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CENTRAL PINE BARRENS

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JOINT PLANNING AND POLICY COMMISSION

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In the Matter of the

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Public Hearing on the

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JOSEPH BILEK

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Quogue Wildlife Refuge
Old County Road
Quogue, New York

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May 19, 1999
4:00 p.m.

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PUBLIC HEARING

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

2 ROY S. DRAGOTTA
3 Acting Chairman
4 County of Suffolk

5 RAY COWEN
6 State of New York
7 Representing the Governor's Office

8 BARBARA WIPLUSH
9 Representing Felix J. Grucci

10 VINCENT VILLELLA,
11 Riverhead Supervisor

12 DORIS ROTH, ESQ.
13 General Counsel for the Commission
14

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

16 WILLIAM SPITZ,
17 State of New York

18 JOHN MILAZZO, ESQ.

19 JUDY JAKOBSEN,
20 Staff to Commission

21 LORRAINE TREZZA

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1 MR. DRAGOTTA: I would like to call
2 the hearing to order.

3 The second hearing, the applicant is
4 Joseph Bilek.

5 First I would like to introduce
6 myself, I'm Roy Dragotta, I'm acting chairman on
7 behalf of County Executive Robert Gaffney.

8 I will ask the panel to introduce
9 themselves.

10 MR. VILLELLA: I'm Vinnie Villella,
11 Supervisor of the Town of Riverhead.

12 MS. WIPLUSH: Barbara Wiplush,
13 representing Supervisor Felix Grucci, Town of
14 Brookhaven.

15 MR. COWAN: I'm Ray Cowen representing
16 Governor Pataki.

17 MR. DRAGOTTA: I'll read the notice of
18 public hearing.

19 Pursuant to the Environmental
20 Conservation Law Article 57-0121(10), notice is
21 hereby given that three public hearings will be
22 held by the Central Pine Barrens Joint Planning and
23 Policy commission on Mary 19, 1999, on the matter
24 of the following applications for a core
25 preservation area hardship exemption. The subjects

1 of the hearing are:

2 Applicant Number II, Joseph Bilek.

3 Project Description: Construction of a
4 single family home, approximately 1200 to 1500
5 square feet in size on a .22 acre lot in an A5
6 zoning district.

7 Project Location: North of Nugent
8 Drive, east of Pinehurst Boulevard, on the south
9 side of Cedar Street, Calverton, Town of
10 Brookhaven.

11 Suffolk County Tax Map Number:
12 200-270-4-28.

13 We can commence the hearing.

14 MR. DRAGOTTA: Would the applicant
15 please come forward?

16 MS. JAKOBSEN: The decision deadline
17 for this is July 24th.

18 MR. DRAGOTTA: thank you.

19 MR. BILEK: Good evening.

20 MR. DRAGOTTA: Good evening.

21 This is an aerial, indicating that this
22 is Staff Number 1.

23 MS. JAKOBSEN: Pinehurst Boulevard
24 comes us here (indicating).

25 Nugent Drive is here (indicating). This is Cedar

1 along here. He's right on Cedar.

2 MS. ROTH: What about that report; are
3 you going to offer that?

4 MS. JAKOBSEN: I also have a staff
5 report again, issued on environmental condition.
6 It doesn't have any recommendations.

7 MR. DRAGOTTA: Are you offering that?

8 MR. MILAZZO: Do you want to hear from
9 the applicant?

10 MR. DRAGOTTA: Yes, why don't I hear
11 from the applicant.

12 MR. BILEK: As you could see I'm down
13 from Oneonta, New York. My name is Joseph Bilek.

14 Roughly about three or four years ago
15 my son who lives on Cedar Street with his family,
16 made contact with people that own the lot next door
17 from North Carolina and the woman was willing to
18 sell and called me because we were intending on
19 coming back down to the Island anyway. I'm
20 disabled. I'm retired. My wife is retired now,
21 too. We have most of our family down here. We
22 lived on the Island since 1968 and we've been
23 Upstate for about ten years. So we want to
24 relocate and I would like to put up a little small
25 ranch down there for my wife and myself.

1 There's homes on either side of us. We
2 have a paved road in front of us. In the back of
3 our property is a LILCO power line that goes
4 through. I believe that land belongs to the State
5 and that's what we would really like to do.

6 One thing else, I would ask if this
7 could be granted today, if we would know while we
8 are down here. We have to return home. We are in
9 the process of selling our home Upstate. We are
10 only going to be down here until Sunday night.

11 MR. COWEN: When did you purchase the
12 property?

13 MR. BILEK: My son purchased it about
14 three, four years ago, I believe.

15 MR. COWEN: DO you know the exact date?

16 MR. BILEK: No, I don't. I believe it
17 should be there in the papers.

18 MR. COWEN: It says here 1995. Is that
19 accurate?

20 MR. BILEK: That sounds right.

21 MR. COWEN: So your son has title to
22 the property at this point?

23 MR. BILEK: Yes.

24 MR. COWEN: And who did he purchase it
25 from?

1 MR. BILEK: It should be in there. It's
2 a woman down in South Carolina. She owned -- from
3 what I understand, she owned a tremendous amount of
4 property, in that whole area there, for a lot of
5 years.

6 MS. WIPLUSH: Your current zoning of the
7 property is A5?

8 MR. COWEN: Yes.

9 MS. WIPLUSH: You are aware that if
10 this Board approves you, you have to go to the Town
11 and get a Zoning Board of Appeals approval because
12 you don't meet the current zoning.

13 MR. BILEK: Current zoning?

14 MS. WIPLUSH: The current zoning is A5,
15 five acre zoning.

16 MR. BILEK: Yes, I'm --

17 MS. WIPLUSH: And your lot is not five
18 acres.

19 MR. BILEK: Right.

20 MS. WIPLUSH: You cannot
21 automatically -- it's a substandard lot.

22 MR. BILEK: Yes.

23 MS. WIPLUSH: So you have to get Board
24 of Appeals approval.

25 MR. BILEK: Yes, I've already spoken

1 with one of the parties in the Building Department
2 of Brookhaven already, and they have informed me
3 of that.

4 MS. WIPLUSH: Okay.

5 MR. DRAGOTTA: Any comments?

6 MR. COWEN: I think we are going to need
7 to see the actual deed to get the actual date of
8 purchase because it's an important matter for the
9 Commission. It goes to a hardship criteria that
10 says essentially you cannot have a self created
11 hardship. If you purchase the property after the
12 effective date of the act, essentially you are
13 creating a hardship on yourself by doing that.
14 So --

15 MR. BILEK: I understand from my son
16 when he purchased this property that he had no idea
17 that there wasn't even anything here involved with
18 this. He was not notified by the owner.

19 MR. COWEN: I understand that.

20 MR. BILEK: From what I understand now
21 that woman is in a convalescent home down in either
22 North or South Carolina I'm not quite sure.

23 MR. COWEN: Well, for me anyway, I'm
24 going to need to see a copy of that deed before we
25 rule on this. I have to know the date that you

1 bought it.

2 MR. BILEK: I could obtain that tonight
3 because we are staying over there with my son any
4 way. Where would I have to take it to?

5 MR. DRAGOTTA: You can send it to our
6 offices.

7 MR. BILEK: I will bring it over to her
8 tomorrow.

9 MR. WIPLUSH: It's on an existing road?
10 The parcel is located on an existing road?

11 MR. BILEK: Yes, homes on the corner of
12 the property, the right hand side of the property,
13 which would be the west side, those homes are
14 facing another road. My son is on the left hand
15 side, there's homes across the street. There's no
16 homes in back. The land goes all the way to a
17 highway.

18 MR. DRAGOTTA: Mr. Kasner, I believe
19 you wanted to make some comments on behalf of the
20 Town?

21 MR. KASNER: Yes, my name is Jeffrey
22 Kasner. I'm director of the Division of
23 Environmental Protection for the Town of
24 Brookhaven. We also conducted an environmental
25 recognizant of this particular piece of property.

1 It is an irregularly shaped piece of property with
2 a few large oaks. It has turned into an area of
3 dumping for leaves and brush and logs and stumps
4 for the community. It is one of the last
5 developable lots on that particular piece of
6 property so it would be development on either side
7 and to the rear of the property. At lease on our
8 environmental review, there's no significant
9 resources on this property and there are no
10 compelling reasons why development should be not
11 allowed on this particular piece of property.
12 Again, because it would representative to
13 in-filling in the community on Cedar Street.

14 MR. DRAGOTTA: Thank you.

15 Does anyone else have any comments to
16 make?

17 (WHEREUPON, there was no response.)

18 MR. DRAGOTTA: Do we have any more
19 questions?

20 MR. COWEN: I just want to make sure
21 that the applicant understands that we are not
22 going to make a decision today. The next time we
23 meet is June 9th.

24 MR. BILEK: All right, we will have to
25 come back down again.

1 MR. DRAGOTTA: yes. Well, you don't
2 have to be here.

3 MS. ROTH: You don't have to come.

4 MR. BILEK: All right.

5 MR. DRAGOTTA: We will keep the record
6 open until June 9th. We will close the hearing.
7 Thank you.

8 (WHEREUPON, the above-referred to
9 document, map, was marked as Staff Exhibit 1,
10 as of this date.)

11 (WHEREUPON, the above-referred to
12 document, staff report, was marked as Staff
13 Exhibit 2, as of this date.)

14 (WHEREUPON, this hearing was
15 concluded.)

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C E R T I F I C A T E

I, LORRAINE D. BERARDI, Court Reporter,
certify that the foregoing transcript of
proceedings of the Public Hearing of the Central
Pine Barrens Joint Planning and Policy Commission,
was prepared by me and is a true and accurate
record of the proceedings, to the best of my
ability.



LORRAINE D. BERARDI

Dated: June 7, 1999

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CENTRAL PINE BARRENS

JOINT PLANNING AND POLICY COMMISSION

In the Matter of the
Public Hearing on the
JOHN and RUDOLPH MIGLIORE

Quogue Wildlife Refuge
Old County Road
Quogue, New York

May 19, 1999
4:00 p.m.

PUBLIC HEARING

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

2 ROY S. DRAGOTTA
 Acting Chairman
3 County of Suffolk

4 RAY COWEN
 State of New York
5 Representing the Governor's Office

6 BARBARA WIPLUSH
 Representing Felix J. Grucci

7 VINCENT VILLELLA,
8 Riverhead Supervisor

9 DORIS ROTH, ESQ.
 General Counsel for the Commission
10

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

12 WILLIAM SPITZ,
13 State of New York

14 JOHN MILAZZO, ESQ.

15 JUDY JAKOBSEN,
 Staff to Commission

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17 LORRAINE TREZZA

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MR. DRAGOTTA: I would like to call the hearing to order.

The third hearing, the applicants are John and Rudolph Migliore.

First I would like to introduce myself, I'm Roy Dragotta, I'm acting chairman on behalf of County Executive Robert Gaffney.

I will ask the panel to introduce themselves.

MR. VILLELLA: I'm Vinnie Villella, Supervisor of the Town of Riverhead.

MS. WIPLUSH: Barbara Wiplush, representing Supervisor Felix Grucci, Town of Brookhaven.

MR. COWAN: I'm Ray Cowen representing Governor Pataki.

MR. DRAGOTTA: I'll read the notice of public hearing.

Pursuant to the Environmental Conservation Law Article 57-0121(10), notice is hereby given that three public hearings will be held by the Central Pine Barrens Joint Planning and Policy commission on Mary 19, 1999, on the matter of the following applications for a core

1 preservation area hardship exemption. The subjects
2 of the hearing are:

3 Applicant Number III - John and Rudolph
4 Migliore.

5 Project Description: Construction of a
6 single family home, detached two car garage and
7 detached horse barn on the combined parcels
8 totaling 15 acres (each tax map parcel is five
9 acres in size) in an A1 zoning district.

10 Project Location: South of Route 25,
11 on the east side of East Bartlett Road, Middle
12 Island, Town of Brookhaven.

13 Suffolk County Tax Map Numbers:
14 200-454-1-8; 200-480-3-1; 200-480-3-2.

15 We can commence the hearing.

16 We have, for the record,
17 staff 1 and 2.

18 Staff 1 is an aerial photograph
19 depicting the subject parcel.

20 Staff Number 2, is the staff report.

21 (WHEREUPON, the above-referred to
22 document, map showing topography, was marked
23 as Staff Exhibit 1, as of this date.)

24 (WHEREUPON, the above-referred to
25 document, staff report, was marked as Staff

1 Exhibit 2, as of this date.)

2 (WHEREUPON, the above-referred to

3 document, map showing vegetation, was marked

4 as Staff Exhibit 3, for identification, as of

5 this date.)

6 MR. DRAGOTTA: your name, sir?

7 MR. NICOLAZZI: My name is Dominic J.

8 Nicolazzi, representing the owners, John and

9 Rudolph Migliore.

10 I have a couple of exhibits; three

11 letters of interpretation for the three lots, each

12 allocating four credits per lot and also my

13 hardship application.

14 MS. ROTH: Did you want to submit that

15 for the record?

16 MR. NICOLAZZI: Yes, please.

17 MS. ROTH: Please mark these.

18 (WHEREUPON, the above-referred to

19 document, Pine Barren Credit Clearinghouse

20 letter of interpretation, tax map

21 200-454-1-8, dated 12/10/98, was marked as

22 Applicant's Exhibit A-1, as of this date.)

23 (WHEREUPON, the above-referred to

24 document, Pine Barren Credit Clearinghouse

25 letter of interpretation, tax map

1 200-480-3-2, dated 12/10/98, was marked as
2 Applicant's Exhibit A-2, as of this date.)

3 (WHEREUPON, the above-referred to
4 document, Pine Barren Credit Clearinghouse
5 letter of interpretation, tax map
6 200-480-3-1, dated 12/10/98, was marked as
7 Applicant's Exhibit A-3, as of this date.)

8 (WHEREUPON, the above-referred to
9 document, hardship letter dated 3/25/99, was
10 marked as Applicant's Exhibit B, as of this
11 date.)

12 MR. NICOLAZZI: And also a survey
13 showing the three lots.

14 (WHEREUPON, the above-referred to
15 document, survey, was marked as Applicant's
16 Exhibit C, as of this date.)

17 MR. NICOLAZZI: The overall project of
18 three five acre lots, 109 by 2,000, in A-1 zoning,
19 on East Bartlett Road -- but the hardship
20 application is really just on one lot, the center
21 lot, where the development will take place, and
22 conservation easements will be placed on the two
23 lots flanking the center lot and the conservation
24 easement will also be placed on the balance of that
25 five acres. So where that center lot was allocated

1 four credits, you subtract one for the single
2 family homes and would then receive three credits
3 for the balance of the five acres. But for the
4 purpose of the development, the owner is combining
5 the three lots to make one parcel 327 by 2,000 and
6 15 acres to build one home. He's doing that for
7 one reason; in A1 zoning you need 175 foot front.
8 We will have at least that by combining the three
9 lots; he'll have 327. He will exceed all the
10 zoning. He would not have to go to ZBA.

11 There is development to the north,
12 south, and west, and there is a park for the
13 development to the south and then after that
14 development is also a park further -- to the east
15 -- and then there's a development further east --
16 park rather east.

17 The owner seeks a footprint of 3,000
18 square feet for development and a detached two-car
19 garage and horse barn.

20 This property, although it is not on
21 the road front exemption list, through
22 conversations with staff, I understand it's
23 consistent with -- and in actual discussion that
24 the commission had with the staff that this
25 question was raised, and the answer was that it is

1 consistent with lots on that list.

2 That is basically the application.

3 MR. COWEN: Has the conservation
4 easement been recorded for these properties?

5 MR. NICOLAZZI: No, the application has
6 been made. They have not been recorded yet. We
7 felt -- I think staff felt that we would do it all
8 in one shot after the hardship application.

9 MR. COWEN: What is contemplated -- I
10 should ask John --

11 MR. MILAZZO: Sure.

12 MR. COWEN: What's contemplated for a
13 residual use type language that will allow the type
14 of development that Mr. Nicolazzi is describing
15 here?

16 MR. MILAZZO: That's why we didn't do
17 it yet.

18 MR. DRAGOTTA: You wanted to comment.
19 Why don't you comment now.

20 MR. MILAZZO: What Dominic is
21 talking about is the applicants have three parcels.
22 They made a letter of interpretation for all three.
23 Each one was allocated four credits and he is now
24 coming in for a hardship under the policy --
25 Commission's policy. We have title records in our

1 office and title is actually clean, and the
2 recommendation -- and we have had discussions about
3 this -- we didn't proceed any further until this
4 was resolved, and the commission would review and
5 make whatever determination you will make and then
6 we could go forward with the letter of
7 interpretation to certificate these. The reason we
8 did that is that this would probably have to go
9 back -- probably be remanded to the Clearinghouse
10 to review what the allocation should be on either
11 A) what I'm hearing today is that these parcels are
12 now being combined or B) where the allocation
13 should be adjusted for the middle parcel if they
14 are not legally combined, assuming the application
15 is approved.

16 If it's denied, the application would
17 get -- each parcel would get four credits and we
18 could quickly move to giving him a pre-approved
19 conservation easement, and if the terms were
20 acceptable to the Migliores, they could execute
21 that and return it to us.

22 We have done the majority of the work
23 on the application. We have cleaned the title.
24 It's just a matter of sending out the easement and
25 making sure they are comfortable with the terms.

1 It won't be a problem. It's just a matter of, we
2 didn't want to put the conservation easement on
3 because we didn't know what the Commission was
4 going to do or the applicant. It just locked them
5 into something. It was a decision of Dominic. We
6 talked about it and he said that's fine. That's
7 the way to do it. We don't tell them what to do,
8 we discuss it with them.

9 MR. NICOLAZZI: In essence, the
10 hardship is only the center lot and these two lots
11 are irrelevant. So what the applicant is seeking
12 is instead of four credits on the center lot, three
13 credits and a single family home, and in the past
14 the reduction would be one credit for a single
15 family home, but I think it's important to know
16 that we are combining it just for the purpose of
17 meeting the local town zoning.

18 MS. ROTH: Did you question about the
19 residual uses?

20 MR. COWEN: No, but I understand why it
21 can't be a hundred percent answered but I want to
22 explore that a little bit further because what I'm
23 trying to get at here is you have stated that your
24 application, hardship application is for the center
25 lot. Am I to understand then that a hundred

1 percent of the development that's being proposed
2 is on that center lot?

3 MR. NICOLAZZI: Correct.

4 MR. COWEN: There's zero development
5 activity on the two side lots.

6 MR. NICOLAZZI: Correct. Because it's
7 a 109 feet, he would want to put it on the center
8 of the property. He would want to have his
9 development on the center of the property because
10 there is a home right here (indicating), and
11 there's a proposed application for a home on this
12 side also. He would want that buffer.

13 MR. COWEN: So clearing for the home
14 itself, clearing for the barn, the corrals,
15 everything is on that center lot?

16 MR. NICOLAZZI: Correct.

17 MR. COWEN: You have indicated that the
18 actual area of clearing is going to be some
19 distance in. Can you give us an estimate of how
20 far off the road you are going to be?

21 MR. DRAGOTTA: If you know.

22 MR. NICOLAZZI: I can only say to the
23 north, is quite set in. It's probably set in
24 about 150 feet at least.

25 MS. ROTH: Do you know what the set back

1 requirement is in that building; is it A-5?

2 MR. NICOLAZZI: A-1.

3 MS. ROTH: Do you know what the front
4 yard set back is in A-1?

5 MR. KASNER:: No.

6 MR. COWEN: Can I ask you, what's the
7 slope of the front of that property; do you know?

8 MR. NICOLAZZI: I would say it varies.
9 It's kind of -- it's a little higher to the north,
10 comes down to the south. I would say at the
11 highest point there's about a six foot differential
12 to the road.

13 Does the topo have numbers on it?

14 MR. MILAZZO: Off the record

15 (Discussion held off the record.)

16 MR. COWEN: There's a ten foot contour
17 shown on Staff 1?

18 You think it's ten feet?

19 MS. WIPLUSH: Yes.

20 MR. NICOLAZZI: Ten foot from the
21 highest to the lowest? That sounds about right. I
22 thought it was six feet from the highest to the
23 road.

24 MS. JAKOBSEN: Each line.

25 MR. COWEN: This would indicate that at

1 the very front of the property there's a 30 foot
2 elevation difference between the road --

3 MS. WIPLUSH: There's a lot of
4 environmental considerations in the area. There's
5 a lot of drainage problems there. We have had
6 numerous resident complaints.

7 MR. DRAGOTTA: Why don't we get all the
8 evidence on the record and then we could ask
9 questions?

10 MS. WIPLUSH: Okay.

11 MR. DRAGOTTA: We are doing it a little
12 backwards here.

13 Mr. Nicolazzi, do you have anything you
14 want to offer?

15 Stay where you are.

16 Mr. Kasner, I understand that you would
17 like to comment?

18 MR. KASNER: Yes.

19 We have reviewed this parcel and we
20 believe that each one individually and cumulatively
21 represents some very significant environmentally
22 sensitive land in this particular community. We
23 note that this property is located within the
24 general vicinity of fresh water wetlands,
25 identified B-3, that the property is deeply sloped

1 and it drains down to the west. There is as a
2 swill between the road and a few feet inland that
3 accumulates water and that is what is feeding those
4 particular wetlands and supporting those wetlands.

5 The property is dominated by natural
6 oak vegetation. It's a significantly sized parcel
7 and is adjacent to the undeveloped property owned
8 by the Suffolk County Water Authority. We note
9 that the development is proposed for the middle of
10 the three lots and that type of development will
11 cause fragmentation of this particular parcel
12 rather than treating it as a single unit.

13 Because of the steeply sloped nature of
14 this property runoff from the road driveway that
15 will have to be constructed to provide access to
16 the house from the road, will pose a problem in
17 that area runoff is a major community of
18 environmental concern which would be exacerbated by
19 another cut through a steeply sloped area.

20 It is our opinion that preservation of
21 this parcel is warranted and it is for
22 environmental reasons that the Town opposes any
23 development on either of those three lots.

24 MR. DRAGOTTA: Thank you.

25 Does anyone else have any comments they

1 wish to make?

2 (WHEREUPON, there was no response.)

3 MR. DRAGOTTA: Does the panel have any
4 questions?

5 MS. WIPLUSH: We've had some -- well,
6 as far as -- I will justify what Jeff has said. We
7 had a lot of complaints at the Town about the
8 drainage problems on East Bartlett Road. The major
9 problem, as far as drainage, the runoff -- we were
10 constantly getting complaints from the neighbors
11 about that. This would only add to that.

12 MS. ROTH: I would just point out that
13 the criteria for deciding this is listed in the
14 statute and some of these points that are raised
15 are really irrelevant to those criteria.

16 MS. WIPLUSH: For environmental impact?

17 MS. ROTH: Yes.

18 MR. DRAGOTTA: That's a Town issue.

19 MS. ROTH: That's an issue for the Town
20 to address on a Town level.

21 MS. WIPLUSH: It says does not apply or
22 affect the property in the immediate vicinity.

23 Here you have a property that's
24 environmentally sensitive, that's going to create a
25 problem in the area, and you're saying that's not

1 germane to the discussion of whether someone should
2 be granted an application to build in the Core? He
3 can get Pine Barren credits.

4 MR. DRAGOTTA: We really should just
5 listen to evidence right now; okay? During
6 deliberations we'll discuss it.

7 MR. NICOLAZZI: Wouldn't some of those
8 issues be addressed at the Town level, such as
9 drainage and steepness of driveways and things like
10 that?

11 I would also like to point out, to the
12 south, a three lot subdivision was recently
13 approved including a flag lot and wells were
14 drilled and these three lots are being marketed
15 right now with all approvals, including the Board
16 of Health approvals. They are owned by a Kurt
17 Gibbons. He has two six acre parcels and one,
18 one point two five acre parcel. He is in A-5
19 zoning and it's at the border and it becomes A-5
20 here and we are at A1 zoning and that would be
21 Section 481, blocks 1, lot 4.1, 481, block 1, lot
22 4.2, 481 block 1, lot 18. Lot 18 has been sold
23 and permits have been secured and construction is
24 to begin.

25 Lot 4.2 is a flag lot and 4.1 has road

1 frontage.

2 MR. COWEN: Are they in the Core?

3 MR. NICOLAZZI: They are in the Core
4 too -- excuse me, I don't know if they are in the
5 Core actually. I just know they are directly south
6 of this property

7 MR. COWEN: Do you know, John?

8 MR. MILAZZO: To the best of my
9 recollection, they are in the Core, in A-1 zone.
10 They were just recently issued letters of
11 interpretation; A-1 zoning.

12 MR. COWEN: Are they on the road front
13 list?

14 MR. MILAZZO: No.

15 MR. COWEN: Were they in front of this
16 commission for some action?

17 MR. MILAZZO: The answer is they were
18 not before the commission for a hardship approval.
19 There was a letter dated some time in 1995, '96 to
20 Phil Sanderman from Donna Plunkett, indicating
21 that they were non-development because they were
22 lots that were approved and met current zoning area
23 requirements. I could provide the actual date of
24 that. That's an estimate on 1995-96. We just
25 recently letters or interpretation.

1 MR. NICOLAZZI: I would just like the
2 record to reflect that maybe those lots that I just
3 referred to are now A-1 but they were upzoned to
4 A-5 and maybe they were grandfathered in as A-1.

5 MS. WIPLUSH: When did the applicant
6 purchase the property?

7 MR. NICOLAZZI: In 1983.

8 MS. WIPLUSH: Has he been issued any
9 credits?

10 MR. NICOLAZZI: He's been allocated 12
11 credits.

12 He's happy to put a conservation
13 easement on the balance of the property and seek
14 eleven credits. He felt it was a minimum use
15 for a 15 acre parcel, one single family home as the
16 barn and the garage are now considered -- I guess
17 considered development, but not -- do not require a
18 reduction in credit.

19 MR. MILAZZO: If I could add one other
20 thing on that 481. I think the non-development
21 letters refer to two of the parcels. I think the
22 tax map numbers are 4.1, 481, 4.1, 481, 4.2. I can
23 see the letters but I can't remember the exact
24 ones. I think it was two of the three lots were
25 non-development. I would have to check to refresh

1 my recollection.

2 MR. COWEN: Let's produce that. I would
3 like to see that in the record here.

4 When did your client acquire these
5 properties?

6 MR. NICOLAZZI: 1983.

7 MR. COWEN: And they were acquired as
8 single lots or subdivision?

9 MR. NICOLAZZI: Well, he took them
10 in -- one in John Migliore, one in Rudolph Migliore
11 and one in his mom's name. She passed away and so
12 now two of them, and one in one of the brother's
13 name, and the other --

14 MS. ROTH: Are they on a filed
15 subdivision map, these lots, or just described
16 land; do you know?

17 MR. MILAZZO: It's my recollection
18 that they are described property, but again we have
19 the title search, we can verify that.

20 MR. NICOLAZZI: The tax map shows them
21 this way.

22 MS. ROTH: Better yet if the adjoining
23 lots are non-development, because if they were part
24 of a previously approved subdivision --

25 MR. MILAZZO: This wasn't the same

1 owners. This was a separate piece.

2 MS. ROTH: Not a lot on either side?

3 MR. MILAZZO: No.

4 The parcel -- it's kind of hard to see.

5 And again, this is what my
6 understanding of the numbers are. These are the
7 three parcels, one, two and three, and then the
8 Gibbons piece is one and two here, and this is a
9 third subdivision.

10 MS. ROTH: And these were found to be
11 part of the subdivision with previous approval.

12 MR. MILAZZO: Yes.

13 MS. ROTH: But it didn't extend all the
14 way here?

15 MR. MILAZZO: No, this was probably one
16 -- I'm not sure -- this is the application -- the
17 letter was for these two parcels, and I'm not quite
18 sure if this one was part of that letter to Phil
19 Sanderman from Donna.

20 MS. ROTH: But is it possible that these
21 lots are part of the same filed subdivision map?
22 Is that possible or not?

23 MR. MILAZZO: I don't know.

24 This was a separate subdivision here.
25 That was only these parcels. This was a separate

1 map.

2 MS. ROTH: Okay. And that is what is
3 described in the record as the property now owned
4 by the Suffolk County Water Authority. So I'm not
5 sure if there was -- if the applicant ran a title
6 completely back, would he find common ownership at
7 one time? I don't know.

8 Could you search for a filed
9 subdivision map that these three lots might be part
10 of or not?

11 MR. MILAZZO: I'm sure we can call the
12 Town and ask --

13 MR. NICOLAZZI: You want to know if
14 they are on an old filed map?

15 MS. ROTH: Yes.

16 MR. NICOLAZZI: I went to --

17 MR. MILAZZO: The deed indicates
18 described property is my recollection. I think
19 it's -- do you have a copy of the deed with you?

20 MR. NICOLAZZI: I do not, but I went
21 to planning and they told me that these are not
22 part of the subdivision.

23 Can I also point out on the record that
24 this parcel is being marketed for 120,000. This is
25 130,000, this is \$65,000, and that these homes are

1 substantial homes in this subdivision.

2 MR. MILAZZO: This is owned by the
3 Suffolk County Water Authority.

4 MR. NICOLAZZI: The DaRosa, Gibbons
5 lots are 120, 130 and \$65,000 respectively. And I
6 understand that they are in contract and one has
7 closed.

8 MR. COWEN: So, Dominic, have you looked
9 into the non-development provision of 57?

10 MR. NICOLAZZI: Yes, I have.

11 MR. COWEN: Or 107.13 (ix)?

12 MR. NICOLAZZI: I have and this project
13 satisfies the requirements of the Pine Barren
14 Statute 57-0121(10) of the Conservation Law;
15 Extraordinary Hardship. If the provisions of the
16 act are literally enforced the applicant/specific
17 property involved would result in an extraordinary
18 hardship, as distinguished from a mere
19 inconvenience. The subject property does not have
20 any beneficial use if used for its present use or
21 developed as authorized by the provisions of the
22 article. The project is consistent with and would
23 not adversely affect the neighbors, neighboring
24 properties and contiguous properties. This is not
25 an application created by the specific situation of

1 the applicant but rather the characteristics of the
2 subject property. Furthermore, this application
3 does not stem from action or inaction of the
4 applicant or owner of title or transfer of same on
5 or before (sic) June 1, (sic) as the property was
6 obtained in the early '80s.

7 The granting of this hardship and
8 ultimate permit will not be materially detrimental
9 or injurious to other property or improvements in
10 the area, or to contiguous property owners (sic).
11 This property will not increase the danger of fire;
12 it will actually decrease it as there will be a
13 homeowner on the property (sic). Because in its
14 non-usage, there is the existence of children
15 camping and creating bonfires in the rear of the
16 property and riding motorcycles on the property.

17 This request is the minimal possible
18 relief the applicant would request. This is a
19 fifteen acre parcel zoned A-1. A yield map under
20 A-1 zoning would show twelve lots conservatively.
21 We are not requesting twelve lots, not eleven, or
22 ten; we are requesting one building lot, one
23 single family home. And items 3,4, and 5, per
24 Donna Plunkett of the hardship application, are
25 non-applicable.

1 MR. COWEN: My question though had to
2 do with the statute. I'm glad you did that because
3 that is very relevant, but the section I was
4 wanting to know if you looked at was 57-0107.13
5 (ix), which has to do with the same citation that
6 Mr. Malazzo just indicated to us -- he referenced
7 Gibbons and the other parcel were exempted.

8 I just wondered if you reviewed that on
9 behalf of your client.

10 Let's go off the record for one second.

11 (Discussion held off the record.)

12 MR. NICOLAZZI: I do not believe subset
13 nine would benefit my client in that I don't think
14 it's part of a subdivision. I think it's described
15 land as per Town of Brookhaven Planning Department.

16 MR. COWEN: So you have researched
17 that?

18 MR. NICOLAZZI: I have, yes. That
19 jogged my memory and I did meet with them and we
20 looked it up and there were no records of
21 subdivision.

22 MR. COWEN: Have there been any
23 discussions with engineers regarding your site
24 development plans and specifically how you would
25 gain access to this property which would be off, I

1 presume, this road --

2 MR. NICOLAZZI: Yes, East Bartlett, and
3 I'm sure includes some type of F drive because of
4 the difference in elevation up to the residence.

5 But I would also like to say that we
6 would, of course, cooperate with the Town of
7 Brookhaven on drainage, on driveways, wetlands and
8 whatever other requirements, DEC, environmental
9 concerns that could possibly be located in my path,
10 but we only ask at this time we be permitted to
11 have the approval of the commission.

12 MR. COWEN: Now I need to ask another
13 question that relates back to my first question
14 which has to do with the residual uses that if this
15 were approved, that would be negotiated for this
16 particular site, because it's now obvious that it
17 will at least be a long driveway on the front part
18 of the center parcel back to the residence area.
19 And the negotiations for residual use would have to
20 include the ability to cross that part of the
21 parcel and to obviously clear trees for a paved
22 driveway or some sort of driveway. But absent that
23 particular part of the use, is it -- I assume you
24 have done this before where we have granted credits
25 -- no we have not granted credits --

1 MR. DRAGOTTA: I'm sorry, ask your
2 question.

3 MS. WIPLUSH: We have granted credits
4 to a large acreage and while the owner retains the
5 ability to retain the one unit, on that acreage,
6 have we done that before?

7 MR. DRAGOTTA: No.

8 MR. COWEN: So would you anticipate
9 that if we do this, this time, that the one credit
10 that the owner is holding back for the one
11 development opportunity, would encompass the acres?

12 MR. MILAZZO: This is actually
13 something you have wrestled with in the past. The
14 decision -- if I could analogize to you the
15 improved parcels have been -- you put the easement
16 on the entire parcel and then the easement is
17 tailored to our continued use of an existing
18 structure. So what would happen here is, if the
19 plan allows you to reduce the allocation, or the
20 plan requires that the allocation is reduced by one
21 credit for every 15 structures, and proportional
22 decrease in an allocation is that based on the
23 first rate approval that is granted to the parcel.

24 Don't quote me, but that's the
25 effective language of the plan.

1 So you could either A) say the
2 allocation has been reduced by one, B) send it back
3 to the Clearinghouse for directions to reduce the
4 allocation by whatever number you get is
5 appropriate and then C) you could say the
6 Conservation Easement will offer the entire parcel.
7 He'll have to have some sort of survey. He'll have
8 to have some sort of review, through the Town. So
9 we could either incorporate whatever the Town
10 requirements are, additional c and r's are more
11 effective then, in addition to the commission
12 easement, or we could just put their standard on it
13 as you leave the house and you can't -- the
14 easement -- we would probably do three easements
15 because it's one here and one here and one here.
16 It's actually with three different owners and this
17 middle easement would be the one we used for
18 pre-approved houses. If that's not enough, I could
19 get you a copy of that and we can do what we did
20 with Warner; you can do this, this and this, but
21 you can't duck farm or you can't do something else.

22 MR. DRAGOTTA: Okay.

23 MR. MILAZZO: I'm not sure -- I don't
24 know if that answers your question but we have an
25 easement that we use for improved property and this

1 would be improved property and the clearing, how
2 much is to be developed is really for the
3 commission to determine and then you would come
4 back to us and we would say "Okay, now it's
5 approved. Here you go."

6 MS. WIPLUSH: It's a question relating
7 to a reduction and not getting credit -- getting
8 less credit than the subject parcel with the house
9 being built? Is that what your representing?

10 MR. MILAZZO: No, I'm not representing
11 anything. I'm reading what the plan tells us. On
12 the front it tells us on page 88, six sections
13 6.3.3.4 "Partially improved parcels shall receive a
14 decreased allocation based upon the extent of
15 improvement." This is not that.

16 "Furthermore, there shall be a
17 proportional decrease in allocation based upon the
18 receipt of all discretionary permits for
19 improvement of a parcel." I would suggest that
20 this would fall into that.

21 I will repeat it.

22 "Furthermore, there shall be a
23 proportional decrease in allocation based upon the
24 receipt of all discretionary permits for
25 improvement of a parcel."

1 And the next sentence can give the
2 Clearinghouse and the Commission some guidelines:
3 "The Pine Barrens Credit allocation for a parcel of
4 land shall be reduced by one Pine Barrens Credit
5 for each existing single family unit on the parcel
6 or equivalent as such equivalent is described in
7 the document entitled Standards for Approval of
8 Plan and Construction for Sewage Disposal Systems
9 for other than Single Family residences, approved
10 by the Suffolk County Department of Health
11 Services, Division of Environmental Quality, on
12 June 15, 1982, revised March 5, 1984..." blah,
13 blah, blah.

14 What that -- Oh, I'm sorry.

15 MR. DRAGOTTA: I think we're going too
16 far. I think we're getting into debate and
17 deliberation. Let's stick to the application and
18 once we finish, any questions that we may have
19 regarding the application itself, then we can make
20 our next determination; okay?

21 MR. SPITZ: I would like to ask a
22 question that might simplify things. We keep
23 talking about credits and I believe that's
24 confusing. However, there is representations in
25 your official application that you mailed to us

1 regarding credits and so we have to talk about them
2 unless, of course, you were to modify or change in
3 some way the application you brought before us,
4 hardship.

5 My thinking is that what you are really
6 seeking is a hardship exemption to construct a
7 single family residence on what will be a merged
8 lot, a lot comprised of three lots. I think that
9 in one sentence or two, depending on how it came
10 out, is what you're here for today. All of the
11 other issues, including your representation in
12 your application as to what you're planning to do
13 by way of applying for credits, are moot in the
14 absence of first perfecting if, in fact, that can
15 be done, your application for this single family
16 residence on what will be one lot then of the
17 merger of three, and I would suggest that perhaps
18 you consider simplifying or modifying or explaining
19 the application in simple terms and that might very
20 well help this commission in its deliberations on
21 the strict question of a hardship exemption for a
22 single family residence.

23 MR. NICOLAZZI: The applicant is
24 seeking a hardship exemption on lot 200-480, block
25 3, lot one for the purpose of building one single

1 family home, a detached garage and horse barn.

2 MS. ROTH: So are you amending your
3 application to withdraw the reference to the other
4 two lots?

5 MR. NICOLAZZI: Yes, I am.

6 MS. ROTH: And you are now making an
7 application for one lot?

8 MR. NICOLAZZI: That's correct.

9 That was only included for reference
10 purposes so that the Commission would have a feel
11 for the overall project.

12 MR. SPITZ: I will ask you again: Your
13 application now is just for the center lot or is it
14 for a single family residence on what would be one
15 lot comprised of the three?

16 MR. NICOLAZZI: Can we go off the
17 record.

18 (Discussion held off the record.)

19 MR. COWEN: We just had an off the
20 record discussion concerning the issue of road
21 frontage and the applicant has indicated that he is
22 going to remain with his amended application and
23 the application that is before us is, in fact, for
24 the center lot only. It does not include any
25 reference to the two lots on either side of the

1 center lot.

2 MS. ROTH: That's lot 1, tax lot 1.

3 MR. COWEN: Tax lot 1 is the center

4 lot.

5 MR. NICOLAZZI: Yes, tax lot 1.

6 MR. COWEN: So we are striking any

7 reference to credit allocations that are contained

8 in the written application, any reference to the

9 other lots that are contained in the written

10 application.

11 MR. DRAGOTTA: Counsel, do you have

12 anything else to offer?

13 MR. NICOLAZZI: That's it, thank you

14 very much.

15 MR. DRAGOTTA: Anyone else have any

16 comments they wish to make?

17 MR. KASNER: I would like to make two

18 comments; the first is that the construction of the

19 driveway to access the residence, will have an

20 adverse impact on the community with respect to

21 drainage given the fact that the slope on this

22 property is very steep, runoff containment is

23 likely to be a problem, and so there will be, we

24 believe, some adverse impact at least with respect

25 to -- the second issue is with respect to having

1 development on the building of the three lots.
2 That will create some degree of habitat
3 fragmentation since these lots are represented as
4 being under single ownership. If you were to
5 reduce the level of impact, of the development, the
6 development should be shifted to the north so that
7 it is adjacent to the existing residential
8 development and not in the middle, and therefore,
9 those two additional lots will create additional
10 open space that when added to the Suffolk County
11 Water Authority will create a much larger
12 undisturbed and unbroken habitat with minimal
13 patchiness and effect.

14 MR. DRAGOTTA: Thank you.

15 MR. NICOLAZZI: May I respond?

16 As with all lot drainage -- there are
17 drainage requirements and with flat lots its easier
18 and steep lots it's more difficult, but drainage
19 plans would be drawn and engineered to contain the
20 water on that lot.

21 MR. DRAGOTTA: Does anyone have any
22 further comments?

23 MR. COWEN: One question.

24 I think this is probably in the record
25 somewhere, but could you tell me once more who

1 owned the big lot that's adjacent to the south
2 boundary of -- two properties or three properties
3 we are talking about?

4 This one here (indicating.)

5 Is that Water Authority?

6 MS. JAKOBSEN: Suffolk County Water
7 Authority.

8 MR. COWEN: So it goes all the way up
9 here (indicating)?

10 MS. JAKOBSEN: The whole area here.

11 MR. MILAZZO: The Water Authority owns
12 this parcel, this road and all of these parcels,
13 with the exception of this parcel right here
14 (indicating).

15 MR. COWEN: So the entire southern
16 boundary of the southern most three lots that were
17 subject to his application is all owned by the
18 Suffolk County Water Authority?

19 MS. JAKOBSEN: Yes.

20 MR. COWEN: And to the north is private
21 residences on the single lot.

22 MR. NICOLAZZI: That's correct.

23 If I may add something.

24 Although it would be more desirable to
25 the applicant to have the development in the middle

1 of the lots, but we would consider the development
2 to the north and favor the north side so that there
3 would be more open space contiguous to the Suffolk
4 County Water Authority.

5 MS. ROTH: That lot is not before us
6 now.

7 MR. NICOLAZZI: It's not but...

8 MR. KASNER: I should point out that if
9 pressure is being given for that lot that's going
10 to be squeezed between the existing residences and
11 the proposed residence, the real value of
12 environmental, speaking of that lot, is greatly
13 diminished because it's going to be developed
14 between two developed parcels. So one has to
15 really revisit that particularly looking at parcels
16 under current ownership.

17 MR. NICOLAZZI: We're talking about
18 development here. Aren't we talking about this
19 being the fragmentation and the other 1500 feet
20 going back being left intact, 1500 by 327, and this
21 would be considered the area of development which
22 we are sacrificing one valuable Pine Barrens
23 credit on and I think it's --

24 MR. DRAGOTTA: I'm going to keep this
25 hearing open until June 9th.

1 MS. ROTH: So you are going to continue
2 the hearing on the 9th, June 9th?

3 MR. DRAGOTTA: Continuing the hearing
4 on June 9th.

5 MR. ROTH: Three o'clock, whatever it
6 is?

7 MR. DRAGOTTA: 3 o'clock.

8 Counsel, just in case you change your
9 mind, we are continuing this hearing until
10 June 9th.

11 MR. NICOLAZZI: Okay.

12 MS. ROTH: At 3 o'clock.

13 MR. DRAGOTTA: at 3 o'clock.

14 MR. MILAZZO: I will provide the
15 letter from staff on --

16 MR. COWEN: Just one more suggestion on
17 the record.

18 We have gone back and forth, Mr.
19 Nicolazzi, on the description of what is in front
20 of the commission and I guess I would urge you in
21 the intervening three weeks to be very sure, at the
22 next meeting, when this hearing is reconvened, that
23 you have a definitive statement as to what is
24 before this Commission with your application.

25 Consider everything that was said

1 today.

2 MR. NICOLAZZI: Right, right.

3 (WHEREUPON, this hearing was
4 concluded.)

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C E R T I F I C A T E

I, LORRAINE D. BERARDI, Court Reporter,
certify that the foregoing transcript of
proceedings of the Public Hearing of the Central
Pine Barrens Joint Planning and Policy Commission,
was prepared by me and is a true and accurate
record of the proceedings, to the best of my
ability.



LORRAINE D. BERARDI

Dated: June 7, 1999