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PUBLIC HEARING NOTICE
COMPATIBLE GROWTH AREA

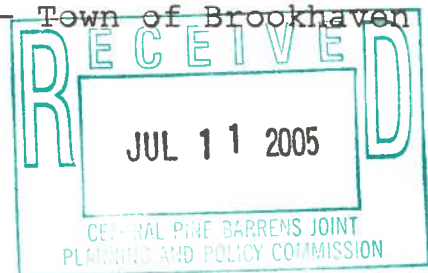
W & K FARMS
A/K/A METZ FARMS
c/o John Kennedy
Manorville, New York
-----X

Suffolk County Park
Police Headquarters
Southaven County Park
Victory Avenue
Yaphank, New York

June 15, 2005
3:00 o'clock P.M.

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

PETER SCULLY - Chairman
BRENDA PRUSINOWSKI - Town of Brookhaven
JOHN TURNER
MARTIN SHEA
JANET LONGO
RAY CORWIN
CHRISTOPHER KENT
MICHAEL DEERING
JUDY JAKOBSEN



JOHN C. MILAZZO, ESQ.
Attorney for Central Pine Barrens
Joint Planning and Policy Commission
P. O. Box 587
3525 Sunrise Highway - 2nd Floor
Great River, New York 11739

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CHAIRMAN SCULLY: I'd like to call this hearing to order and read from the Notice of Public Hearing. Pursuant to the Environmental Conservation Law, Article 57-0121(10), notice is hereby given that a public hearing will be held by the Central Pine Barrens Joint Planning and Policy Commission on June 15th, 2005 on the matter of an application for Compatible Growth Area hardship exemption. The subject of the hearing is W & K Farms, Matthew Metz, c/o John Kennedy. The location is 216 South Street, Manorville, Town of Brookhaven.

The project description:
Proposal to clear a 21.45 acre parcel above the clearing limit of 35% for property that is zoned A-2 Residential for agricultural use. The applicant is seeking relief from the clearing standard and 15% fertilizer dependent vegetation standard.

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The property has an existing residence with a sanitary system.

I'd like to get the appearances on the record, please.

CHRISTOPHER KENT, Town of Riverhead.

JOHN TURNER, Town of Brookhaven, representing Supervisor LaValle.

PETER SCULLY, representing the State of New York.

MARTIN SHEA, representing Patrick Heeney, Supervisor of the Town of Southampton.

MICHAEL DEERING, representing Suffolk County Executive Steve Levy.

JUDY JAKOBSEN, Commission staff.

JOHN MILAZZO, Commission counsel.

BRENDA PRUSINOWSKI, representing Town of Brookhaven Supervisor John J. LaValle.

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JANET LONGO, Suffolk
County.

CHAIRMAN SCULLY: I'd like
to ask Mrs. Jakobsen to read from
the exhibits.

MRS. JAKOBSEN: The
exhibits are as follows:

(Staff Exhibit Number 1
is the cover sheet.

Staff Exhibit Number 2
are miscellaneous historic aerials.

Staff Exhibit Number 3
are digital photo prints.

Staff Exhibit 4 is a
staff report prepared 6-13-05.

Staff Exhibit 5 is a
survey for Metz Farms, revised
April 8, 2005 prepared by John
Schnurr, professional land sur-
veyor.)

MRS. JAKOBSEN: Those are
the five staff Exhibits I would like
to admit into the record. The
stenographer will attach the cover

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1 sheet that lists all of staff
2 exhibits.

3
4 I am just going to go
5 right to basically what's in the
6 handout I provided to you, it
7 contains the majority of the
8 exhibits except for the survey
9 which is on the table in front of
10 you.

11 Basically the survey
12 will indicate the areas that are
13 wooded and otherwise vegetated,
14 where the location of the existing
15 residence is. Included in your
16 packet also is the site photos that
17 I took during a site visit. Basi-
18 cally there is a description of the
19 vegetation provided on the staff
20 report, and in addition there are
21 some aerials, historic aerials
22 attached to your packet that was
23 provided by Mr. Kennedy. These were
24 actually for a different project
25 site, so you have to disregard the

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1 red indicated parcel, that was for
2 a different site, but it does show
3 the nature of the area and I tried
4 to highlight in orange the general
5 area of the Metz Farm location and
6 it generally shows the position
7 since '57, the transition. I
8 apologize, I think some of the
9 aerals are out of order, and the
10 last is the 2001 aerial.
11

12 Basically also attached
13 to the packet is a historic inven-
14 tory form, the house and property
15 has historic value, it's the
16 Raynor House. We do have guidelines
17 that address when you are consid-
18 ering a development proposal and
19 they should consider protection of
20 cultural resources.

21 In addition, on the staff
22 report I presented below the ver-
23 sions went within the Town Code and
24 the Pine Barrens Plan and Article
25 57 that discuss agriculture and

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development and also clearing
limits.

Just some additional
information, currently there is
an existing home on site. The owner
of the property also owns or is
partner within the Sparrow Mining
Operations located to the east and
south of the property. Also, so
you get a general sense from the
2001 aerial, you will see there is
some agricultural areas to the north
of the property and some residential
development to the west of the pro-
perty. The clearing for agricul-
tural use would involve removing
some rather mature grown forest and
some late successional scrublings.

I'm sorry, I'm going to
skip back to the mining operation.
It needs to be clear that there is
no connection between the mining
operation and the existing parcel,
that it's a separate parcel. The

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applicant should also state why it is within this hardship, as part of the hardship why it's not viable to farm within the 35% clearing limit for natural vegetation, and as stated, they also do not meet the 15% fertilizer dependent vegetation due to the nature of the proposed agricultural use.

The SEQRA still needs to be completed, it's a Type I action, coordination should be completed as of July 8, and then we will be able to move forward at that point in terms of SEQRA. That's all I have.

CHAIRMAN SCULLY: To try to boil it down, the basic issue before the Commission then is whether or not the applicant can demonstrate an economic hardship as a result of an inability to clear the property as proposed here, is that essentially it? Are there questions of staff or shall we hear

1
2 from the applicant?

3 MR. KENT: Is the proposed
4 use agricultural?

5 MRS. JAKOBSEN: Yes.

6 MR. MILAZZO: The applicant
7 is in some relation you will have
8 to investigate, between the appli-
9 cant and the owner, but this piece
10 of property as shown, the areas
11 here are cleared, this is all
12 wooded. He wants to clear the
13 entire property and farm. It's
14 21 acres, 21.4 acres, so he wants
15 to clear the entire site. It's
16 within the compatible growth area,
17 it's A-2 Residence and within the
18 Town of Brookhaven. The Town of
19 Brookhaven determined that the
20 clearing standard applies which
21 limits clearing to 35%. He is here
22 to get a hardship exemption from
23 the 35% clearing limit so he can
24 clear more than 35%, plant it into
25 growth crops, and have an active

1 farm. The other standard that
2 applies is the plan states that
3 there can be no more than 15% of
4 the site in fertilizer dependent
5 vegetation. If he was to have an
6 active farm you would see that
7 because more than 15% of the pro-
8 perty would be in fertilizer
9 dependent vegetation, so he had two
10 things he's asking your body relief
11 from and it's fair we use the
12 criteria of Article 57 which
13 indicates he comply with Town Law
14 267B which conforms to the neigh-
15 borhood character, reasonable
16 return, not self created and won't
17 have an adverse impact, so the
18 applicant will make a presentation
19 and address those four.
20

21 MRS. PRUSINOWSKI: Do you
22 know the present clearing on site?

23 MRS. JAKOBSEN: .45 acres,
24 it's pretty much in proximity of
25 where the house is located. It's

1 pretty much what's shown on here and
2 maybe it's cleared, this is like all
3 dirt, there are some dirt paths,
4 trails that cut through the pro-
5 perty.
6

7 MRS. PRUSINOWSKI: We're
8 taking this area to be natural
9 vegetation?

10 MRS. JAKOBSEN: Yes.

11 CHAIRMAN SCULLY: The four
12 criteria in Town Law?

13 MR. MILAZZO: I will give
14 you them. Reasonable return, can-
15 not realize a reasonable return
16 provided that the - is substantial
17 as demonstrated by competent, fin-
18 ancial evidence. The alleged hard-
19 ship relating to the property is
20 unique and does not apply to a
21 substantial portion of the district
22 or neighborhood. The third is the
23 requested use, if granted, will not
24 alter the essential character of
25 the neighborhood, and the fourth is

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1 the alleged hardship has not been
2 self created, and I would just point
3 out that Article 57 refers to Town
4 Law 267B and it says you shall con-
5 sider, so you have some discretion
6 in how to apply each of those
7 elements of 267.
8

9 CHAIRMAN SCULLY: Can you
10 clarify the relationship between the
11 Town of Brookhaven Zoning Code, the
12 act and the plan so I understand a
13 little better?

14 MR. MILAZZO: The applicant
15 went to the Town of Brookhaven to
16 ask to clear the entire site to do
17 this agricultural use. Brookhaven
18 has implemented your plan into their
19 Code and determined that it would
20 require clearing more than 35% which
21 the Town cannot grant unless the
22 applicant gets approval from this
23 body.

24 CHAIRMAN SCULLY: In an
25 A-2 Residence Zone regardless of the

use?

MR. MILAZZO: Yes, he's clearing more than the clearing limit would allow in A-2.

CHAIRMAN SCULLY: Any other questions of staff? The applicant? Please state your name for the record.

JOHN KENNEDY

MR. MILAZZO: Judy, what was the deadline for this decision?

MRS. JAKOBSEN: The deadline is August 11th.

CHAIRMAN SCULLY: 2005?

MRS. JAKOBSEN: Yes.

CHAIRMAN SCULLY: What is the SEQRA status?

MRS. JAKOBSEN: We coordinated and if we have no objection as of July 8th, then we can proceed and before the next meeting.

MR. MILAZZO: It's a Type I because it's more than ten acres.

MRS. JAKOBSEN: Right,

1 disturbance of more than ten acres.

2 (At this time, JOHN
3 KENNEDY, was duly sworn by the
4 stenographer.)

5 MR. KENNEDY: I'm a little
6 outgunned here, I'm just a farmer.
7 The reason I'm here is because I
8 lost 40 acres of what I have been
9 farming for 23 years to a builder.
10 This parcel of ground which you're
11 talking about here is the only
12 piece that I could locate in the
13 area that would be available for
14 farming. The landowner has it as
15 a buffer to his business and is
16 willing to let me go ahead and go
17 in and do my thing.

18 As far as the 35% and all
19 the rest of the things you folks are
20 talking about, well, I'm just a
21 farmer and if I can't clear it all
22 it doesn't pay for me to get
23 involved. It's only 20 acres, I
24 lost 40 of 130 that I, some of
25

1
2 which my wife and I own, most of
3 which we lease. I'm just trying to
4 continue earning a living in the
5 Town of Brookhaven as a farmer.
6 It's getting a little tough.

7 CHAIRMAN SCULLY: Could you
8 tell us a little bit about what it
9 is you intend to do?

10 MR. KENNEDY: I intend to
11 clear the property and plant sweet
12 corn, pumpkins, string beans and
13 such.

14 CHAIRMAN SCULLY: You may
15 have heard counsel speaking about
16 the burden of the applicant with
17 regard to the demonstration of the
18 economic hardship. Can you talk to
19 us a little bit about to what extent
20 you know that a certain amount of
21 the acreage would make this a viable
22 farm for you economically and
23 whether or not there is a threshold
24 of which it becomes not viable?

25 MR. KENNEDY: As far as how

1 much I'm allowed to clear?

2 CHAIRMAN SCULLY: How much
3 would you need to clear to make this
4 work economically?
5

6 MR. KENNEDY: I'd like to
7 clear it all because I haven't been
8 able to replace the 40 acres I lost
9 this season to begin with, so I'm
10 coming up with not even a whole
11 parcel, it's not quite 21 acres.
12 It has a house and buildings on it
13 so I'm probably looking at, if I'm
14 allowed to clear, only 18 acres to
15 begin with. The other part is
16 leaving this wooded area it turns
17 into a habitat for deer and birds
18 and they will come in and eat the
19 crops, so the property -

20 MR. DEERING: How did you
21 lose those 40 acres?

22 MR. KENNEDY: The people I
23 rented it from sold it to a devel-
24 oper.

25 MR. DEERING: Were those

lands you were leasing?

MR. KENNEDY: Yes.

MRS. LONGO: Where is this in relation to the property you were farming?

MR. KENNEDY: About a mile west on South Street.

MRS. PRUSINOWSKI: Would your lease involve the leasing of any of the farm buildings in any way?

MR. KENNEDY: No.

MR. KENT: In terms of the crops?

MR. KENNEDY: Sweet corn, pumpkins, string beans.

MR. KENT: How fertilizer dependent are those?

MR. KENNEDY: Normal procedure on sweet corn is on planting we put 350 pounds of 12-8-16. We will come back a few weeks later when it gets 5, 6 weeks into development with 400 pounds of 30-0- -

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2 MRS. PRUSINOWSKI: Per
3 acre?

4 MR. KENNEDY: Yes, that's
5 the extent of the fertilizing we do.
6 It's under the Cornell recommenda-
7 tions and standard practices of
8 farming.

9 MR. KENT: Is this your
10 sole source of income?

11 MR. KENNEDY: Yes. My wife
12 and I have been in Manorville since
13 1982. Nine years ago we purchased
14 a 35 acre parcel which now is on
15 the corner of South Street and
16 Wading River Road which we retail
17 out of. Previous we were all
18 wholesale, and losing acreage. Now
19 I'm less wholesale, more retail.
20 We also raise bedding plants and
21 things.

22 MR. KENT: Were you leasing
23 just the 40 acre piece?

24 MR. KENNEDY: No, the 40
25 that I lost was part of a total of

130 acres.

MR. KENT: You are still farming the balance of that?

MR. KENNEDY: Yes sir.

MR. MILAZZO: Has this been a self created hardship?

MR. KENNEDY: I didn't sell the 40 acres that I lost, I'm just trying to make a living here. Is this self created? I don't understand.

MR. KENT: Do you have a long term lease on the 40 acres or was it year to year?

MR. KENNEDY: Year to year.

MR. KENT: Did you in any way suggest to the owner of the property to sell the land to the developer?

MR. KENNEDY: No, it was quite the opposite, I was trying to get them to talk to the Town and County. As the deal turned out the owner blew the deal, he didn't get

1 half the money out of the builder
2 that he could have gotten -

3 MR. KENT: Does the owner
4 of this property have any interest
5 in selling his development rights
6 or keeping it in farming forever?
7

8 MR. KENNEDY: The owner is
9 here, no, that's just an investment
10 to him.

11 MR. MILAZZO: Is the use
12 consistent with the other uses in
13 that neighborhood, if there was a
14 farm here, would that be consistent
15 with the area?

16 MR. KENNEDY: Yes sir,
17 there is farms all over South
18 Street in Manorville, it's allegedly
19 one of the targeted areas to protect
20 farmland in Brookhaven.

21 MR. MILAZZO: Is there a
22 lease interest between you and the
23 owner of this property?

24 MR. KENNEDY: Lease
25 interest?

1
2 MR. MILAZZO: Do you have
3 a lease for this property?

4 MR. KENNEDY: I will if I
5 can get it cleared, yes.

6 MR. MILAZZO: Would that be
7 a year to year or a longer term?

8 MR. KENNEDY: A longer
9 term, he's a personal friend and -

10 MR. MILAZZO: Your other
11 properties, are they in the Ag
12 district, are they Ag district
13 parcels?

14 MR. KENNEDY: I'm not
15 exactly sure, I don't believe they
16 are. Two of the parcels that I
17 lease, one is purchased as the
18 development rights have been pur-
19 chased off it, the other is in the
20 process of being purchased off it.

21 MR. MILAZZO: So they are
22 no longer developable?

23 MR. KENNEDY: Right.

24 CHAIRMAN SCULLY: Any other
25 questions of the applicant? If not,

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is there any member of the public
that would like to be heard on the
application?

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RICHARD AMPER: We would
ask the Commission to satisfy itself
on the matter of the self created
hardship based on the ownership
lease arrangement and the applicant
for the hardship, and the second
thing we would ask the Commission to
do is to consider only granting the
minimum relief necessary for the
development of the amount of acreage
he might have lost from farming
previously and the relevance of that
with respect to the request to
exceed the clearing limits to the
minimum necessary.

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CHAIRMAN SCULLY: Does
anybody else wish to be heard? If
not we will close the hearing.

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MRS. PRUSINOWSKI: Would
the owner consider, if he would
not consider the sale of development

1 rights, would he consider joining
2 the eight year development program,
3 the State program?
4

5 MR. KENNEDY: Yes, he said
6 he would.

7 (MATTHEW METZ, was duly
8 sworn.)

9 MRS. PRUSINOWSKI: Would
10 you consider signing onto the
11 State's eight year commitment pro-
12 gram?

13 MR. METZ: Yeah, I would do
14 that if it's taking tax base out of
15 Brookhaven Town.

16 MRS. PRUSINOWSKI: The
17 concern is you're going to have
18 some ability to potentially clear
19 more of the site than you would
20 otherwise, then it becomes more
21 viable building lots.

22 CHAIRMAN SCULLY: The idea
23 is could there be protection to
24 make sure it remains in agriculture
25 if the approval was granted.

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2 MR. METZ: It's a long term
3 lease -

4 MRS. PRUSINOWSKI: What is
5 the term of the lease?

6 MR. METZ: Whatever you
7 would want.

8 MRS. PRUSINOWSKI: It's not
9 what we want.

10 MR. METZ: Whatever would
11 work based on a ten year lease for
12 him to farm the land I have no pro-
13 blem, I just use it as a buffer.

14 MR. KENT: Do you have a
15 lease already prepared?

16 MR. METZ: No, the only
17 reason I don't is we don't know
18 which way we're going.

19 MR. KENT: Not that it has
20 to be signed, but you might want to
21 submit a proposed lease.

22 MR. METZ: I can have that
23 drawn up in a day.

24 MR. AMPER: Did you
25 establish when the land was

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acquired?

MR. METZ: About seven years ago and I have done nothing with it since then.

CHAIRMAN SCULLY: Any other questions?

MRS. PRUSINOWSKI: The house is currently rented or do you live there?

MR. METZ: Someone is living in the house, I haven't received rent in four years on that. They have a couple of little kids and I feel bad, so like I said, I bought it originally just for a buffer zone and they have a couple of little kids and they're not doing so well, so the rent is not -

CHAIRMAN SCULLY: Any other questions?

MRS. LONGO: If this were cleared for farmland, it's now wooded, you would or wouldn't be willing to sell the development

1 rights so that it would remain
2 farmland since that's what would be
3 created?
4

5 MR. METZ: To be honest
6 with you at this point I don't want
7 to sell the development rights
8 because who knows what they are
9 going to be worth in ten years from
10 now, and at this point it was only
11 bought to be a buffer and I mean,
12 if I sold the development rights
13 when I bought it seven years ago
14 I could probably get 30 cents on the
15 dollar today, so economically I
16 don't need the money at this point,
17 but like I said, I can sign a long
18 term lease or whatever it would
19 take because he's a personal friend
20 of mine, so he can farm, that's the
21 only reason we're here.

22 MR. SHEA: Would you be
23 willing to reclaim the land to
24 natural vegetation upon the termin-
25 ation of the farming?

1
2 MR. METZ: What do you
3 consider natural being there, trees
4 and stuff?

5 MR. SHEA: Replanting it
6 with native trees, shrubs.

7 MR. MILAZZO: They could
8 be small.

9 MR. KENNEDY: The property
10 was farmed, as the historical photos
11 show, back in the '60's. I'm trying
12 to bring it back to farming. In the
13 last 40 years it's grown up to what
14 it is. All of these concepts are a
15 little foreign to me.

16 MR. METZ: If you're talk-
17 ing about seedlings and putting them
18 down, absolutely, but I don't want
19 to go into my pocket and go to a
20 nursery and bring in trees.

21 CHAIRMAN SCULLY: Does
22 anybody else wish to be heard on
23 the application?

24 MR. MILAZZO: Is the
25 hardship, does it apply to any other

1 parcel in the neighborhood, are
2 there any other parcels being pro-
3 posed for agricultural use where
4 the clearing standards have been
5 an impediment to the proposed farm-
6 ing of those lots, does it apply
7 to anyone else trying to do the
8 same thing?
9

10 MR. KENNEDY: Not that I'm
11 aware of.

12 MR. METZ: No, they already
13 did it.

14 MR. MILAZZO: Is this
15 parcel covered by a DEC mining
16 permit?

17 MR. METZ: No, it's single
18 and separate.

19 MR. MILAZZO: Is it
20 required under the DEC, is the
21 permit you have for the adjacent
22 property, does it mention this
23 property at all?

24 MR. METZ: No, it does not.

25 MR. MILAZZO: It's comp-

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pletely separate?

MR. METZ: Yes.

MRS. JAKOBSEN: Will the house remain on the property, and the barn?

MR. METZ: Yes. The barns are a little -

CHAIRMAN SCULLY: Any further questions of the landowner or the applicant?

MR. KENT: If you didn't put it into farming under this lease, what would you do with the property?

MR. METZ: Probably right now leave it as it is or sell it to a developer if the right number came. I'm not trying to be wise, but at this point I would leave it the way it is but then as time goes on who knows.

CHAIRMAN SCULLY: Any other questions? Anybody else wish to be heard on the application? We

June 15, 2005

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will close the hearing, thank you.

(Time noted: 3:30 p.m.)

* * * *

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

I, ROSEMARY E. MORELLINO, do hereby
certify that the within transcript is a true,
accurate and complete transcript of the
proceedings which took place in the above
matter.

Rosemary E. Morellino

ROSEMARY E. MORELLINO