order and execute this Consent Order on his or her own behalf and on behalf of the Party or Parties he or she represents. Each signatory shall defend and hold the Commission harmless against any loss caused by a signatory's misrepresentation.

Silver Corporate Park, LLC

By: _____

Name: _____

Title: _____

Date: _____

WF Industrial XII, LLC

By: 

Name: MATTHEW A. DICKER

Title: AUTHORIZED SIGNATORY

Date: 9/30/2022

Acceptance by the Commission

The Commission authorizes entering this Order on Consent.

CENTRAL PINE BARRENS JOINT PLANNING AND POLICY COMMISSION

By: Judith Jakobsen
Judith Jakobsen, Executive Director

Date: 10/5/2022

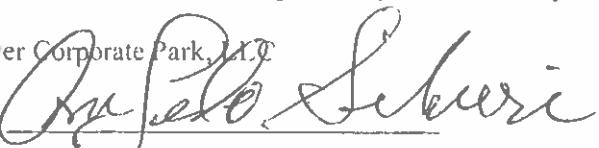
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Silver Corporate Park, LLC

By: 

Name: Angelo Silveri

Title: Manager

Date: 9/29/22

WF Industrial XII, LLC

By: _____

Name: _____

Title: _____

Date: _____

Acceptance by the Commission

The Commission authorizes entering this Order on Consent.

CENTRAL PINE BARRENS JOINT PLANNING AND POLICY COMMISSION

By: 
Judith Jakobsen, Executive Director

Date: 10/5/2022



Peter L. Curry
Partner

Direct Dial: 516.227.0772
Direct Fax: 516.336.2208
pcurry@farrellfritz.com

RECEIVED

OCT 05 2022

Central Pine Barrens Joint
Planning & Policy Commission

400 RXR Plaza
Uniondale, NY 11556
www.farrellfritz.com

Our File No.
17805/106

October 4, 2022

Central Pine Barrens Joint Planning & Policy Commission
Attn.: Mrs. Jakobsen, Executive Director
624 Old Riverhead Road
Westhampton Beach, NY 11978

**Re: Order On Consent (Silver Corporate Park, LLC & WF Industrial XII, LLC)
SCTM# 0200-662.00-02.00-005.016**

Dear Mrs. Jakobsen:

Please be advised that Farrell Fritz's client, Silver Corporate Park, LLC, executed the "draft" Order on Consent on September 29, 2022 (the "Order on Consent"). This letter will confirm that the terms of the draft Order on Consent shall be deemed the terms of the Final Order on Consent, and my client's signature page shall be deemed the signature page of the Final Order on Consent.

My client accepts the terms and conditions set forth in the Order on Consent and agrees to be bound by the provisions, terms and conditions contained therein. Please do not hesitate to contact me with any questions or concerns that you may have regarding the contents of this letter.

Very truly yours,

Peter L. Curry

Peter L. Curry

PLC/an

cc: Mr. Matthew Howe
Anthony S. Guardino, Esq.