

THE STATE OF NEW YORK
NYS CENTRAL PINE BARRENS COMMISSION

In the Matter of

The Estate of Constance DiPeri Core
Perseveration Area Extraordinary
Hardship Waiver

Location: West side of William Floyd
Parkway (CR46), 4,225 feet south of
New York State Route 25 and 217.80 feet
East of Sally Lane in the A-1 Residence
Zoning District, in the Core Preservation
Area of the Central Pine Barrens, in the
Hamlet of Ridge, Town of Brookhaven,
Suffolk County, New York

Suffolk County Tax Map Number
200-383-1-22

Riverhead Town Hall
200 Howell Avenue
Riverhead, New York 11901

Wednesday,
September 15, 2010

The above entitled matter came on for
hearing at 3:00 p.m.

A P P E A R A N C E S :

CENTRAL PINE BARRENS JOINT PLANNING AND POLICY
COMMISSION

PETER SCULLY, CHAIRMAN

MARTY SHEA, Representative of Town of South Hampton
Supervisor

JOHN TURNER, Representative of Brookhaven Town
Supervisor

SEAN WALTER, Riverhead Town Supervisor

BRENDA PRUSINOWSKI, Representative of Town of Brookhaven
Supervisor

CARRIE GALLAGHER, Representative for County Executive
Steve Levy

ANN THRONE HOLST, Member

JULIE HARGRAVE, Environmental Planner

JOHN MILAZZO, Pine Barren Commission Attorney

JOHN PAVACIS, CPBC Director

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P R O C E E D I N G S

(Pine Barrens Exhibits A-G were pre-marked
For identification.)

CHAIRMAN SCULLY: I would like to call the
public hearing to order. I'll read from the notice of
the hearing and just submit the hearing notice to the
court reporter so you can type it.

Folks, could you please quiet down and if
you have discussions you can take them out in the hall,
please.

Pursuant to the New York Environmental
Conservation Law Article 57-0121 (10) notice is hereby
given that the Central Pine Barrens Joint Planning and
Policy Commission will hold a public hearing
September 15, 2010 on the matter of the application for
a Core Preservation Area Hardship Waiver.

The name of the project is the Estate of
Constance DiPeri Core Preservation Area Extraordinary
Hardship Waiver.

The applicant is the Estate of Constance
DiPeri. The applicant's representative is Cramer
Consulting Group, c/o Thomas Cramer.

The project site is located on the west
side of William Floyd Parkway, 4,225 feet south of New
York State Route 25 and 217.80 feet east of Sally Lane



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1 in the A-1 Zoning District in the Core Preservation area
2 of the Central Pine Barrens in Hamlet of Ridge, Town of
3 Brookhaven, Suffolk County, New York.

4 The project description is construction of
5 a single family residential dwelling on a 21,78 square
6 feet (.50 acre) project site that is currently
7 undeveloped and wooded.

8 The hearing will be held 3 p.m.
9 September 15th 2010 at the Town of Riverhead Town Hall,
10 200 Howell Avenue, Riverhead, New York.

11 I will ask the Commission representatives
12 to state their names for the record.

13 MR. TURNER: John Turner on behalf of the
14 Supervisor Mark Lesko for the Town of Brookhaven.

15 MS. PRUSINOWSKI: Brenda Prusinowski,
16 representing Brookhaven Town Supervisor Mark Lesko.

17 MR. WALTER: Sean Walter, member.

18 MS. THRONE-HOLST: Anna Throne-Holst,
19 member.

20 MS. GALLAGHER: Carrie Meek-Gallagher,
21 representing County Executive Steve Levy.

22 MR. SHEA: Marty Shea of Southampton Town.

23 CHAIRMAN SCULLY: Peter Scully representing
24 the Governor of the State of New York. We'll hear first
25 from staff.

1 MS. HARGRAVE: Good afternoon. You should
2 all have a package of the staff report and exhibits. The
3 exhibits for this project includes the staff report, an
4 aerial of the project site, an aerial of the surrounding
5 area, survey of the project site, photographs of the
6 site, the Town of Brookhaven Zoning Board of Appeals
7 variance dated May 5, 2010 and the applicant hardship
8 petition.

9 So you have just read, Commissioner, the
10 description of the site where it is on the west side of
11 William Floyd Parkway on the South of Route 25 in Ridge.
12 It's just east of Sally Lane by one lot. It's
13 21,780 square feet in the A-1 Zoning District.

14 The proposal is to build a single family
15 dwelling on the property. This lot is not on the core
16 road front exemption list. I don't know exactly why it's
17 not on the list, but it's not on the list.

18 The applicant has not applied for a letter
19 of interpretation to get a credit allocation which is
20 another option for this applicant. The applicant will be
21 required to get other permits including the Health
22 Department and a building permit and DEC Recreation
23 Wildlife Scenic Rivers Permit.

24 Again, the site is wooded and there are
25 pictures of the site. It is a small property but its



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1 wooded and according to the application, it was observed
2 in the field visit, there are some large trees on the
3 site.

4 There's no endangered species, no wetlands.
5 The site is generally flat. The parcel has been under
6 the ownership of the Constance DiPeri since March 1971.
7 This lot existed when the Act was passed in 1993. Ms.
8 DiPeri is deceased and the hardship application is being
9 filed by her estate.

10 The applicant submitted a title report and
11 the lot is single and separate. The adjacent lots are
12 developed. Again, the Town of Brookhaven adopted a
13 zoning, adopted a variance in May for the project with a
14 condition that the applicant obtain a hardship. That was
15 a condition of approval. The project is Type 2 under
16 SEQRA. The applicant is here to explain the application
17 and answer any questions.

18 MR. MILAZZO: I just have a question. When
19 was the staff visit? John Milazzo, Staff Counsel.

20 MS. HARGRAVE: It was on, about a month ago,
21 August 5th.

22 MR. MILAZZO: Did you take the photos in
23 Exhibit E on August 5th?

24 A. Yes.

25 MR. MILAZZO: You took those photos?

1 MS. HARGRAVE: Yes.

2 MR. MILAZZO: That's it.

3 CHAIRMAN SCULLY: I just have two. Could you
4 briefly describe the nature of the hardship exemption?

5 MR. MILAZZO: To build a house.

6 CHAIRMAN SCULLY: I know, but is it simply a
7 clearing statement.

8 MR. MILAZZO: It's in the core.

9 MS. HARGRAVE: There is no standards;
10 although the applicant did go through the standards even
11 though they didn't need to.

12 CHAIRMAN SCULLY: Because in the core you
13 need a hardship exemption to undertake the activity in
14 any event, regardless?

15 MS. HARGRAVE: Any clearing.

16 CHAIRMAN SCULLY: You made comment with
17 regards to an exemption list, not being on the list,
18 what's the pertinence of that?

19 MS. HARGRAVE: There are other core parcels
20 that you won't see asking for hardship because they are
21 on this exemption list. Why this one didn't make it, it
22 is on a road, but maybe it was missed -- I couldn't
23 speculate but I don't know.

24 CHAIRMAN SCULLY: Thank you. Any questions
25 for Julie? If not we'll get to public testimony. Let's

1 hear in the applicant. Is the representative of the
2 applicant present?

3 Please be sworn in.

4 Whereupon,

5 THOMAS CRAMER,

6 after having been first duly sworn, testified as
7 follows:

8 MR. CRAMER: Can I give you this?

9 CHAIRMAN SCULLY: Please.

10 MR. CRAMER: Good afternoon members of the
11 Commission; for the record my name is Thomas Cramer
12 principal of the firm of Cramer Consulting, with offices
13 at 54 North Country Road, Miller Place.

14 We represent the applicant on this
15 particular hardship. The DiPeri family. The subject
16 parcel is almost 22,000 square feet in size. It is
17 located on William Floyd Parkway in the core
18 preservation area. The site has been in the DiPeri
19 family since 1958 at which time it was stretched from
20 William Floyd to Sally Lane on the west.

21 In 1978 it was split in half and sold and a
22 house was constructed on the Sally Lane parcel. We have
23 included, I have given a copy of the CO and the survey
24 to the Chairman, that is from the Town of Brookhaven
25 records that shows where it was split.



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1 MS. PRUSINOWSKI: What year was that?

2 MR. CRAMER: 1978. Because of the single and
3 separate search we had to go back to 1966 for the Town
4 of Brookhaven to be considered single and separate by
5 the Town of Brookhaven under their laws.

6 Since the tax parcel was split in 1978, it
7 appeared on the 1978 tax maps as a single parcel. So it
8 was -- and also if Town Zoning Board of Appeals records
9 are greater than 25 years old they dispose of them and
10 there is no way of proving this was split at that time
11 other than the CO we had on the parcel.

12 So we did go back to the Zoning Board of
13 Appeals and they did recognize this was a separate
14 parcel and it has appeared as a separate parcel since
15 the '79 tax maps. We have provided the Board with a copy
16 of that approval from the Board of Zoning Appeals.

17 As I said I provided for the Board a copy
18 of the CO and survey for that parcel to the west. So in
19 1992 when the Pine Barrens Law was enacted this was a
20 separate parcel and owned by the DiPeri family. The
21 other parcel was at one time owned by the DiPeri family
22 but sold in '78 to, I don't have the CO, it went to
23 Mauro Enterprises; they were the ones that bought it and
24 ultimately sold it off.

25 The site is located in a relatively

1 extensively developed portion of the core area; obvious
2 from the aerial photos I provided the Board with. I
3 colored up a tax map that I presented to the Board that
4 shows the development patterns in the area.

5 There are some 43 lots on the Sally Lane
6 cul-de-sac in between the William Floyd and county
7 property is to south and east and William Floyd --
8 county property to the south and west and William Floyd
9 is to the east. There are some 43 lots in that area; of
10 these 43 lots only four are undeveloped. That is not
11 counting the subject site.

12 Of the four that are undeveloped three are
13 owned by Suffolk County. Only one other one has
14 potential to be developed; we don't know whether that is
15 a single and separate lot or whether its merged with
16 another lot; however, it did appear on the 1978 tax maps
17 as a separate lot.

18 That really leaves, besides the subject
19 parcel only one other that has potential to be
20 developed. We have no idea why these lots were not
21 included in the development, non development list.

22 Since the Pine Barrens Law was enacted
23 there was a section in the law that addresses such
24 properties for road furnished lots. I am sure the Board
25 is familiar with it, but it's states that "in the core



1 preservation area construction of a single family home
2 and customary accessory uses thereon from parcels
3 identified in the comprehensive land use plan adopted by
4 the Commission in June of 1995 and as amended in
5 February 21, 2001."

6 What this refers to is a list of parcels.
7 There are some 54 parcels within the Town of Brookhaven
8 in the land use plan that essentially are in the core
9 but are not considered development within the core if
10 construction takes place on them.

11 The subject site, as I said, was not on the
12 list. However two parcels in the immediate area along
13 Sally Lane cul-de-sac are. I highlighted those on the
14 aerial photo as well as the development map to show
15 where they are. Those have both subsequently been
16 developed and did not require a hardship because they
17 were on the list.

18 Again, it's unclear why this particular
19 parcel or the other one was not included in it because
20 they are exactly -- in fact one -- they are essentially
21 the same size and in fact the one also fronts on William
22 Floyd and is almost exactly the same size as the subject
23 property. It's just north of the subject piece. Why some
24 were included and why some weren't? All I can assume is
25 it was an oversight at the time and never pulled in when



1 it should have been.

2 It is also important to note that in the
3 land use plan it includes an additional bullet in the
4 write up, and is identified as 9.1.1 small x, small i
5 which states that "in the core area construction of a
6 single family home and customary accessory uses thereon
7 on a vacant privately owned parcel located in or taking
8 access from an existing approved road contained within a
9 substantial development area as defined by and subject
10 to criteria and procedures establish by the Central Pine
11 Barrens Joint Planning and Policy Commission upon
12 enactment of this amendment."

13 While this language was within the land use
14 plan it was never made part of the amendment to the
15 State Law. But it is clear what the intent was at that
16 time to allow the Commission the ability to establish
17 criteria and to look at individual parcels that may not
18 have been included in the list itself. This certainly is
19 one of them that was an oversight in it.

20 So, again, that was not made part of the
21 law at that time of the amendment. So that is why we are
22 here for a hardship at this time.

23 If you look at the land area within this
24 isolated development area approximately 98.8 percent of
25 the land area is in established land use, either



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1 developed or owned by Suffolk County or some other way
2 preserved. There's two small parcels that are not
3 developed which is the subject parcel and the other one
4 immediately to the north I spoke about before. Both of
5 these face front lawn existing improved roadways; both
6 of them do not require the extension of utilities,
7 utilities are there, both electric and water.

8 We have prepared a layout and submitted
9 that as part of the application proposal. The standards
10 -- while the standards do not relate to core area
11 development, we use those standards in the development
12 of the proposed application and we do not require any
13 variances from the standards. We're able to meet all the
14 standards for development on this parcel if this was in
15 the compatible growth area.

16 I have provided the Board with a copy. We
17 discussed that in detail in our application. I will not
18 go over each standard and discuss it unless the
19 Commission would like me to do so which I kind of doubt.

20 We did prepare an economic evaluation that
21 was included in the application. We have revised that. I
22 provided a copy of that to the Commission in the back of
23 the package that I handed out to you. Essentially what
24 we did is take a look at similar size parcels within the
25 area that are for sale.



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1 Just a little over a mile away there were
2 two parcels that are for sale for approximately \$165,000
3 each. Considering the size of the parcel, it's
4 estimated, considering the size of the subject parcel,
5 this particular lot would yield approximately 0.43 pine
6 barren credits. We also took a look at the sale of the
7 pine barren credits from the Pine Barrens website and
8 estimated over the past two years the average sale is a
9 little bit over \$80,000 per credit which would result
10 in, for the credits that would be generated on this
11 particular parcel, it would be worth approximately a
12 little over \$35,000.

13 The difference between the sale price of
14 vacant land in the areas as well as Pine Barrens credits
15 would be almost \$130,000 difference. In our opinion
16 this is significant loss to the applicant for this
17 particular situation. We would consider this an
18 economic hardship.

19 This is a little bit over 78 percent of the
20 value that could have been obtained if this property was
21 -- if this property is sold and developed as a parcel
22 and not forced to result to Pine Barrens credits.

23 CHAIRMAN SCULLY: Do you know how much the
24 applicant paid for the parcel?

25 MR. CRAMER: This is in the DiPeri family.



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1 It goes back to '58 when they originally owned both
2 parcels. I have no idea.

3 CHAIRMAN SCULLY: Probably next to nothing.

4 MR. CRAMER: But again, what we have to look
5 at is the price nowadays. I should note that we did have
6 a recent land appraisal done for another piece of
7 property in the area not related to this case and they
8 found the other appraisal found comparable sales in the
9 area significantly higher than the 165 that we did
10 there.

11 That appraisal, the sale prices resulted in
12 \$273,000, to \$285,000 for an individual lot. This would
13 mean a loss of significantly greater of between 237,
14 almost \$238,000 to almost \$250,000.

15 CHAIRMAN SCULLY: The reason I asked the
16 purchase price is you keep using the term "loss" as if
17 the applicant had invested a certain amount of money and
18 is going to suffer a loss as to the amount invested.

19 MR. CRAMER: This is all part of the estate
20 and it is a loss to the estate because this is something
21 they owned since 1958 and this particular parcel since
22 1978, this is all part of the family's estate on it. If
23 the estate could sell it, this is the loss. The
24 difference between the credit and what could be sold
25 would really be the loss.



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1 CHAIRMAN SCULLY: Thank you.

2 MR. CRAMER: Any other questions that I can
3 answer?

4 CHAIRMAN SCULLY: Any questions?

5 MS. PRUSINOWSKI: Could you clarify the
6 orange tone parcels on the pages in your hand out?

7 MR. CRAMER: The second page?

8 MS. PRUSINOWSKI: No, next to the last page.
9 They are noted as developed, non development parcels.
10 That looks like.

11 CHAIRMAN SCULLY: You want to mark it?

12 MR. MILAZZO: We don't have it. If you want
13 to mark it, give up one.

14 CHAIRMAN SCULLY: Let's make the record one
15 we can rely on. This is a hand out by Mr. Cramer.

16 MR. CRAMER: We'll mark this as applicant's
17 we'll use numbers because we did letters. We call it
18 one, it is a four page document.

19 MR. MILAZZO: Is this all you handed up?

20 MS. PRUSINOWSKI: Five page document.

21 MR. MILAZZO: Five page document.

22 MR. CRAMER: We also have this.

23 MR. MILAZZO: We also have a letter dated
24 February 25, 2010 from First American Title Insurance, a
25 copy of a single and separate search. And the last

1 document is Applicant's 3 which will be the May 7th
2 Zoning Board of Appeals determination which states,
3 among other things, subject to obtaining a Pine Barrens
4 hardship. Applicant 4 will be the CO for the property
5 to the west.

6 MR. CRAMER: And the survey.

7 MR. MILAZZO: And the survey of the property
8 to the west. That's it.

9 (Applicant Exhibit Nos. 1-4 were so marked.
10 For identification.)

11 MR. CRAMER: I am sorry your question on the
12 --

13 MS. PRUSINOWSKI: The way you designated
14 these two parcels as developed, non-developed parcels
15 are those on the core exemption list?

16 MR. CRAMER: On the list and they have been
17 developed. They say, that shows on the area photo in
18 between on the first page and they are on the list and
19 have been developed without needing a hardship. As you
20 can see the one that faces William Floyd Parkway, that
21 is, you know, a matter of just a few feet difference in
22 size from the subject parcel.

23 CHAIRMAN SCULLY: Do you know how many of
24 those lots were developed since the act was passed?

25 MR. CRAMER: Within this area, the two lots



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1 within the area both have been developed.

2 MS. PRUSINOWSKI: I am asking you because I
3 do recall another request in this area, in this
4 vicinity, it may have been further north but it was a
5 parcel that did not show up the road front list because
6 it had an old foundation on it so it showed up in the
7 records as having been developed residential, already
8 developed essentially in the eyes of someone. I don't
9 know whether any such thing may have occurred. There was
10 never a house or any sort of foundation on this parcel?

11 MR. CRAMER: This one, no. I don't know if
12 it might have been, there's one vacant parcel shown in
13 white; I don't know whether it could have been that one.

14 MS. PRUSINOWSKI: No, it was on a corner as
15 I recall.

16 MR. CRAMER: No. Again, there is a lot of
17 development through this whole area that is within the
18 core.

19 If you look at the location map, you can
20 see there is extensive amount of development. We were
21 only looking at the Sally Lane portion of this section
22 of the core. We figured that that was a good dividing
23 line because Sally Lane is a little unique enclave into
24 itself.

25 MS. PRUSINOWSKI: Yes. So access to this

1 parcel would be a driveway connection directly to
2 William Floyd Parkway?

3 MR. CRAMER: Yes, it's one of those that was
4 not taken -- when William Floyd was constructed they
5 didn't take access along with it, so it still maintains
6 access.

7 In the Staff comments they recognized or
8 they stated that certain permits are needed. We have,
9 those are types of permits that are expected to be
10 granted. We didn't make any application to the New York
11 State DEC for the Scenic and Recreational Rivers,
12 because they can't make a decision until this Board
13 makes a decision anyway; but their past practice has
14 been to approve applications like this even though it
15 may be in a scenic area in single and separate lots and
16 single and separate that existed at the time they
17 typically issue it.

18 We also meet all the standards from the
19 scenic and recreational rivers, because the river is
20 substantially removed, it is quite a bit further to the
21 south. We meet their standards even though we are in
22 the corridor.

23 DPW we would get permits from them and the
24 Health Department, it is a single and separate lot that
25 existed back in 1981 and we were able to meet their

1 standards. The only one that is some question about was
2 the Town of Brookhaven and that is one of the reasons I
3 went to the Board of Zoning Appeals.

4 CHAIRMAN SCULLY: Any other questions for
5 Mr. Cramer?

6 MR. PAVASIC: Thank you, Mr. Chairman. A
7 couple of other questions that need to be addressed
8 pertaining to Article 57, and it has to do with
9 demonstrating the hardship.

10 Does the inability of your client to have
11 beneficial use, result from a unique circumstance
12 particular to the subject property that do not apply to
13 or effect other property in the immediate vicinity?

14 MR. CRAMER: As I said there is only one
15 other parcel in the immediate vicinity that this would
16 be equal to; which is the vacant parcel immediately, not
17 immediately to the north, but some 600 feet to the
18 north. That parcel is approximately the same size of the
19 subject. It is also a parcel that probably should have
20 been included on the non-development parcels since other
21 parcels have been identified that are similar to us as
22 non development and have since been developed. So it is
23 a significant hardship where we cannot, other properties
24 were excluded from this regulation and this one was not
25 for some reason or both these properties were not for



1 some reason.

2 From an economic standpoint we presented
3 that before; but considering what has transpired, what
4 has been developed and excluded ours is the same exact
5 parcels and it is our feeling the hardship should be
6 granted.

7 MR. PAVASIC: Second question. I have two
8 more questions. Does the inability for your client to
9 have a beneficial use result from unique circumstances
10 peculiar to the subject property which relate to or
11 arise out of the characteristics of the subject property
12 rather than the personal situation of the applicant?

13 MR. CRAMER: Again, the situation is because
14 of the tax lot, the lot existed at the time of the
15 enactment of the Pine Barrens ordinance.

16 For some reason it has been excluded from
17 the regulations at the time when other parcels exactly
18 like it were included as non development parcels and
19 were, in essence, grandfathered in. So the unique
20 situation is that it was an oversight at the time of the
21 preparation of the land use plan that should have
22 excluded this if other parcels similar to this was
23 excluded.

24 MR. PAVASIC: Thank you. Third and last
25 question, is the inability to a have beneficial use



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1 resulting from unique circumstances peculiar to the
2 subject property which are not the result of any action
3 or inaction by the applicant or the owner or his or her
4 predecessors entitled, including any transfer of
5 contiguous land in common ownership on or before June
6 1st 1993?

7 MR. CRAMER: As I said the property to the
8 west was split from this and sold off in 1978 well
9 before the enactment of the relations.

10 The property has been in single and
11 separate ownership with the family since that time.
12 Constance DiPeri, it was sold or given, whatever, given
13 to her later on but I still believe that was before the
14 enactment of the regulations and they had nothing do
15 with the enactment of the regulations; that was imposed
16 on them.

17 CHAIRMAN SCULLY: Any other questions for
18 the applicant? Any member of the public wish to be
19 heard? Mr. Amper?

20 Whereupon,

21 RICHARD AMPER,
22 after having been first duly sworn testified as follows:

23 MR. AMPER: Richard Amper, I am prepared to
24 venture an answer as to why this parcel was not included
25 in the exemption list. To my shock and dismay government

1 some times doesn't get it exactly right.

2 I went out and looked at every single one
3 of these parcels before they were approved by the
4 Legislature; they all met this criteria. This meets
5 that criteria. There is nothing in the standards or
6 guidelines of the plan or objectives and goals of the
7 Pine Barrens that would be under cut. This would not be
8 precedent setting.

9 I do not mean to compromise the livelihood
10 of the lawyers and consultants that do a great job
11 advising these folks but it seems unbelievable to me
12 that these folks have had to jump through this hoop to
13 get a hardship waiver that they are fully entitled to
14 and I hope you will grant it.

15 CHAIRMAN SCULLY: Thank you. Anyone else
16 wish to be heard?

17 MS. HARGRAVE: I just have a couple of other
18 things to ask the applicant. The owners consent for some
19 reason, we weren't able to find in the application, the
20 owners affidavit. Do you have that Mr. Cramer?

21 MR. CRAMER: I do, if not I can get it for
22 you. It's probably in here somewhere. I'll get that to
23 you.

24 MS. HARGRAVE: We'll need that. Do you have
25 a map that shows retained rights to access to William

1 Floyd Parkway?

2 MR. MILAZZO: The tax map shows they retain
3 access?

4 MR. CRAMER: There has never been any
5 taking, no, we don't have anything like that.

6 MR. MILAZZO: Was there a tax map filed when
7 they laid into the main road?

8 MR. CRAMER: I think this portion of William
9 Floyd Parkway was just improvement of Hills Lane at the
10 time.

11 MR. MILAZZO: All right, we'll look at that.

12 MS. HARGRAVE: The application, in your
13 application you submitted that the loss would be around
14 \$93,000?

15 MR. CRAMER: That was -- I gave a revision.
16 We have a revision on the fifth page of Exhibit 1 and
17 it's loss would be approximately \$129,901.

18 MR. MILAZZO: That's based on allocation of
19 how many credits?

20 MR. CRAMER: It's in there.

21 MR. MILAZZO: You have point 35. I'll
22 observe the plan has a provision that allows the
23 Clearing House or delegated to its staff to allocate one
24 pine barren credit for parcels like this. Using his
25 numbers, if it was one full credit, his credit value was

1 \$80,000; so it would be \$80,000 credit, using his own
2 numbers. I think that is why staff asked for another
3 application. That is Section 676 or 6766.

4 CHAIRMAN SCULLY: Are there other questions
5 for the applicant? Anyone?

6 MR. WALTER: Since we have the two
7 Godfather's of the Pine Barrens Act, Mr. Amper and Mr.
8 Weeble (ph) that had something to do with this at some
9 point in time and since I am assuming nobody has an
10 issue with this on the Board, I happen to be familiar
11 with these parcels since I drive by them all the time,
12 is there a mechanism to approve this today if the Board
13 so chose to send them on their way?

14 MR. MILAZZO: Well --

15 MR. AMPER: Not until we figure out how they
16 missed the list in the first place.

17 MR. MILAZZO: The Commission can, on the
18 basis of the record it could verbalize a resolution and
19 approve it.

20 I think that the safer procedure is to
21 close the hearing, have the applicant come back next
22 month with a prepared resolution. What I am hearing if
23 it's intent of the Commission to approve this, if there
24 is no intent or consent --

25 MR. TURNER: John indicated the value of the

1 property and it seems to be higher in terms of credit
2 allocation then provided in the materials submitted;
3 that is something that is important.

4 MR. WALTER: Judging by someone who drives
5 by that lot every single day this is not hurting nobody.
6 I don't know what the intent of the Board is, I know
7 it's my intent to vote to approve this. I won't run the
8 meeting.

9 CHAIRMAN SCULLY: Let me just focus the
10 discussion. We had inquiry from Commissioner Walter
11 whether or not the Commission might act today. Counsel
12 indicated the Commission is certainly free to act but
13 the safer course might be to close the hearing and wait
14 until the next meeting when additional information is
15 provided.

16 There was further discussion and we heard
17 from Mr. Turner, he is not sure what the Town of
18 Brookhaven's position would be on the application in any
19 event.

20 MR. CRAMER: May I point out even though we
21 used a very conservative estimate for the cost of the
22 property of 165, as I said there was comps done for
23 another application in the immediate area and comps came
24 back significantly more.

25 MR. TURNER: Do you know specifically where

1 those comps were?

2 MR. CRAMER: They were done, I don't have
3 them with me that is part of another project.

4 MR. TURNER: They are on William Floyd?

5 MR. CRAMER: In the area. It was done by an
6 appraisal company. They used an appraisal for the area.

7 CHAIRMAN SCULLY: Mr. Weeble, did you want
8 to say something?

9 MR. WEEBLE: Bob Weeble, (ph) Long Island
10 Builders Institute. I'll tell the truth.

11 CHAIRMAN SCULLY: Hasn't the Town approved
12 the application? We have evidence of a grant of the
13 subject property subject to approval of the hardship by
14 this commission.

15 MR. WALTER: I'll role the dice. I make a
16 motion that we approve this application subject to the
17 reasonable recommendations of the staff if we have any
18 that we can put on the record right now. If you have
19 anything that we need to do?

20 CHAIRMAN SCULLY: Why don't we close the
21 hearing unless further comments for the record.

22 MS. GALLAGHER: I have a question which
23 Julie raised. Did you receive a copy of the affidavit of
24 the owner's signature?

25 MR. MILAZZO: We have that copy of the

1 owner's application.

2 MS. HARGRAVE: We have a copy of this
3 owner's affidavit. It authorizes -- it doesn't authorize
4 Mr. Cramer it authorizes Richard Olivio? I have
5 correspondence.

6 MR. CRAMER: He was the previous one.

7 MS. HARGRAVE: Previously about this lot.

8 MR. WALTER: I suddenly might be conflicted.
9 Richard Olivio?

10 MR. CRAMER: He was at the hearing with the
11 applicant previously.

12 MR. WALTER: What was he --

13 MR. CRAMER: He was previously handling the
14 application.

15 MR. WALTER: Not the owner.

16 MS. HARGRAVE: Was he a family member?

17 MR. CRAMER: I don't know.

18 CHAIRMAN SCULLY: But he was authorized --

19 MR. CRAMER: He was authorized, now we're
20 authorized.

21 CHAIRMAN SCULLY: He is authorized to
22 represent the property owner but he is not here.

23 MR. WALTER: We can't move forward.

24 MR. MILAZZO: From what I have seen we do
25 not have an owners affidavit, owner's consent for Mr.

1 Cramer. I am sure he has it in the files but he hasn't
2 provided it to date.

3 MR. CRAMER: We'll dig it out.

4 MS. GALLAGHER: I think we should wait until
5 we have it.

6 CHAIRMAN SCULLY: Carry Gallagher's
7 suggestion is we wait to have it before we move forward.
8 We have two other public hearings scheduled for this
9 afternoon which will be significant and lengthy.

10 MS. HARGRAVE: I have a blank one but the
11 owner is not here.

12 CHAIRMAN SCULLY: I suggest the failure to
13 provide that document --

14 MR. CRAMER: I am sure we have it. You
15 wouldn't let us come to the hearing without it. Again, I
16 can't put my hands on it right now.

17 CHAIRMAN SCULLY: We'll close the hearing
18 and see what you can do before the meeting ends if you
19 can put your hands on it and if Supervisor Walter is
20 still here we'll take it back up again. We will close
21 the hearing, then, if everybody is ready we'll move onto
22 our next hearing.

23 MR. MILAZZO: Motion to close?

24 CHAIRMAN SCULLY: Motion to close the
25 hearing. Is there a second?

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MS. GALLAGHER: Second.

CHAIRMAN SCULLY: Hearing is closed. We will
take a recess for two minutes.

(Time noted: 3:40 p.m.)



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

I, Marie DiMarco, a Shorthand Reporter and
notary public, within and for the State of New York, do
hereby certify:

That transcript is a true record of the
proceedings set forth herein.

I further certify that I am not related to
any of the parties to this action by blood or marriage,
and that I am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this ____ day of _____, 2010.

Marie DiMarco



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