

CENTRAL PINE BARRENS JOINT
PLANNING AND POLICY COMMISSION

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

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ORDER ON CONSENT

No. CPBJPPC 2-2022

by

Holy Trinity Evangelical Lutheran Church,
Middle Island,
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 Article 57 of the New York Environmental Conservation Law (the ECL), in the Central Pine Barrens region. The Long Island Pine Barrens Protection Act (the Act) is codified in Article 57 of the ECL. The Commission adopted and 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. The Holy Trinity Evangelical Lutheran Church (HTLC or Respondent) owns approximately 3.54 acres of property held in two separate tax parcels located at 93 and 182 Yaphank-Middle Island Road, in Middle Island, Town of Brookhaven identified on the Suffolk County Tax Map as Numbers 200-456-2-4.1 (2.6 acres) and 5 (0.94 acres) (the Property).
3. The Property is in the Core Preservation Area of the Central Pine Barrens. Section 8.5.6 of Volume 2 of the Plan identifies Yaphank-Middle Island Road in the location of the Property and to the north and south as a Scenic Resource. It states in part, "Considerable historic and cultural resources are present here, and form the basis for part of the scenic nature of the area."
4. An alleged violation occurred on the Property in a manner that is not consistent with the Long Island Pine Barrens Protection Act of 1993 and the Central Pine Barrens Comprehensive Land Use Plan. Specifically, HTLC cut 12 mature significantly sized white pine trees and other natural vegetation in an area of 8,500 square feet (0.195 acres) on the Property without prior Commission approval (collectively the "Violations").
5. Aside from naturally vegetated areas, structures on the Property include an existing church building, a landmark church building circa 1860, a 19th century cemetery, a cell

tower with a fenced equipment compound, a paved parking lot and outdoor congregation area.

6. Pursuant to Section 57-0107.13(c) of the Act, the activities constituted Development activity.
7. As development, the Project requires Commission review of a Core Preservation Area Hardship Waiver pursuant to Section 57-0121.10 of the Act.
8. On September 9, the Commission became aware of activity on the Property (the Clearing). The Town of Brookhaven directed the Respondent to stop the Clearing activity. Impermissible Clearing continued a second day on September 10, that involved tree stump grinding.
9. Commission staff inspected the site on September 14 and October 6 and observed white pine tree logs piled up and wood chips spread on the Property, piles of woodchips on the edge of the Property and an area cleared and designated with a sign for use as a parking area.
10. On September 30, HTLC contacted the Commission office regarding the alleged activity. Commission staff had a telephone call with the Respondent on October 4.
11. On October 7, HTLC submitted a compelling public need Core Preservation Area hardship application to the Commission for “retroactive approval” to cut trees and expand the parking lot on the Property.
12. On October 19, the Commission authorized by duly adopted resolution the issuance of a Notice of Violation (NOV) to the Respondent alleging that the removal of the trees and the clearing violated the Act and Plan’s provisions. The NOV was issued pursuant to Environmental Conservation Law Section 136 and transmitted to the Respondent.
13. Section 57-0136.2(a) suspended the Commission obligation to review HTLC’s application.
14. On November 8, Commission staff had a conference call with the Respondent to discuss the clearing. The Respondent explained their motivation was to remove 12 trees that they allege were diseased or hazardous. HTLC alleges that it cost \$7,000 to have the trees removed and admitted that the work was performed on September 9 and continued on September 10. HTLC stated that woodchips were brought onto the Property and distributed to level the cleared area. HTLC stated that Brookhaven Town Code Enforcement issued a verbal stop work order to the Respondent.
15. To avoid the costs and uncertainties of litigation, the parties have agreed to the terms of a settlement as set forth below.

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

16. Respondents' execution and complete satisfaction of the terms of this Consent Order shall resolve the Notice of Violation issued by the Commission on October 19, 2022 for the Violation.
17. Section 57-0136.2 of the Act sets forth maximum civil penalties for a violation that occurs in the Core Preservation at not more than \$25,000 for each violation and an additional civil penalty of not more than \$1,000 for each day such violation continues.
18. The alleged violation continued for One (1) Day.
19. The Commission has determined that 8 of the 12 trees may have been considered in proximity to structures and constituted a potential hazard to HTLC structures and the use of the Property, while the removal of four (4) of the 12 trees and the clearing violated the Act and Plan's provisions. The value of the 4 white pines removed is estimated to be \$2,220/ tree for a total cost of \$8,880.
20. In consideration of the settlement of all claims arising from or related to the Violations, Respondent agrees to pay to the Commission a civil penalty in the amount of EIGHT THOUSAND EIGHT HUNDRED EIGHTY DOLLARS of which SIX THOUSAND SIX HUNDRED AND SIXTY DOLLARS is suspended pending the removal of the woodchip piles along the edge of the Property and the remaining downed trees. No restoration of the cleared area will be required and it will be allowed to remain as an unpaved overflow parking area. No paving of the parking area is allowed without the written approval of the Commission.
 - (a) The payable portion of the penalty, TWO THOUSAND TWO HUNDRED TWENTY DOLLARS (\$2,220) is to be paid in four payments of FIVE HUNDRED FIFTY FIVE DOLLARS by bank check made payable to "Central Pine Barrens Joint Planning and Policy Commission, with the first payment to be paid one month from the date of the executed consent order and the remaining payments to be received over the course of two years with the final payment to be made by two years from the date of the executed order.
 - (b) Payments to the Commission must have written on its face: CPBJPPC 2-2022.
 - (c) Payments to the Commission shall be delivered to:
Central Pine Barrens Joint Planning and Policy Commission 624 Old Riverhead Road, Westhampton Beach, New York 11978, via certified mail, overnight express delivery, or hand delivery.
21. No other site disturbance or tree cutting may occur on the Property without prior approval from the Commission or the Town of Brookhaven.

22. Since this Order settles the violation, the “retroactive” request in the form of a Core Preservation Area hardship application is moot and shall be withdrawn from consideration.
23. Respondents’ compliance with this Consent Order settles all claims arising from or relating to the alleged violations set forth in the Notice of Violation.
24. 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.
25. Respondents expressly waive its rights to bring or pursue any lawsuit, grievance, arbitration, or administrative proceeding, upon any claims it may have or has had against the Commission, its members, staff, representatives, or agents (collectively the “Commission Parties”) arising from the Violations, the Notice of Violation, or this Consent Order. Respondents irrevocably and unconditionally release and forever discharge the Commission Parties from any actions, charges, causes of action, suits, obligations, promises, agreements, damages, debts, complaints, liabilities, claims, grievances, arbitrations, costs, losses, rights, expenses or any controversies, or any combination of the same in law or equity of any nature whatsoever asserted or unasserted, known or unknown, suspected or unsuspected, which Respondents ever had or now has against the Commission Parties about the Violations, the Notice of Violation, or this Consent Order.
26. Respondents covenant not to sue, bring, or pursue any lawsuit, grievance, arbitration, or administrative proceeding, upon any claims it may have or has had against the Commission Parties in law or equity of any nature about the Violations, the Notice of Violation or this Consent Order.
27. Respondents’ failure to materially comply and in timely fashion with any provision, term, or condition of this Consent Order shall constitute a violation under the Act and shall be deemed to be a violation of both this Consent Order and the Act. Upon such failure to comply, the Commission may commence any action it deems appropriate to resolve the violation.
28. Respondents shall indemnify and hold harmless to the extent permitted by law the Commission Parties for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Consent Order by Respondents and its successors and assigns (including successors in title).
29. 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.

30. 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.
31. The Effective Date of this Order shall be the date upon which it is signed by the Commission's Executive Director or her designee.
32. 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.
33. Each of the undersigned persons represents and warrants that he or she is fully authorized to enter this Consent Order and execute this Consent Order on his or her own behalf and on behalf of the Party or Parties he or she represents. Each signatory shall defend and hold the Commission harmless against any loss caused by a signatory's misrepresentation.

Holy Trinity Evangelical Lutheran Church

By: Holy Trinity Lutheran Church

Name: Virginia D. Wusing

Title: Congregational President

Date: 1/10/2023

Acceptance by the Commission

The Commission authorizes entering this Order on Consent.

CENTRAL PINE BARRENS JOINT PLANNING AND POLICY COMMISSION

By: Judith Jacobsen
Judith Jacobsen, Executive Director

Date: 1/24/2023