

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 2-2023

by

R.N. Middle Island LLC
Rocky Point Road LLC
7 Eleven Inc.
Respondents
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WHEREAS:

1. The Central Pine Barrens Joint Planning and Policy Commission (the "Commission") has jurisdiction over development, as the term is defined in the Long Island Pine Barrens Protection Act (the Act) as codified in Article 57 of the Environmental Conservation Law (the ECL), in the Central Pine Barrens region. Pursuant to the Act, the Commission adopted and now 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. R.N. Middle Island LLC and Rocky Point Road LLC (the "Owners") own certain property located at 910 Middle Country Road in Middle Island, in the Town of Brookhaven. The Property consists of three separate parcels of land on the northeast corner of the intersection of Middle Country Road and Rocky Point Road in the hamlet of Middle Island, Town of Brookhaven. The parcels are identified on the Suffolk County Tax Map as District 200, Section 378, Block 2, Lot 37.2 and District 200, Section 403, Block 1, Lots 2.1 and 2.3 (the Property). In total the Property contains 1.54 acres of area. The Property is in the Compatible Growth Area of the Central Pine Barrens region. 7 Eleven Inc. leases the Property. R.N. Middle Island LLC, Rocky Point Road LLC, and 7 Eleven Inc. taken together are referred to as the "Respondents."
3. The Property is developed with a 7 Eleven convenience store and gas station. The Property is shown in the Revegetation Plan dated June 11, 2017 prepared by Nelson, Pope & Voorhis. The 2017 Revegetation Plan is attached hereto as Exhibit A.
4. Development on the Property is regulated by the Act and the Plan.
5. On August 16, 2017, the Commission granted to the Owners a Hardship Waiver Exemption (the Decision) authorizing 100 percent of the Property to be cleared for the development of the 7 Eleven convenience store and gas station. The terms or conditions of the Decision required the revegetation of 35%, 0.539 acres of the Property, after

construction was complete. The Decision also required the preparation and filing of a Declaration of Covenants and Restrictions on the Property setting forth certain conditions on the Property's use, including to protect the revegetation area from being disturbed.

6. On November 7, 2018 the Covenants and Restrictions were filed.
7. On March 18, 2020, the revegetation was completed.
8. On March 17, 2021, the Commission issued a Notice of Violation to the Owners for improperly causing or allowing revegetation area to be disturbed.
9. On May 10, 2021, the Owners and the Commission executed an Order on Consent executed with terms included a \$1,500 fine of which \$1,000 was a suspended penalty and \$500 was paid. The Owners were also required to plant approved vegetative species in the revegetation area.
10. On December 9, 2022, Commission staff became aware of disturbance on the Property and performed an inspection on December 15. The inspection revealed that activities had been conducted on the Property including disturbance of the area that was revegetated pursuant to:
 - the Hardship waiver
 - the recorded Declaration of Covenants and Restrictions and
 - the 2021 Order on Consent
11. On December 21, 2022, the Commission issued a Notice of Violation to the Owners.
12. A meeting occurred on March 2, 2023 with Commission staff, Mike Nelin, a principal of the Owners, and Owner's attorneys Keith Brown and Matthew Ingber to discuss the violation.
13. During the meeting, Owners stated that their tenant, 7 Eleven, is responsible for maintaining the Property and that 7 Eleven may have caused the revegetation area to be disturbed. Owners stated that 7 Eleven should be made party to the Notice of Violation.
14. On March 15, 2023, a new NOV was issued to the Respondents.
15. The Commission finds that the disturbance activity was neither authorized nor approved by the Commission prior to commencement and it violates the terms of the terms and conditions of the Decision and Declaration of Covenants and 2021 Order on Consent.
16. ECL §57-0136(2-b), provides that "any person who violates any provision of ECL Article 57, the land use plan adopted by the Commission, . . . , or the terms or conditions of any order, permit, or determination issued by the Commission pursuant to ECL Article 57 shall be liable for a civil penalty of not more than ten thousand dollars (\$10,000) for each

violation and an additional civil penalty of not more than one thousand dollars (\$1,000) for each day that such violation continues.”

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

NOW, therefore, the parties agree as follows:

18. Due to the uncertainty in identifying the individual or company who caused the disturbance the Respondents agree to settle this matter as set forth herein assumes responsibility for the unauthorized clearing that occurred on the Property and seeks to resolve the matter without further delay.
19. In consideration of the settlement of the claims arising from or related to the Violation, the Respondent agrees, at its own cost and expense, to:
 - A. Maintain the 0.539 acre revegetated area as per the Decision and Covenants.
 - B. Prepare and submit a Revegetation Plan by July 15, 2023 that includes existing plantings from past revegetation activities. The Revegetation Plan shall supplement the impermissibly cleared portion of the Property and must comport with the revegetation guidelines (the “Guidelines”) attached hereto as Exhibit B.
20. Penalty. With respect to the violations identified in this Order, the Commission assesses against the Respondent a civil penalty jointly and severally payable in the sum of TWO THOUSAND DOLLARS (\$2,000), of which ONE THOUSAND DOLLARS (\$1,000) is suspended pending complete compliance with the terms and conditions of this Order on Consent.

Method of Payment. Payment shall be made as follows.

The payable portion of the penalty, ONE THOUSAND DOLLARS (\$1,000) is to be paid by bank check made payable to "Central Pine Barrens Joint Planning and Policy Commission,"

Payment to the Commission must have written on its face:
CPBJPPC 2-2023.

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 no later than THIRTY (30) DAYS following the effective date of this Order.

21. Execution and complete satisfaction of the terms of this Consent Order shall resolve the March 15, 2023 Notice of Violation issued by the Commission for the Violation.
22. 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.
23. 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 Violation, 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 have against the Commission Parties about the Violation, the Notice of Violation, or this Consent Order.
24. 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 Violation, the Notice of Violation or this Consent Order.
25. Respondents' failure to materially comply with any provision, term, or condition of this Consent Order constitutes a violation and is a violation of this Consent Order and the Act. Upon such failure to comply, the Commission may commence any action it deems appropriate to resolve the violation and the suspended portion of the penalty will be immediately payable to the Commission.
26. Respondents jointly and severally agree to 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).
27. 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.
28. 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.

29. The Effective Date of this Order shall be the date upon which it is signed by the Commission's Executive Director or her designee.
30. 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.
31. 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 he or she represents. Each signatory shall defend and hold the Commission harmless against any loss caused by a signatory's misrepresentation.

Respondents acknowledge the authority and jurisdiction of the Central Pine Barrens Joint Planning and Policy Commission to issue the foregoing Order, waives public hearing or other proceedings in the matter, accepts the terms and conditions set forth in the Order and consents to the issuance thereof and agrees to be bound by the provisions, terms and conditions contained therein.

R.N. Middle Island LLC

By: [Signature]

Name: Richard Veliz

Title: Member

Date: 5/16/2023

Rocky Point Road LLC

By: [Signature]

Name: Richard Veliz

Title: Member

Date: 5/16/2023

7 Eleven Inc

By: [Signature]

Name: Robin D. Bryant

Title: Assistant Secretary

Date: 6-9-2023


SIGN

Here

XIII. Acceptance by the Commission

The Commission authorizes entering into this Order on Consent.

CENTRAL PINE BARRENS JOINT PLANNING
AND POLICY COMMISSION

By: 
Judith Jakobsen
Executive Director

Date: 6/28/2023