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4 -----X
5 CENTRAL PINE BARRENS JOINT
6 PLANNING & POLICY COMMISSION
7

8 PUBLIC HEARINGS ON CORE
9 PRESERVATION AREA HARDSHIP
10 APPLICATIONS
11 -----X

12 Riverhead Town Hall
13 Riverhead, New York

14 June 22, 1994
15 7:40 P.M.

16 P U B L I C H E A R I N G
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24 RAM COURT REPORTING SERVICE (516) 727-3168
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ORIGINAL

6/94

FORM FED-35 PENGAD INC BAYONNE NJ 07002

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COMMISSION MEMBERS:

ROBERT J. GAFFNEY
per George Proios

FRED W. THIELE, JR.
per Linda Reilly

JOSEPH F. JANOSKI
per Brenda Filmanski

JOHN S. LaMURA
per Carol Swick

ULRIC S. HAYNES
(not present)

A L S O P R E S E N T:

DORIS E. ROTH, ESQ.
General Counsel to Commission

RAY CORWIN

MR. PROIOS: I call the meeting of
Central Pine Barrens Joint Planning &
Policy Commission to order.

My name is George Proios and I am
sitting for County Executive Bob Gaffney.
I would like to introduce the members of
the panel.

MS. REILLY: I am Linda Reilly and
I am the Town Attorney for Southampton
and I am sitting in for Fred Thiele.

MS. FILMANSKI: I am Brenda
Filmanski and I am sitting in for Justice
Janoski.

MS. SWICK: My name is Carol
Swick and I am sitting in for John
LaMura.

GEORGE PROIOS: I will read these
public notices which were published for
these two hearings.

Pursuant to the Environmental
Conservation Law Section 57-0121(10),
notice is hereby given that two public
hearings shall be held by the Central
Pine Barrens Joint Planning and Policy

Commission on June 22, 1994 on the matter of the applications for core preservation area hardship permits. The subjects of the hearings are:

Hearing 1: Applicant Edwin Tuccio, Westhampton Mini Storage. The description of the project is it involves a 40 acre parcel of land on which the constructions of two commercial storage buildings would replace two existing earthen berms, located within a complex of existing storage buildings. The parcel is located on North Perimeter Road, Suffolk County Airport, Westhampton.

The second hearing will be by applicant Stuart Osleeb, application for a single residence. The description of the project involves a .72 acre parcel of land on which a single family dwelling is proposed to be built. The parcel is located on the east side of Sally Lane, west of William Floyd Parkway, south of the intersection of Cornfield Road and

1
2 Sally Lane.

3 The first hearing is for Mr.
4 Tuccio. Would the applicant like to make
5 a statement?

6 MR. NOBILETTI: I am Michael
7 Nobiletti, representing Edwin Tuccio,
8 Tuccio & Tuccio, the owners and operators
9 of the property and of Westhampton Mini
10 Storage. We are here to demonstrate a
11 hardship basis within the core, that the
12 property has no beneficial use under the
13 article as it is written, and it cannot
14 contribute and will not contribute in its
15 existing state, therefore, a hardship
16 application should be granted for the
17 requested addition of the two storage
18 buildings.

19 We will further demonstrate that
20 the project has no negative impacts to
21 the environment. It has certain
22 safeguards that have been designed into
23 the proposed application and the nature
24 of the operation inherently is one
25 without utilities, septic systems and

1
2 water, that will pose less of a threat
3 than other types of developments in the
4 area.

5 Additionally, the site has been
6 extensively developed by the Air Force
7 during the 1950s and we plan to add this
8 development, within a paved, structured
9 area with existing buildings, and add
10 only slab and steel structured buildings
11 within an existing paved roadway within
12 the developed site itself. It is a
13 minimal excavation and removal of berms
14 that were man-made by the Air Force and
15 have not contributed to the species or
16 habitat of the Pine Barrens and,
17 therefore, the contribution these sites
18 have made, or can make, will not address
19 the intent or objectives of the Pine
20 Barrens Protection Act.

21 Taking the Natural Communities Map
22 which was recently done by Southampton
23 Town, this site is located within the
24 region, within this area here, Suffolk
25 County Airport and Sunrise Highway. The

significance of this map also is that it does indicate the species in the area and it does isolate the site itself as being one that has previously been disturbed and does not hold any of the endangered vegetative species the Act is intended to protect.

Would you like to see this map up closer?

MS. FILMANSKI: Can you tell me the title of the map.

MR. NOBILETTI: Yes. Plate 2, Natural Communities Special Groundwater Protection Area and Western Town GEIS Study, Town of Southampton, July of 1993.

From a regional photograph basis, we can locate Sunrise Highway, the runway of the airport, and this is our site here (Indicating).

(Whereupon, at this time, the panel reviewed the photographs.)

MS. ROTH: Do you want to read the labels as you're going along?

MR. NOBILETTI: The first

1
2 photograph is the mini storage site
3 itself referencing the tax number.

4 MS. FILMANSKI: The 40 acres is
5 surrounded by that road?

6 MR. NOBILETTI: Yes.

7 These are areas that were
8 excavated by the Air Force.

9 MS. FILMANSKI: Were you not going
10 to gear it down to some smaller portion
11 of the parcel?

12 MR. NOBILETTI: We are going to
13 include the total development site and we
14 are proposing to develop two areas 55
15 feet by 150, for a total of 16,500 square
16 feet within the development area.

17 MS. SWICK: The berms run between
18 the building and the asphalt, parallel to
19 the building; correct?

20 MR. NOBILETTI: Yes, they do.
21 There are also a set of berms
22 perpendicular to it. The purpose of
23 these berms were as blast berms in the
24 event that there was an explosion in the
25 buildings, the explosion forces would be

deflected north-south, and east-west.

MS. ROTH: Let's call this Applicant's A. This would be an aerial photograph labelled, "Westhampton Mini Storage."

Applicant's B are aerial site photographs. These are photographs of the actual existing site in the proposed development site area.

MR. NOBILETTI: What we are trying to do is within the existing berm, we want to keep the existing concrete structure that exists between the already developed buildings and in between those existing concrete walls, remove the berms and add the buildings.

MS. ROTH: Applicant's C consists of nine photographs labelled "Existing Developed Site and Proposed Site."

MR. NOBILETTI: This is an artist's concept of what would happen. We would keep the existing walls and buildings similar to the existing buildings. There are two similar to

these at the site surrounded by existing paved roads.

MS. ROTH: Applicant's D is an artist's rendering labelled "Westhampton Mini Storage Proposed Buildings."

MR. NOBILETTI: The total acreage at the site is 404 acres. Currently there are 40,000 square feet of self storage buildings that do exist within eleven concrete buildings that are surrounded by the paved roads within the existing developed site. It's use operates as a preexisting nonconforming use and has been issued a Certificate of Occupancy from Southampton Town for warehouse and storage uses.

Would you like a copy of the CO?

MS. REILLY: It is in the packet that was handed up.

MR. NOBILETTI: The proposed project is to add to the 55 foot by 150 foot area, two steel buildings approximately 35 to 40 feet in width and 150 feet long. They will be constructed

on a concrete slab and formed with a steel structural frame and skinned with steel sheathing.

As I mentioned before, the site had been extensively developed during the 1950s by the U.S. Government and all native vegetation at that point was removed and the area was bulldozed. For security purposes, the entire area is fenced in and remains intact today.

Also, add to this, fire protection for the facility itself. The steep slopes that exist today add minimal vegetation to the area due to the nature of the construction and the slopes themselves, they have not been able to sustain a healthy growth that is indicative of other areas of the site and is primarily beyond the site itself.

These are photographs of the berms themselves and the vegetation that they do support or what they don't support.

MS. ROTH: We'll mark this as Applicant's E, a poster containing 15

1
2 photographs labelled "Proposed Building
3 Site, Berm Habitat and Vegetation
4 Photographs."

5 MR. NOBILETTI: The entire parcel,
6 the 404 acres, is laid out on this
7 survey. There were questions as to when
8 the application had originally been
9 submitted as to the total parcel and tax
10 map number. The survey indicates the
11 total parcel and indicates the existing
12 developed site and the proposed site
13 where we intend to build the buildings.

14 Do you want the survey entered in?

15 MR. PROIOS: Yes.

16 MS. ROTH: That would be
17 Applicant's F, survey prepared by Young &
18 Young, last revised April 1, 1976,
19 entitled, "Ethel B. Fishel Estate."

20 MR. NOBILETTI: For the purposes
21 of thoroughness and to demonstrate the
22 project itself is not detrimental to the
23 environment, we chose to follow the
24 compatible growth area format, the
25 applicable sections of it, recognizing

1
2 that we are not bound to do so for this
3 application. But many of the
4 environmental issues that are questioned
5 there would be pertinent to this
6 application.

7 Number one: Groundwater. The
8 proposed project will not contain any
9 utilities with the possible exception of
10 some exterior mounted electrical security
11 lights. There will be no water to these
12 facilities, no sanitary, no septic
13 systems, and there will be no other
14 utilities that would cause to have any
15 sort of activities or development there
16 that could promote something that would
17 cause a groundwater issue.

18 In regards to the storage within
19 the buildings, the tenants, under lease
20 agreement, are not permitted to store any
21 hazardous or toxic materials or perform
22 any act or permit to be performed any act
23 that would endanger the environment
24 overall, including groundwater, air, or
25 habitat. A copy of the applicant's

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2 lease, in paragraph eight, specifically
3 restricts that and is agreed to. Each
4 tenant agrees to not have any of these
5 substances on the site.

6 Additionally, the owner has the
7 right to inspect without permission of
8 the tenant, in order to inspect for any
9 sort of hazardous materials or any
10 conditions that may cause an
11 environmental problem.

12 The security fence that was
13 installed by the Air Force in the 1950s
14 as mentioned before, is still intact and
15 does secure the area.

16 In addition to that, the road
17 leading to the site has a security gate
18 that will be manned on a full-time basis
19 or partially full-time basis depending on
20 the circumstances, and the management
21 will continue to maintain the level of
22 security and surveillance that it had in
23 the past, which has resulted in no
24 incidence, no fires, or no other
25 activities that were disruptive or

endangered any environmental issues.

Further, we have offered a design that will contain spills within the unit in the event that something is stored that could spill. We are proposing that, if necessary, to have a curb system within the concrete slab that would contain any spills in the event of a spill, within each unit, that would be traceable to the occupant of that unit, and render safeguards of that material getting into the ground. The slab system and concrete material used would meet the permeability standards of the Department of Health for their containment systems for secondary containment of above ground oil tanks and would certainly be effective in this type of operation. The design itself consists of cast concrete slabs. These are foundation footings on top of the slabs and there would be a depression in the slab itself consisting of approximately a four inch curb and a little ramp going down at the entry door

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2 to each unit, and any liquid spill would
3 be contained in the unit. Depending on
4 the size of the unit, the gallonage could
5 range from 200 gallons in a 10 by 20 foot
6 unit and the containment area could hold
7 about 500 gallons. This would be a
8 significant safeguard with regard to any
9 spills.

10 MS. SWICK: You said no toxic or
11 hazardous materials. Are you including
12 waste?

13 MR. NOBILETTI: We didn't address
14 waste, no. If that were a concern, we
15 could add that to the lease.

16 MS. SWICK: Sometimes it is
17 differentiated. You have toxic materials
18 and you have waste. If materials were
19 implying toxic waste as well as --

20 MR. NOBILETTI: We are saying that
21 the occupant shall not store nor permit
22 to be stored or spilled or disbursed, any
23 material that could pollute or in any way
24 negatively impact groundwater or the
25 environment at the storage facility.

1
2 MS. SWICK: It sounds like you are
3 including waste.

4 MR. NOBILETTI: I think we can
5 enforce that as part of the lease
6 agreement to include waste.

7 MS. ROTH: We will include
8 Applicant's G as another poster of
9 concrete slabs and foundation design
10 detail.

11 MS. REILLY: What about fireworks?
12 Were there not fireworks stored in other
13 buildings on this site in the past?

14 MR. NOBILETTI: Yes. There were
15 and there are. Not within these storage
16 buildings that you see in these
17 photographs or in that proposed area of
18 the berms. There are three other
19 buildings further away that do store
20 fireworks that have the proper permits to
21 do so. They are remote buildings and the
22 buildings have been specially prepared
23 and treated for non-explosives. Special
24 epoxy paints have been put on so that no
25 explosions would take place. They have

1
2 been permitted for this use and
3 inspected.

4 MS. REILLY: Those berms you are
5 removing in no way serve as any kind of
6 protection agent?

7 MR. NOBILETTI: No. They are not
8 in that immediate area and would not
9 afford any protection to any of the
10 explosives stored here.

11 MS. REILLY: You did mention they
12 were blast berms. They were erected to
13 protect against blasts.

14 MR. NOBILETTI: Within the
15 existing storage buildings that exist
16 there now.

17 MS. REILLY: Which no longer
18 contain explosives?

19 MR. NOBILETTI: No. They were
20 built by the Air Force for the storage of
21 bombs and in the event of an accidental
22 explosion, to deflect the gasses up and
23 away from adjacent buildings.

24 The wetlands component and surface
25 waters component of the compatible growth

1 area are not applicable to this
2 application. In regard to rare and
3 endangered species and unique natural
4 communities and native vegetation
5 disturbances, the two steep berms that
6 exist there today and as per the
7 photographs that were submitted, are
8 basically void of any significant
9 species, and in further support of that,
10 is the Western GEIS Natural Communities
11 Map that clearly showed the site well
12 surrounded and described as disturbed
13 areas with respect to native plant cover
14 types. So our removal of the berms would
15 not be removing any of the important
16 native species and the fact that the
17 entire site that we propose to develop,
18 within which is paved, that we would not
19 be having any impact to the areas that do
20 support native vegetation.
21

22 Even on that scale, the distance
23 from our site to the first area indicated
24 on the map of the pitch pine is quite
25 some distance and we would have no impact

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2 due to our operation. The existing
3 vegetation that you do see on the berms
4 that will remain, will remain. There
5 will be no fertilizing of those berms, no
6 nitrogen loading or phosphorous fertilons
7 will be used and this existing vegetation
8 will remain to either thrive or to perish
9 at its own adjustment to the environment
10 without any interference from the storage
11 operation.

12 The only steep slopes in the area
13 are the man-made slopes that were
14 constructed by the Air Force that will
15 remain except for the two that we propose
16 to remove for the project itself. The
17 fill that is generated by the excavation
18 will be removed from the site and will
19 not be placed in any area within the
20 site. A letter has been submitted from
21 Suffolk Cement Products of Calverton
22 indicating that they will be the
23 contractor to remove the dirt from the
24 site and bring it to their concrete
25 production facility.

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2 The runoff from the proposed new
3 buildings; there are dry wells installed
4 at the site and we will direct the runoff
5 from the roof to the existing dry wells
6 and we do not believe that there will be
7 any necessity to have any additional
8 capacity there of any dry wells.

9 Agricultural and horticultural are
10 not applicable in this case.

11 In regard to rezoning of land, the
12 present storage use is a preexisting
13 nonconforming use and we do not believe
14 that any rezoning would be necessary for
15 the proposed building. We do intend to
16 submit to Southampton Town Planning and
17 Building Department for the building
18 permit and for the proper planning
19 approvals and to further, consistent with
20 the existing Certificate of Occupancy,
21 expand its uses within the parameters of
22 the Southampton Town requirements.

23 With regards to commercial and
24 industrial development, this development
25 can be described as one of very low

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intensity and no hazardous or toxic materials will be stored or used at the facility. In contrast to other mini storage areas that sometimes act as commercial operations, the remoteness of this operation is one that is relatively quiet and in addition to that, the management has strict rules there and has supervision and does not permit the facility to be open at night. It is closed at night and acts as more in terms of passive storage as opposed to a warehouse or commercial type storage facility that would have activity on a daily basis. Because of a clustering design and coordinated open space management, this is an excellent example of the use of land that has no beneficial use, that in itself is clustered within the developed site and contained within the paved roadways that, as luck has it perhaps, is an excellent example of a coordinated design and the management of open space by having the development only

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2 within an immediate site and the balance
3 of the area will remain in its
4 undeveloped state.

5 In regard to well head protection,
6 the development itself will not generate
7 any organic or inorganic pollutants
8 either from fertilizing or as previously
9 addressed in the groundwater issue
10 before. There are at the site, Suffolk
11 County Water lines installed and
12 available, however, no water will be
13 brought to these existing buildings or to
14 the proposed buildings.

15 As far as scenic, historic, or
16 cultural resources, there are no known
17 scenic, historic or cultural resources at
18 the site that would be negatively
19 impacted. The extensive excavation that
20 was performed by the Air Force in the
21 1950s would have clearly disrupted it if
22 there were and we just intend to remove
23 what the Air Force had added in the
24 1950s.

25 In regard to the hardship, the

1
2 existing use right now as stated before
3 is 40,000 square feet in eleven
4 buildings of 140 tenants on 40 acres
5 surrounded by the chain link security
6 fence. The site is further improved with
7 the asphalt and concrete roadways which
8 service the existing buildings and will
9 also service the proposed buildings. The
10 units are currently fully rented and
11 provide revenue to the applicant.

12 In addition, the site is part of a
13 400 plus acre area held by the applicant,
14 85 percent of which is undeveloped and
15 produces no income. The revenue from the
16 storage facility contributes to the
17 entire parcel and the revenue that will
18 be generated by the additional storage
19 units is needed in order to offset rising
20 costs.

21 Additionally, the applicant wishes
22 to take advantage of the existing
23 structures, namely that of the concrete
24 pyramid walls that contain the berms, and
25 add to those structures and to contain

1
2 the proposed buildings within those
3 structures and use them for the purposes
4 of the foundation and the structural end
5 of the proposed buildings.

6 The cost of duplicating the
7 existing infrastructure of roads and
8 security fencing and the existing walls
9 with foundations at a second site would
10 be a hardship on the applicant, if not
11 impossible.

12 Additionally, there are certain
13 economies regarding the maintenance and
14 transit and set up times and security and
15 management and other factors that would
16 be lost in a two site operation. There
17 are no other alternatives or relocation
18 possibilities for this proposed
19 expansion. The existing development at
20 the site clearly eliminates its ability
21 to contribute as a beneficial use site as
22 described under the Long Island Pine
23 Barrens Protection Act and further
24 prevents us from doing so in the future.

25 Further, it is clear that its

1
2 hardship was not brought upon by the
3 applicant. It was due to the development
4 of the U.S. Government, and the site is
5 certainly unique unto itself. And there
6 are no other sites that have this similar
7 hardship.

8 We feel that the primary concerns
9 of the Long Island Pine Barrens
10 Protection Act, the Groundwater and
11 Native Vegetation Habitat Protection Act
12 will not be impacted by this proposed
13 development. We therefore feel that this
14 permit should be granted.

15 Are there any questions?

16 MS. SWICK: Is this hardship
17 description included within this document
18 that we were presented? Because it is
19 not included in the document that I have
20 except for the first paragraph. Do you
21 have an extra copy?

22 MR. NOBILETTI: There was a May
23 31st application and a June 20th
24 addendum.

25 MR. PROIOS: Are there any other

1
2 questions?

3 MS. REILLY: My question goes to
4 whether or not you have any beneficial
5 use of the property in its present use,
6 as it is presently being used? It would
7 seem that there is a beneficial use of
8 the property as it stands.

9 MR. NOBILETTI: Benefit to the
10 owner or benefit to the Pine Barrens
11 Protection Act?

12 MS. REILLY: I am referring to the
13 criteria for core area hardship. Under
14 10(a) it says, "and applicant shall be
15 deemed to establish the existence of an
16 extraordinary hardship only if he
17 demonstrates the affected property does
18 not have any beneficial use --"

19 MR. NOBILETTI: I think what they
20 are saying is under its present use,
21 meaning its undeveloped use. The
22 implication being that it is making a
23 contribution to the Pine Barrens. We are
24 saying that it does not make a
25 contribution so, therefore, it has no

1
2 beneficial use to the intent of the Act
3 itself. It is tricky, I know that. I
4 read that several times and -- beneficial
5 use, what do you mean?

6 MS. REILLY: Beneficial use to the
7 owner.

8 MR. NOBILETTI: Yes, that is what
9 I thought initially. It means, I
10 believe, beneficial use to the Pine
11 Barrens Act. Further down it says that
12 the subject property does not have any
13 beneficial use if used for its present
14 use or developed as authorized by the
15 provisions of this Act. I think they are
16 addressing the provisions of the act.

17 MS. REILLY: I don't know about
18 that.

19 MR. NOBILETTI: I think that if
20 you are coming in for a hardship
21 application, they are assuming you are
22 applying to build something which means
23 that nothing is built already.

24 MS. REILLY: In your case,
25 something is built already.

1
2 MR. NOBILETTI: What we have is a
3 disturbed site. In the berm itself,
4 nothing is built. But immediately
5 adjacent to it, there is a developed
6 site, a disturbed site. So I am
7 addressing beneficial use meaning it has
8 no beneficial use if it is put under the
9 scrutinies of the Pine Barrens Protection
10 Act. If it is left as it is now, it
11 will not contribute to the habitat or
12 protect the endangered species or, due to
13 the steep slopes, even encourage the
14 growth of any of the endangered species
15 or create a habitat. The habitat
16 photographs and vegetation photographs
17 show the very steep slopes that are in
18 distinct contrast to the rest of Pine
19 Barrens. Those steep slopes will not
20 promote the type of vegetation you are
21 attempting to protect.

22 MS. SWICK: You basically have two
23 steep slope berms between existing
24 buildings and those will be replaced.
25 And the other thing is that several more

1
2 lighting units will be installed to light
3 the area for access.

4 MR. NOBILETTI: For possible
5 security lighting, not nightly lighting.
6 We don't keep the facility open at night.

7 Then it would be the addition of
8 two concrete slabs within those walls and
9 the steel structure, frame and steel skin
10 of the building.

11 MR. PROIOS: Are there any further
12 questions?

13 Thank you.

14 Are there any members of the
15 public here who would like to address the
16 commission regarding this application?

17 MR. MORRIS: I have a couple of
18 questions. I would like to make sure
19 that the maps are labelled as to a date
20 of the aerial photographs so we can
21 accurately represent what the conditions
22 might be at the site.

23 I would like to know how much more
24 traffic would be generated to the area.

25 You indicated that the Pine

1
2 Barrens Law would prohibit further
3 expansion. Does he have any expansion
4 plans tied into this anywhere on the 400
5 acre site?

6 My interpretation of the reading
7 is is it beneficial to the owner. Is he
8 getting income from it or something like
9 that and as for the developed part, if it
10 was developed within the guidelines of
11 the interim rules or the final rules as
12 they may be adopted, would he then have a
13 beneficial use for them rather than
14 having somewhat of another problem of
15 getting that?

16 MR. PROIOS: The last point seems
17 to play devil's advocate. The
18 application is for the areas between the
19 buildings so the question, if you are
20 looking at it from that standpoint, the
21 question is what to do with the berms.
22 Do they serve any beneficial use to him
23 right now? But that is not what the
24 hearing is about. We are only talking
25 about the removal of the earthen berms.

1
2 Do they serve as a beneficial use right
3 now to the applicant or do they not.

4 MR. NOBILETTI: The answer to that
5 is no. Those berms provide no benefit.

6 MR. PROIOS: They did serve a
7 purpose when the Air Force built it but
8 they are not used for anything now?

9 MR. NOBILETTI: No. And they are
10 not needed as berms for the operation.

11 MR. PROIOS: Can you address the
12 issue of the aerial photographs?

13 MR. NOBILETTI: The aerial
14 photographs were after Sunrise Highway
15 was built. I am not sure. There is a
16 serial number on that and I would have
17 to --

18 MS. SWICK: The date is usually
19 with the serial number.

20 MR. NOBILETTI: I believe I may
21 have cut those --

22 MR. MORRIS: I got those aerial
23 maps from the U.S. Department of
24 Agriculture and Edwin Tuccio. They might
25 have the date. They have serial numbers

1
2 and I guess if we ask the Department of
3 Agriculture, they can determine when they
4 took those. They did all of Long Island
5 at the same time.

6 MS. SWICK: They did the Suffolk
7 County Soil Survey in 1976, so it may
8 have been done for that because I don't
9 know if the Department of Agriculture has
10 done any further aerial photographs since
11 1976.

12 MR. TUCCIO: I happen to be on the
13 Board of the United States Department of
14 Agriculture in Riverhead and we use these
15 maps to show soil crop growth and soil
16 conditions. That is the only reason that
17 I have it.

18 MR. PROIOS: You do have the
19 aerial photograph that shows the current
20 conditions depicted in these photographs.

21 MR. NOBILETTI: No. This is the
22 old photograph. The color photographs
23 are current, made June of this year which
24 if you were to look at them, looking at
25 the vegetation, you can get an accurate,

1
2 today's accounting of what is going on
3 there.

4 As far as the aerial photographs
5 go, no. I think what we can do to answer
6 that question is to fall back on the
7 Southampton Western GEIS and use their
8 legend here, and that will, on an overlay
9 basis, identify all of the features you
10 see there, all the whited out areas, the
11 runways, the roads, the large oval,
12 Sunrise Highway, and they do so by
13 identifying the species in each area.

14 I believe Southampton Town
15 Department of Natural Resources in their
16 reports with this map can actually give
17 you species counts or percentages of
18 species anywhere within those areas. I
19 know that they have much more detailed
20 vegetation population information than is
21 shown on this map even though this map is
22 an accurate representation of it. We
23 possibly could go to Southampton Town and
24 ask them to be more specific with regards
25 to any of the vegetation.

1
2 MR. PROIOS: The final point was
3 on traffic.

4 MR. NOBILETTI: Again, the
5 remoteness of the site. This is clearly
6 a long term storage, it is not an active
7 site where people come and go.
8 Numerically, other than to say it is a
9 very quiet spot with regards to the
10 amount of in and out traffic, we truly
11 meet the criteria for passive storage as
12 opposed to some of the more active
13 storage areas. If you are familiar with
14 other storage areas in other villages,
15 they are much, much more active and
16 almost act as a warehouse or commercial
17 operation as opposed to passive storage.

18 MR. PROIOS: If you were to put
19 it in percentage increases, what would it
20 be in terms of additional units,
21 approximately?

22 MR. NOBILETTI: It would probably
23 be about a 20 percent increase.

24 MR. PROIOS: Are there any other
25 questions?

MR. AMPER: I am Richard Amper and I am the Executive Director of the Long Island Pine Barrens Society. The commission is and should properly explore the applicant's efforts and advocacy of those efforts to properly protect the groundwater supply from anything that may be stored on site. That appears to have been addressed by the applicant. But as long as the commission has satisfied itself about that, that need not provide a particular obstacle. You will want to review, it seems to us, the interpretation of what constitutes beneficial use. The beneficial use of a specific, topographical feature of a parcel is an extraordinary reach in terms of interpreting the purposes of a hardship application. Surely the law is not intended to determine whether a berm or a depression in the land was in itself beneficial, but overall whether there was some beneficial use attending the property overall.

Neither of these really need to interfere with the overall objective of the commission to evaluate the hardship, that is, what sort of environmental harm would be done to the Pine Barrens. The applicant appears to be reasonably responsible in addressing those concerns. The damage previously done is not being used as an excuse to do more damage but, in fact, to mitigate any ongoing problem which is commendable, responsible, and consistent with the purposes of the Act.

The commission, as is responsible for addressing and responding to the hardship application, also has a larger charge and I think it might be useful to consider here, and that is; that this, like so many applications, that we discussed over the development of the Act and the process, is only part of a larger effort to protect the Pine Barrens as a whole. So the commission may want to explore, with the applicant, on the basis of the expressed desire to use this

1
2 particular parcel, the desirability on
3 the commission's part of obtaining and
4 the willingness of the applicant for his
5 part to perhaps grant an easement of some
6 sort, a conservation easement, on the
7 portion that does have environmental
8 utility and which is not necessary to the
9 economic development of the proposal that
10 he has before you. That is something
11 that, at the very least, ought to be
12 explored and you might want to visit with
13 the applicant either tonight or at some
14 future point about.

15 Moreover, the applicant has
16 additional holdings in the Pine Barrens
17 which would be contributive to the
18 overall preservation of the core
19 preservation area. The Act is a product
20 of accommodation. It may well be the
21 case that both the applicant and the
22 commission and the purpose of the Pine
23 Barren Act all benefit by our sitting
24 down with those who have holdings in this
25 case and in others, to try to determine

1
2 whether or not we can simultaneously
3 accommodate the economic needs of the
4 applicant, and at the same time, the
5 preservation needs of the people of Long
6 Island.

7 There are other holdings, some of
8 which, or at least one of which is on a
9 target acquisition list of Suffolk County
10 that is very ecologically important.
11 And, while it may not go to the heart of
12 deciding whether or not this constitutes
13 a hardship application or not, there does
14 seem to be a spirit of cooperation on
15 both sides in this particular case and if
16 there is some way the commission's work
17 can be expanded in scope to explore the
18 possibilities of other environmental
19 benefits of working with the applicant,
20 that would be desirable as would
21 attempting to accommodate his bona fide
22 efforts at trying to use his land in ways
23 not to compromise either the ecology or
24 the hydrology of the region. That is
25 the limit of our contribution tonight.

1
2 MR. NOBILETTI: We do recognize
3 all the statements this gentleman made
4 and that there are important areas within
5 that parcel. We specifically chose this
6 site and approached it the way we did
7 approach it because we truly believe we
8 can do this project and fully meet the
9 intent and objectives of the Pine Barren
10 Protection Act. We do request that the
11 commission review this application on the
12 merits of the application the way it has
13 been presented tonight and we would like
14 to not add to the issue any of the other
15 properties that are involved and just
16 review this application on its own merit.

17 MR. AMPER: If I could follow up
18 and just suggest that the commission is
19 then indeed charged with, at least with
20 respect to an application that is before
21 them concerning a particular parcel, to
22 address the ecological implication and
23 the beneficial use provision of the
24 parcel as a whole in the same way that we
25 can't merely look at the berms

1
2 differently from the overall buildable
3 portion of the site. All applications
4 that come before the commission address
5 both the portions that are to be
6 developed and the portions that will
7 remain undeveloped and you will, at the
8 very least, need to consider the overall
9 environmental impact of granting an
10 approval for this application without
11 consideration for the larger portion of
12 environmentally sensitive land.

13 MR. DARK: Did we get an answer on
14 the future expansion on the 400 acre
15 parcel?

16 MR. PROIOS: The commission has no
17 other proposals before it regarding these
18 properties.

19 All right, I will call this to a
20 close. Is there a time limit to which we
21 can keep the record open?

22 MR. CORWIN: We usually go ten
23 days to two weeks. If you pick two
24 weeks, that will take you to July 6.

25 MR. PROIOS: In order to address

1
2 the issue, can we ask counsel to, within
3 that time frame, give us an
4 interpretation of what beneficial use
5 constitutes in terms of this application.

6 MR. CORWIN: Keeping it open until
7 the 6th will give us time.

8 MR. PROIOS: We will keep the
9 record open until July 6th. During that
10 time, our counsel will try to provide us
11 with a legal opinion regarding what
12 constitutes beneficial use.

13 MR. NOBILETTI: Can the applicant
14 be advised of that decision of your
15 interpretation of beneficial use?

16 MR. PROIOS: Yes.

17 MR. NOBILETTI: And may we submit
18 to you our interpretation of beneficial
19 use?

20 MR. PROIOS: Certainly.

21 MR. NOBILETTI: I think I would
22 like to do that prior to July 6. I will
23 send to you our interpretation prior to
24 July 6.

25 MR. PROIOS: Thank you.

(Whereupon, at this time the public hearing on this matter was closed with the record being kept open until July 6, 1994.)

MR. PROIOS: Our second application for public hearing is from Stuart Osleeb.

I read your whole description. As the applicant or representative here, would you like to describe the project.

MR. OSLEEB: My name is Stuart Osleeb. My office is at 235 Boyle Road, P.O. Box 970, Selden, New York.

I tried to submit with my letter application the tax maps, Health Department approvals, Building Department, Planning Board permits, highway permits, photographs, and at that point, not knowing anything about the Pine Barrens Act, that was all I could put in the letter that you have before you.

1
2 Subsequently I received some
3 correspondence from the commission
4 defining, or what was supposed to define,
5 hardship reasons. So I have two items
6 that I haven't submitted with the
7 application.

8 One would be a radius map showing
9 the homes that surround the property.
10 The second thing is, and I don't really
11 want to get into this legal business, but
12 my reading of what was sent to me by the
13 commission concerning beneficial use,
14 because I had to address that differently
15 than what I did in my original letter.
16 This would be the radius maps.

17 MS. ROTH: We will mark as
18 Applicant's Exhibit A titled, "Radius Map
19 for Stuart Osleeb, prepared by William
20 Jaeger." I believe it is for a 200 foot
21 radius around the subject property.

22 MR. OSLEEB: I would like to read
23 an addendum type letter that I wrote
24 after receiving some material after the
25 letter that I sent to the Pine Barrens

Commission, if permitted to do so:

"I am seeking relief under the Core Area Hardship Provisions because of unique circumstances peculiar to the subject property in that this property does not have any beneficial use" --

This is the issue you have been discussing --

"under the commission's goals and standards. This inability to have a beneficial use results from unique circumstances peculiar to the subject property which, One: Do not apply to or affect other property in the immediate vicinity, nor relate to or arise out of the characteristics of the subject property, and are not the result of any action or inaction by myself including any transfer of contiguous land which were in common ownership before or after January 1, 1993.

"In addition, if the commission grants this request, it will not be materially detrimental or injurious to

1
2 the other property or improvement in the
3 area which the subject property is
4 located, nor will it increase the danger
5 of fire, the danger of public safety, or
6 result in a substantial impairment of
7 resources of the Core Preservation Area.
8 If the waiver is granted, it will not be
9 inconsistent with the purposes,
10 objectives or the general spirit or
11 intent of the written Core Area Hardship
12 Provisions.

13 Commission, members, I am seeking
14 you assistance in granting this relief
15 for this application and thank you for
16 the consideration in this matter."

17 If I could, I would like to submit
18 copies of this in addition to my
19 application.

20 MS. ROTH: Applicant B is a letter
21 from Stuart Osleeb dated June 22, 1994,
22 one page.

23 MR. OSLEEB: Wrong or right, that
24 was what I got from reading what I read
25 and I am not an attorney, so I cannot

1
2 give any further opinion other than what
3 I read from it.

4 I would like to note also that the
5 ecological features were already altered
6 previously by two houses on this property
7 which were then removed. The driveway
8 aprons are still showing in the pictures
9 that I submitted to you people. The
10 permits that I received to build went
11 through all the proper town channels from
12 Highway to Health, and were issued and
13 certainly I hate to be singled out versus
14 all the surrounding property owners who
15 have homes there.

16 I know that real personal
17 considerations is not what the commission
18 will act on but this is the only thing
19 that I can present to you. Permits were
20 issued to build, this Act came in. I
21 owned the property since 1981. It is not
22 a speculative purchase of property and I
23 would be glad to answer any questions you
24 might have.

25 MR. PROIOS: Primarily the fact

1
2 that the permit expired is why you are
3 here; correct?

4 MR. OSLEEB: No.

5 MR. PROIOS: There is an
6 expiration date of 11-93.

7 MR. OSLEEB: It ended the end of
8 '93, the end of the year, which kind of
9 overlapped what was happening with the
10 Pine Barrens.

11 MS. FILMANSKI: Why did you let
12 the permit lapse?

13 MR. OSLEEB: When I went to renew
14 the permit, I was told by Mr. Dark, the
15 building chief, that I would have to, or
16 his staff told me that I would have to go
17 before the Appeals Board -- the Variance
18 Board -- because the area had been
19 upzoned as far as requirements for the
20 size of the house and that the granting
21 of this permit was prior to the upzoning
22 for that size. Mr. Dark said he would go
23 and approve it for one more year if I
24 intended to build immediately and I could
25 not give him that answer, so, therefore,

1
2 the permit lapsed and that is the history
3 of that property.

4 MS. FILMANSKI: What was it zoned
5 from and to?

6 MR. OSLEEB: I think it was zoned
7 to an A-1. I'm not sure, but the lower
8 zoning prior to that. In order for them
9 to grant the renewal based on this
10 permit, I was told at the counter that I
11 would have to go before the Variance
12 Board. I asked to see Mr. Dark and he
13 said he will let it go one more year if I
14 build immediately. I said no, because we
15 have this issue about the Pine Barrens
16 thing and I am not ready to build this.

17 MS. FILMANSKI: You also stated in
18 paragraph two of your letter that both
19 houses were demolished. When did that
20 occur?

21 MR. OSLEEB: Prior to 1981. I
22 can't answer that. What happened was
23 there were two individual lots and the
24 town combined the lots to one lot.

25 MS. FILMANSKI: When did that

1
2 occur?

3 MR. OSLEEB: That happened after I
4 owned it. I gave you two tax maps. One
5 shows where it was split and the second
6 tax map shows it where it was joined into
7 one. They retired the individual lots 5
8 and 6 and they retired them on the tax
9 rolls and combined them to make one lot,
10 .6001.

11 MS. FILMANSKI: How long have you
12 been receiving one tax bill instead of
13 two?

14 MR. OSLEEB: Approximately four or
15 five years, in that range. I am not that
16 sure but it was definitely after I
17 purchased it that they combined the
18 zoning.

19 MR. PROIOS: You purchased both
20 lots under your name?

21 MR. OSLEEB: Yes.

22 MR. PROIOS: You didn't maintain
23 them separately?

24 MR. OSLEEB: No.

25 MS. FILMANSKI: So your intent was

1
2 only to build one house?

3 MR. OSLEEB: Yes. There was never
4 an issue or a speculative type of thing.
5 I submitted the tax roll, I think the
6 1988 tax roll, in the papers here.
7 Permits were given for one house. Two
8 lots were never the issue.

9 If there is anything else I would
10 be glad to answer anything.

11 The building permit expired as of
12 December of 1993.

13 MS. SWICK: So the two lots
14 comprise .72 acres?

15 MR. OSLEEB: Correct.

16 MS. SWICK: Do you have any idea
17 of the surrounding lot sizes? I see
18 several parcels of land here running in
19 one direction and yours running in the
20 other direction. Is your lot a similar
21 lot to these?

22 MR. OSLEEB: It is a little
23 smaller than the one adjacent to it.
24 Lots 5, 8, and 6 on the radius map are
25 about the same size.

1
2 MS. SWICK: Are you totally
3 surrounded by houses on every single
4 parcel?

5 MR. OSLEEB: Yes.

6 MS. SWICK: For more than just the
7 200 foot radius?

8 MR. OSLEEB: Yes. Well, William
9 Floyd, these people reach their homes,
10 lots 8, 9, 10, 11, from William Floyd
11 Parkway because that is their road. As
12 you know, William Floyd is another couple
13 of hundred feet, so the answer to your
14 question is, yes. Lot 9 which was vacant
15 at this time, this map was done in 1986,
16 so I don't know if subsequently if a
17 house was put on that lot or not. That
18 would be the only lot that was vacant.

19 MS. SWICK: The house to the
20 south of you, is that house owned by
21 another party?

22 MR. OSLEEB: That triangular piece
23 is one house. What happens is is that it
24 drops down and they had a horse corral in
25 the triangular section of that. They

1
2 couldn't put a house there, it was just a
3 weird shape, but that is all belonging to
4 that house. That is there now and
5 functions. There are houses all around
6 the entire area, up and down Sally Lane.

7 MR. PROIOS: Are there any further
8 questions?

9 MR. OSLEEB: I submit the radius
10 map because I came across it and after
11 reading it, I thought this would be a
12 better help to you to show you what homes
13 actually existed there and do exist
14 today.

15 MR. PROIOS: Thank you.

16 MR. OSLEEB: Thank you.

17 MR. PROIOS: Are there any members
18 of the public who would like to comment
19 at this point?

20 MR. CORWIN: If you want, I can
21 help you a little bit with a current land
22 use map, if you want to wait.

23 MR. PROIOS: As long as you have
24 it with you now.

25 MR. CORWIN: It is a bit hard to

1
2 see it to scale, but it is there. This
3 is a land use map for the Town of
4 Brookhaven as of this year. The lot we
5 are talking about is the green one here.

6 (Whereupon, at this time the
7 commission members reviewed the above-
8 mentioned map.)

9 MR. PROIOS: Are there any other
10 members of the public that wish to
11 comment?

12 MR. AMPER: For the record,
13 Richard Amper, Executive Director of the
14 Long Island Pine Barrens Society.

15 If the commission, in consultation
16 with the general counsel can satisfy
17 itself that this does, in fact,
18 constitute a unique set of circumstances
19 that qualifies under the Act and does not
20 establish an untoward precedent for other
21 development in the core area prohibited
22 by the Act, the Society takes no
23 exception to the application on the basis
24 of ecological or hydrological grounds.
25 The application as presented does not

1
2 constitute an environmental threat from
3 my point of view.

4 MR. PROIOS: Thank you.

5 Are there any other members of the
6 public who wish to comment?

7 If not, I will close the public
8 portion and we will leave the comment
9 period open, again until the same date of
10 July 6, as we did for the previous
11 hearing.

12 MR. CORWIN: Just for the record,
13 you have until the same date. Again, the
14 decision date is the 31st of July.

15 MR. PROIOS: So this gives the
16 full commission time to act.

17 If there is no further business,
18 do we have a motion to adjourn?

19 MS. FILMANSKI: So moved.

20 MS. SWICK: Second.

21 MR. PROIOS: All in favor, aye.

22 MEMBERS OF THE COMMISSION: Aye.

23 (TIME NOTED: 8:50 p.m.)
24
25

C E R T I F I C A T I O N

I, WAYNE GALANTE, a Notary Public in and for the
State of New York, do hereby certify:

THAT the foregoing is a true and accurate
transcript of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand
this 11th day of July, 1994.

Wayne Galante
WAYNE GALANTE

E R R A T A S H E E T

PAGE LINE CHANGE OR CORRECTION

SIGNATURE

Worn to before me this
____ day of _____, 19__

NOTARY PUBLIC

ATTORNEY NOTES