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CENTRAL PINE BARRENS

JOINT PLANNING AND POLICY COMMISSION

- - - - - :  
:  
In the Matter of the Application of :  
:  
JOHN AND RUDOLPH MIGLIORE :  
:  
:  
for a core hardship exemption to build:  
a single-family house, detached two- :  
car garage and detached horse barn on :  
one of three adjoining 5 acre parcels.:  
:  
- - - - - :

CONTINUATION OF HEARING in the above-captioned  
matter, held on the 9th day of June, 1999 at 4:00 P.M.,  
at the Brookhaven Town Offices, Building 4, 3233 Route  
112, Medford, New York, pursuant to Notice of Hearing,  
adjournment thereof, and before Judi Gallop, a Notary  
Public of the State of New York.

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

ROBERT J. GAFFNEY, Chairman  
Suffolk County Executive  
BY: GEORGE PROIOS AND ROY DRAGOTTA

FELIX J. GRUCCI, JR., Vice Chairman  
Supervisor, Town of Brookhaven  
BY: BARBARA WIPLUSH

VINCENT CANNUSCIO, Member  
Supervisor, Town of Southampton  
BY: MARTY SHEA

VINCENT VILLELLA, Member  
Supervisor, Town of Riverhead

RAY E. COWEN, P.E., Member  
DEC Regional Director  
Representing George Pataki, Governor

DONNA PLUNKETT, Staff to Commission

DORIS E. ROTH, ESQ.  
Attorney for Commission

WILLIAM H. SPITZ, Chief  
Water Supply Office, NYSDEC

MARK H. RIZZO, Environmental Analyst

DOMINICK NICOLAZZI, ESQ., Attorney for Applicants

RUDOLPH AND JOHN MIGLIORI, Applicants

WALTER OLSEN, Civil Property Rights Associates

oOo

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[THE HEARING WAS CALLED TO ORDER BY THE  
CHAIRMAN, GEORGE PROIOS, AT 4:00 P.M.]

MR. PROIOS: I'd like to call this hearing to  
order. This is a continuation of a public  
hearing that was held previously on May 19,  
1999 in the matter of John and Rudolph  
Migliore.

For the record, my name is George  
Proios. I'm the Acting Chairman of the  
Commission, and I think we need to again  
reintroduce ourselves in case there are  
different members from the last hearing.

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

MR. PROIOS: Barbara Wiplush left the room.  
She is representing the Town of Brookhaven.

MR. DRAGOTTA: Roy Dragotta, representing the  
Town Attorney.

MR. SHEA Marty Shea, representing the  
Supervisor, Vincent Cannuscio, Town of  
Southampton.

MR. COWEN: Ray Cowen, representing Governor  
Pataki.

MR. PROIOS: Is the applicant or a

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1 representative here?

2 MR. NICOLAZZI: Dominick Nicolazzi.

3 MR. PROIOS: Based on our last meeting, there  
4 were several issues that came up. I wasn't  
5 at that hearing. There was, at the very  
6 end, a question that said when you would  
7 reconvene today that you would have a  
8 definitive statement for the Commission in  
9 terms of the application and what parcel,  
10 which lots, an accurate description of  
11 where they were being located.

12 MR. NICOLAZZI: At this time, the only thing I  
13 would like to add to the application is  
14 that I would like to reamend it to state  
15 the original way the application was  
16 written up, that was the hardship  
17 application, is overall three lots rather  
18 than just the center lot. We would like to  
19 consider the hardship application of the  
20 three lots comprising the hundred seven by  
21 two thousand times three.

22 MR. SPITZ: Bill Spitz, New York State DEC.

23 The application is to build a  
24 single-family dwelling on the three acre  
25 parcel.

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1 MR. NICOLAZZI: Correct.

2 MS. WIPLUSH: Where on the three?

3 MR. NICOLAZZI: On the three parcels comprising

4 fifteen acres.

5 MS. WIPLUSH: Where would the house be

6 situated?

7 MR. NICOLAZZI: The house can be situated with

8 the direction of the Town of Brookhaven

9 Building and Planning Department. We have

10 three hundred twenty-seven, the frontage in

11 A-1 Zoning, which is a hundred seventy foot

12 frontage required and we will be happy to

13 work with the local Town Building and

14 Planning Department as to where they would

15 like us to place the house.

16 MR. SPITZ: For the record, I tried to

17 clarify it and I made it worse. One

18 single-family dwelling on the fifteen acre

19 parcel.

20 MR. NICOLAZZI: One hundred percent correct, sir.

21 MR. VILLELLA: Good land preservation.

22 MR. PROIOS: Are there any other questions?

23 The Commission is finished?

24 Any members of the public wish to

25 address us on this matter?

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1 MR. AMPER: Richard Amper, Executive  
2 Director, Long Island Pine Barrens Society;  
3 that's 429 Manorville, 11549.  
4 Has the County expressed  
5 unwillingness to purchase this property?  
6 MR. PROIOS: No.  
7 MR. AMPER: Has the State expressed  
8 unwillingness to purchase the property?  
9 MR. COWEN: I don't believe we have been  
10 approached.  
11 MR. AMPER: Is there an application for Pine  
12 Barrens' credits for this credit?  
13 MS. WIPLUSH: Yes, there is.  
14 MR. SPITZ: There is an application for an  
15 Interpretation if, in fact, there is one.  
16 MR. AMPER: Development credits have not been  
17 denied this applicant?  
18 MR. RIZZO: But an interpretation was issued.  
19 MR. AMPER: What is the hardship for? The  
20 purpose of the Pine Barrens Act is to  
21 preserve the core. A hardship exists only  
22 when there is no other mechanism available  
23 to compensate the owner for the land.  
24 I don't want to get into this  
25 situation. We have looked at these little

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1 guys in between houses and so forth.

2 Let me understand this. We will  
3 put a house on this fifteen acres and one  
4 in this ten acres and one on twenty-five  
5 acres and that is okay? That is not the  
6 way we read the law. It's when you can't  
7 compensate the owner by any other mechanism  
8 and we're prepared to compensate him by any  
9 mechanism. The hardship must be denied.  
10 We have bent over backwards in hundreds of  
11 parcels. This is not one that we can bend.

12 MR. PRIOR:

Thank you.

13 Any other members of the public  
14 wish to address the Commission?

15 Further questions?

16 MS. WIPLUSH:

Yes. The Town of Brookhaven  
17 would like to submit for the record its  
18 recommendation that the hardship  
19 application be denied based on failure to  
20 meet the criteria as set forth in the  
21 statute. We would like this to be made  
22 part of the record.

23 MR. NICOLAZZI:

Can I also say we need to put  
24 John's paper in as an exhibit -- whatever  
25 we're up to? That was the question about

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1 the Gibbons/DeRosa parcel to the south.

2 MS. WIPLUSH: Can we just have this first?

3 MS. ROTH: Let's take one at a time. Let's  
4 finish with this one.

5 MS. WIPLUSH; This is the recommendation of the  
6 Town of Brookhaven, Department of Planning,  
7 Environment and Development, and I'm just  
8 going to read it, a portion of it, that it  
9 did an analysis of the parcels and it  
10 stated that the property has been  
11 undisturbed by development or other uses.

12 "The entire property has  
13 significant ecological value and supports a  
14 diversity of flora and fauna. Development  
15 of even one of the parcels will cause  
16 habitat fragmentation and displace  
17 wildlife, thereby reducing the ecological  
18 value of the two other parcels, as well as  
19 the adjoining natural areas."

20 The other parcel that was before  
21 you had solidified this to be one parcel;  
22 the other application.

23 "Development will alter drainage  
24 patterns that may adversely impact the  
25 freshwater wetlands in the area. Because

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1 of its high ecological value and  
2 environmental sensitivity, the highest and  
3 best use of the property is natural and  
4 undeveloped."

5 That department made a  
6 recommendation that the hardship  
7 application be denied and the full report  
8 is set forth to be contained in the record.

9 [WHEREUPON TOWN OF BROOKHAVEN REPORT WAS  
10 MARKED TOWN OF BROOKHAVEN EXHIBIT 1 IN  
11 EVIDENCE.]

12 MR. NICOLAZZI: This seems to be the reoccurring  
13 theme and the reoccurring problem which  
14 faces the Commission. There is something  
15 that is before the Commission to be  
16 approved at the Pine Barrens' level. These  
17 are all issues that would be addressed at  
18 the Town level. We are asking approval and  
19 for the hardship application. If we meet  
20 that hardship application, the hardship  
21 criteria, we would ask to then move on.

22 For example, the application that  
23 Donna brought up, that this gentleman wants  
24 to rebuild on a foundation, well, we don't  
25 know if he's going to meet the parking of

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1 the Town of Brookhaven and we don't know if  
2 it's allowed in the current zoning,  
3 etcetera, etcetera.

4 MR. PROIOS:

Starting at Page 2, it goes  
5 through the provisions of ECL 5-0121.  
6 Whether or not the project is in  
7 conformance with the hardship criteria --

8 MS. WIPLUSH;

[INTERPOSING] Each aspect of  
9 that part of the statute was addressed by  
10 the Town Department of Planning,  
11 Environment & Development. Section 57-  
12 0121(10)(a) talks about the specific  
13 criteria in which the hardship application  
14 is to be determined by including whether  
15 the unique circumstances, whether there is  
16 any beneficial use for its present use, or  
17 the inability to have any use results from  
18 the unique circumstances peculiar to the  
19 subject parcel, which do not apply to or  
20 affect any other property in the immediate  
21 vicinity.

22 It was the analysis of that  
23 Department that there are no unique  
24 circumstances with respect to that parcel  
25 or its status, and then it went on further

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1 to discuss that criteria.

2 The next criteria relate to, or  
3 arise from the characteristics of the  
4 subject property rather than the personal  
5 situation of the applicant.

6 Again, that Department discussed  
7 that criteria in detail, and the third  
8 criteria, as far as the result of any  
9 action or inaction by the applicant.

10 That Department went further to  
11 discuss the other part, 57-0121, Section  
12 (10), Subsection (c), that requires that  
13 there are the following additional  
14 standards to be met in granting a hardship  
15 application, and that is whether granting  
16 the application will be materially  
17 detrimental or injurious to the other  
18 properties or improvements in the area in  
19 which the subject property is located.

20 Additionally, whether waiver will  
21 be consistent or inconsistent with the  
22 purposes, objectives or general spirit and  
23 intent of this Article.

24 It was that Department's finding  
25 that granting the application would be

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1 inconsistent with the objective and general  
2 spirit of the Article.

3 [DISCUSSION OFF THE RECORD]

4 MS. WIPLUSH: The rest of the report speaks for  
5 itself.

6 MR. PROIOS: You have a response?

7 MR. NICOLAZZI: Yeah, well, I think what I'm  
8 having a tough time understanding if, for  
9 example, a lot were on the road-front  
10 exemption list and there were environmental  
11 issues on that lot, or drainage issues or a  
12 need by the County to purchase this lot,  
13 how would that then -- would that lot then  
14 be taken off the list? It would not come  
15 to this forum?

16 MS. WIPLUSH: It's irrelevant.

17 MR. NICOLAZZI: It don't think it's irrelevant in  
18 the light that you may be visiting the lots  
19 that may be added. We are not on the road-  
20 front exemption list, but we may be in  
21 three weeks or a year.

22 MS. WIPLUSH: I don't think that this parcel  
23 would be added to the road-front parcel  
24 exemption, given what the report has been  
25 from the Department of Environment and

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1 Planning. I think it's highly unlikely it  
2 would be added to that parcel.

3 I can't speak for the Department,  
4 but it doesn't appear that way.

5 MR. NICOLAZZI: What I also would like to do is  
6 ask that the letter supplied by John  
7 Migliore, although this is not a  
8 subdivision and it is described land, it  
9 meets all current zoning. There is  
10 development around it. It's on a road  
11 frontage and the DeRosas just to the south,  
12 Gibbons will be developing on there, have a  
13 right to develop their land.

14 I'd like to add as whatever  
15 exhibit you're up to, a letter by David  
16 Blackburn describing the zoning of that Lot  
17 A-1, which is the zoning of our lot, and  
18 the letter to Mr. Sanderman, written by  
19 Ms. Donna Plunkett. Donna did explain to  
20 me that that is the lot for the  
21 subdivision.

22 [WHEREUPON LETTERS DATED APRIL 23, 1999 AND  
23 APRIL 28, 1995 WERE MARKED APPLICANTS'  
24 EXHIBIT D IN EVIDENCE.]

25 MR. NICOLAZZI: Furthermore, just to reiterate,

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1 this is a fifteen acre parcel zoned A-1,  
2 and we requesting a hardship to build one  
3 single-family home, which is the least  
4 demanding use of the property.

5 MS. WIPLUSH:

I would just like to respond to  
6 your statement regarding the letter that  
7 you submitted into the record, regarding  
8 the other subdivision. That was a letter  
9 of determination that that parcel was  
10 grandfathered because they had their  
11 preliminary approvals.

12 It was determined to be  
13 nondevelopment pursuant to ECL 57-0107,  
14 Subsection (13), Subsection (ix). What  
15 this says is you have certain approvals for  
16 a date, I believe it's June, '93, you were  
17 grandfathered, and this way you were  
18 determined to be nondevelopment.

19 This is not the case with this  
20 application.

21 MR. NICOLAZZI:

I completely understand that  
22 point.

23 MS. WIPLUSH:

I wanted to bring that up.

24 MR. NICOLAZZI:

I understand that. The point I'm  
25 making, that maybe there should be a

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1 section for described lots as well as lots  
2 in a subdivision that meet the zoning  
3 exception.

4 MS. WIPLUSH: Well, this parcel was excluded.  
5 This parcel is in the core. This parcel has  
6 been determined by the Town Planning  
7 Division to be environmentally sensitive  
8 and it's the statement of the Town's  
9 Department of Planning and Environmental  
10 that it's their recommendation that this  
11 application not be approved.

12 MR. PROIOS: Mr. Olsen.

13 MR. OLSEN: Walter Olsen of the Civil  
14 Property Rights Associates.

15 I would just like to make a brief  
16 comment on this. I see a pattern that has  
17 developed over time with many of these  
18 parcels. It appears that the process being  
19 used is to put an applicant in this  
20 situation where he's held onto this  
21 property for a number of years since the  
22 inception of the Article 57, and not make  
23 any attempt to purchase the property.

24 The County, up to this point,  
25 apparently has not approached the property

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1 owner, even though now we have a report  
2 from the Brookhaven Department that exudes  
3 how great this is as preservation and  
4 everything else and what a candidate it is,  
5 and yet somebody has chosen to just leave  
6 this property owner hanging for this period  
7 of time, and made no attempt to purchase  
8 the property until they're backed into the  
9 corner by an application such as this.

10 That is something I've complained  
11 about repeatedly since this act has become  
12 law, and as you just heard from the Pine  
13 Barrens Society, they would oppose any  
14 development of this property.

15 I would suggest that we're at a  
16 point where some serious negotiations need  
17 to be undertaken to alleviate this property  
18 owner's problem and offer him fair market  
19 value for the property. I emphasize fair  
20 market value. I think it's long past due  
21 and I find it very disturbing that there is  
22 not just this applicant, but there are many  
23 others out there who the State and the  
24 County and the Towns have chosen to just  
25 leave hanging, let them continue to pay

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1 taxes until they finally take their last  
2 few dollars and hire counsel or whatever to  
3 try to do whatever they can to remedy their  
4 situation, and I think that's wrong to have  
5 let it go to this point.

6 And I would urge you, through  
7 whatever mechanism there is, to act in a  
8 hasty manner to purchase this outright, if  
9 that is your intention for preservation,  
10 unless the intention isn't for preservation  
11 but simply to prevent the property owner  
12 from using this property.

13 Thank you.

14 MR. PROIOS:

Let me state for the record that  
15 many of your statements are totally  
16 inaccurate. Every property owner has been  
17 notified numerous times under many  
18 different resolutions, and direct mailed  
19 through our property and real estate. It's  
20 their choice whether they want to enter  
21 into negotiations with the County or not.

22 To make the process as easy as  
23 possible, and both the County and State  
24 have bent over backwards to do that, we  
25 have passed resolutions where it doesn't

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1 require an individual legislator to  
2 introduce an individual parcel to go before  
3 our Real Estate Department before we enter  
4 into negotiations.

5 We had generic ones produced last  
6 year that said we would go to all small  
7 properties up to five acres, and basically  
8 every parcel over five acres, every  
9 property in the core can be purchased as  
10 long as they enter into negotiations with  
11 the Real Estate Department.

12 All they have to do is respond to  
13 the letters that went out individually, or  
14 call the Real Estate Department. As far as  
15 I know, the County is not turning down  
16 anyone that wishes to have their property  
17 purchased.

18 Secondly, no one at the clearing  
19 house has been turned out. We have  
20 established this order. There is either  
21 going to be acquisition, transfer of  
22 rights, or where the other options do not  
23 prevail, the person is eligible to go  
24 through the hardship. If that is  
25 challenged in court, it would be turned

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1 down, as it has been in previous court  
2 cases. I think that was the issue that has  
3 been raised by some of the other comments.

4 Since those avenues have not been  
5 taken by the applicant, there is a question  
6 as to why there is the need to go for a  
7 hardship. There has been no acquisition  
8 and no TDR.

9 MR. OLSEN:

I would like to make a point. I  
10 think you missed the key point that I made.  
11 The key statement that I made was fair  
12 market value. I know the values that have  
13 been offered to date to property owners for  
14 their property, and they do not represent  
15 fair market value, and that is why many of  
16 these people have not pursued purchase  
17 through the County or anyone else because  
18 it simply doesn't make economic sense to do  
19 so.

20 I reiterate what I said earlier,  
21 and offer, if you had something that was  
22 worth a hundred thousand dollars, and  
23 somebody offered you five thousand dollars,  
24 it would not be worth your while to even  
25 enter into discussions with somebody about

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1                   that matter.

2                   And that is exactly where we are  
3 here. We are not even close, as far as the  
4 offer that the County is making. They do  
5 not represent anything that comes close to  
6 fair market value that has been represented  
7 in recent sales in the area, so that is why  
8 these people have not participated in the  
9 program.

10                  I reiterate what I said earlier.  
11 That is what I said. These offers, these  
12 negotiations have to start to come closer  
13 to where a person gets a value out of the  
14 property that it's really worth. It's that  
15 simple.

16 MR. NICOLAZZI:

                  That's true. In the Town of  
17 Brookhaven, the dollar value that the  
18 County would offer, and I use the Town of  
19 Brookhaven because it has the highest Pine  
20 Barrens' per credit value, the value that  
21 it would be offered by the County per acre  
22 does not come close to the Pine Barrens'  
23 credit. That is why we said fine, we will  
24 work with eleven of the twelve credits and  
25 build one home so we have the best of both

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1 worlds rather than try to get five, six,  
2 seven thousand dollars an acre from the  
3 County, even if it were eleven thousand  
4 dollars, which is the highest I ever heard  
5 the County is going.

6 The applicant is being very  
7 conservative, going for eleven Pine  
8 Barrens' credits and building one single-  
9 family home. We said we will shift it all  
10 the way over to the north so the  
11 development is close to one another rather  
12 than have it in the middle of the property.

13 We will be happy to do that. We  
14 will amend the application to include the  
15 hardship of the whole property.

16 Mr. Migliore, John, is a  
17 professional landscape designer and  
18 landscaper. He is happy to consider things  
19 like gravel driveways to control runoff.  
20 He works with trees and bushes and plants  
21 every day of his life and he's very excited  
22 about working this property. He wants to  
23 work within the Pine Barrens' rules and  
24 regulations, Town of Brookhaven Rules and  
25 Regulations, and build a home for himself

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1 on a very special parcel, and it would be a  
2 hardship to him if he could not develop.

3 It's a unique piece. It's an  
4 opportunity for him, as a landscaper, to  
5 live on this fifteen acre parcel.

6 MR. PROIOS: Anyone else have anything?

7 MR. NICOLAZZI: If the applicant would like to  
8 add anything.

9 JOHN MIGLIORE: I'd like to show you pictures of  
10 the property and I'd like to show you  
11 pictures of the work that I do. [HANDING]

12 I specifically picked the piece  
13 of property out fifteen years ago. This is  
14 where I wanted to live. It was very  
15 simple. I liked the road, I liked the  
16 street, I liked the development.

17 In addition to that, I work with  
18 property, I work with wood. This is what I  
19 do on an everyday basis. I want to live  
20 where I want to live. That is why I went  
21 broke buying property. That is why I  
22 specifically picked it out. And to be very  
23 blunt about it, the first day I went there  
24 by the golf course, and I said, "This is  
25 home. I like this street."

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1 Now, I put all the money into it.  
2 I acquired three five-acre parcels  
3 individually to do something. When I  
4 bought the property, it was A-1 Zoning, so  
5 one acre, so I think I'm a little bit above  
6 the budget.

7 Why I didn't build sooner? Very  
8 simple. I had no money.

9 Then came the moratorium where I  
10 couldn't build anything. We went to the  
11 Pine Barrens. I brought my brother. I'm  
12 also with the services of Dominick  
13 Nicolazzi, to help me out on this. I want  
14 to live here. I'm not going to hurt  
15 anybody or anything. I lived my whole life  
16 planting trees and I'll work with you on  
17 the environment.

18 Having one house on fifteen acres  
19 is not that bad. It's not a crime. I'm  
20 not doing anything disastrous, but I'm  
21 supposed to be able to live where I want to  
22 live, too especially when I paid for the  
23 property.

24 I have been paying on one acre,  
25 A-1, on fifteen acres for fifteen years

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1 now, so nobody denied the money that we  
2 paid in taxes. If anything, we got an  
3 increase. So, what is so terrible about  
4 what we want to do?

5 MR. SHEA: Excuse me. You should direct your  
6 comments to the Commission rather than  
7 Commission staff.

8 JOHN MIGLIORE: I'm sorry, this is my first time  
9 here and I'm a little bit flabbergasted on  
10 what happened today, to be honest with you.  
11 I'm in awe. How can I not have a house on  
12 the property I want?

13 May I show you what else I do?  
14 Please look at these, gentlemen. [HANDING]

15 These are residential properties.  
16 We work with woods all the time. I do  
17 everything I can to preserve trees. I  
18 don't want to go down as the guy that is  
19 trying to hurt anybody or anything.

20 MR. PROIOS: I think that what is not clear  
21 here, we are dealing with a law that was  
22 passed by the State Legislature, whose  
23 purpose was to protect as much vacant land  
24 within the fifty-two thousand area core as  
25 possible.

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1                   We recognize there is some  
2                   development in the core area with some  
3                   individual people who are living in the  
4                   communities. Some of these are exempt.  
5                   There are other areas where there is spot  
6                   development and individual small lots were  
7                   left vacant because part of an overall  
8                   planned subdivision never came into  
9                   fruition and some of these were granted  
10                  exemptions or granted a hardship because  
11                  they were part of in-filling.

12                 This is for fire management. If  
13                 you have small lots individually where  
14                 there are homes surrounding, we're not  
15                 going to have fires in areas of development  
16                 of half acre plots, as you would on fifteen  
17                 acres.

18                 It's not fair to say that it  
19                 would never burn. Once a house goes into  
20                 that area, it makes it difficult to do fire  
21                 management, and one in fifteen acres,  
22                 again, may not be significant, but if the  
23                 neighbor has fifteen acres and then another  
24                 neighbor has fifteen acres, and he put up a  
25                 house, then little by little he chips away

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1 at the core.

2 The legislation was to acquire as  
3 much of the undeveloped land in aggregate  
4 as possible. So we had these various  
5 mechanisms to try to compensate homeowners.  
6 I don't know if you requested or the County  
7 has made you an offer?

8 JOHN MIGLIORE:

9 Here is the thing. There is a  
10 house across the street, houses down the  
11 block, houses all over the place there, so  
12 I didn't buy in the middle of the woods to  
13 be the king of the forest. I bought to  
14 build a house. I want to live in a house.  
15 It's my right.

16 Now, we have delays but at the  
17 same time, there is a house next to me,  
18 right next to the property. They're  
19 allowed to live there. I just want to have  
20 one house. Right across the street, there  
21 is all houses there. It's not undeveloped  
22 land. If it was in the middle of, say,  
23 three acres down the road or three miles  
24 away where it's all land and the County  
25 needs that land, okay, fine. But I'm not  
hearing any offer of fair market value.

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1 We're not talking forty thousand an acre,  
2 even on the credits, and thank God for  
3 Mr. Nicolazzi. He's helping me in a big  
4 way.

5 It's still not allowing me  
6 another issue, replacement value. I want  
7 this house, I want it here. I picked it  
8 out and it's that simple.

9 MR. PROIOS: Thank you very much.

10 Does anybody have any questions?

11 RUDOLPH MIGLIORE: Rudolph Migliore. I'm an  
12 attorney. I practice in Commack; 353  
13 Veterans Highway, Commack.

14 I've been listening very well to  
15 the comments back and forth here about the  
16 road frontage issue. By my own admission,  
17 it was done arbitrarily and in many cases,  
18 unreasonably.

19 Constitutional Law is very clear  
20 about the standards on government action.  
21 Arbitrary, unreasonable, capricious, is  
22 unconstitutional. Your own records speak  
23 of your arbitrary actions and so to now  
24 come in and say, "Well, wait a minute, this  
25 is environmentally sensitive," if I have

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1           you in court, you will go by the standard  
2           that is set when the exemption maps were  
3           drawn, not by the standards you set on June  
4           9, 1999. That standard was unreasonable  
5           and arbitrary.

6                     If you want to say we now have a  
7           reason, where is your standard? Do you  
8           have legislation that says such and such  
9           and such habitat must be preserved? Do you  
10          have such and such flora in your  
11          legislation? You have nothing. You are  
12          continuing to act arbitrarily on this.

13                    I have discussed this matter at  
14          length with Mr. Nicolazzi. We are quite  
15          convinced that we qualify for the road  
16          exemption and it's only an arbitrary act  
17          that has denied it to him. You're acting  
18          arbitrarily. It's beyond the  
19          constitutional scope of government powers  
20          here and you cannot remedy it after the  
21          fact.

22                    I want you to consider that very  
23          strongly. Otherwise, you will be pressed  
24          to discuss it with a judge.

25          MR. PROIOS:

Members of the Commission have

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1 any questions?

2 MR. COWEN: I think I should respond to the  
3 statements.

4 First of all, nobody has decided  
5 on the application as yet. Please don't  
6 stand there and threaten on the record. I  
7 don't think that is productive for your  
8 client or anyone else present.

9 MS. ROTH: I think that the applicant should  
10 have an opportunity, or anyone else on the  
11 Commission, to respond to the written  
12 comment, to the recommendation that was  
13 submitted from the Town of Brookhaven.

14 I suggest that you keep the  
15 record open. You can close the hearing,  
16 but keep the record open with time for the  
17 applicant to respond to the writing, or  
18 anyone else on the Commission.

19 I think the decision deadline is  
20 July 22nd.

21 MR. NICOLAZZI: With the permission of my client,  
22 could we leave this open to July 27th?

23 MS. PLUNKETT: You can leave it open to June  
24 30th. The decision deadline is July 22nd.

25 MR. PROIOS: I will close the hearing. I will

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1 leave the comment period open so that you  
2 can reply to what the Town of Brookhaven  
3 has submitted today.

4 MR. NICOLAZZI: Will this be on for June 30th?

5 MS. PLUNKETT: It will be up for discussion. It  
6 will be on the agenda.

7 MR. NICOLAZZI: I thank the Commission. Then,  
8 with all due respect to the Commission, I  
9 would like to add that the brothers are --  
10 Rudy is looking after his brother. He did  
11 not mean any offense.

12 RUDOLPH MIGLIORE: By all means.

13 JOHN MIGLIORE: Can I say one thing? Why can't I  
14 live where I want to live? It really comes  
15 down to that. I bought the property. When  
16 I bought the property, nobody said you  
17 can't live there.

18 In addition, I have been taxed on  
19 it for fifteen years.

20 MS. PLUNKETT: The hearing is closed.

21 MR. NICOLAZZI: It is my understanding that this  
22 is to be included in as exhibits.

23 JOHN MIGLIORE: I just brought them in to show  
24 you what I do.

25 MS. WIPLUSH: Can I make a statement?

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MS. ROTH;

The hearing is closed.

[WHEREUPON THIS HEARING WAS ADJOURNED AT  
4:30 P.M.]

oOo

TOWN OF BROOKHAVEN EXHIBITS MARKED IN EVIDENCE

Exhibit 1: Town of Brookhaven Report Page 9

APPLICANTS' EXHIBITS MARKED IN EVIDENCE

Exhibit D: 4/23/99 and 4/28/95 letters Page 13

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CERTIFICATION

STATE OF NEW YORK)  
 )  
COUNTY OF SUFFOLK)

I, JUDI GALLOP, a Notary Public in and for  
the State of New York, do hereby certify:

THAT this is a true and accurate record of  
the Hearing held before the Central Pine Barrens  
Joint Planning and Policy Commission, in the matter  
of JOHN AND RUDOLPH MIGLIORE, held on the 9th day  
day of June, 1999, as reported by me and transcribed  
under my direction.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 25th day of June, 1999.

Judi Gallop  
JUDI GALLOP

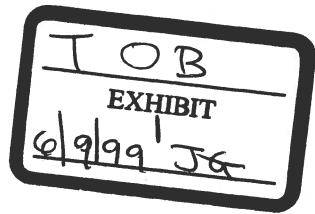
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Town of Brookhaven  
Department of Planning, Environment & Development  
3233 Rte 112  
Medford, New York 11763

**JUSTIFICATIONS TO SUPPORT THE DENIAL OF HARDSHIP  
APPLICATION OF JOHN and RUDOLPH MIGLIORE**

**APPLICATION**

Request of John and Rudolph Migliore for a core hardship exemption to build a single family house, detached two car garage and detached horse barn on one of three adjoining 5 acre parcels.

**PROPERTY CHARACTERISTICS**

**Location:** South of Route 25, on the east side of East Bartlett Road, Middle Island, Town of Brookhaven.

**Suffolk County Tax Map numbers:**

200-454-1-8  
200-480-3-1  
200-480-3-2

**Description of the subject property:**

**Size:** The subject property is comprised of 3 adjoining parcels each of which is 5 acres in size for a total of 15 acres.

**Pine Barrens status:** The property is located in the Core Preservation Area. The applicant has received a letter interpretation indicating that the each of the parcels would be granted 4 Pine Barrens Credits for a total of 12 Pine Barrens Credits for the property. The property is not included in the Town of Brookhaven's list of roadfront parcels to be exempted from the provisions of the Long Island Pine Barrens Act and the Comprehensive Land Use Plan.

**Zoning:** A-1

**Topography:** Along East Bartlett Road, the parcel has slopes ranging from 20 to 35 percent and the property drains toward East Bartlett Road. Overall, the property

can be characterized as having a ridge and swale topography.

**Soils:** Carver and Plymouth sands (CPE), 15 to 35 percent slopes.

**Vegetation:** The property has not been undisturbed by development or other uses and is adjacent to undeveloped property owned by Suffolk County. The vegetation of the property is characterized as an Oak-Heath woodland. There are freshwater wetlands along East Bartlett Road which are part of a system of New York State designated Freshwater Wetlands (B-3); the freshwater wetlands are supported by drainage from East Bartlett Road as well as from the subject property.

**Assessment:** The entire property has significant ecological value and supports a diversity of flora and fauna. Development of even one of the parcels will cause habitat fragmentation and displace wildlife, thereby reducing the ecological value of the other two parcels as well as the adjoining natural areas. Development will alter drainage patterns that may adversely impact the freshwater wetlands in the area. Because of its high ecological value and environmental sensitivity, the highest and best use of the property is natural and undeveloped.

There is concern that development of the parcel will exacerbate flooding problems that currently occur along East Bartlett Road. Because of sub-surface geological conditions unique to the area, the standard means of containing runoff on site may not be effective. Additional information on sub-surface geology is required to assess this concern.

#### **CONFORMANCE WITH THE HARDSHIP CRITERIA**

The provisions of ECL 57-0121-(10) set forth the criteria that must be met for a hardship application to be granted. The following is an assessment of the conformance of this application with respect to these criteria:

ECL 57-0121(10) (a) states that an applicant shall be deemed to have established the existence of extraordinary hardship only if he demonstrates, based on specific facts, that the subject property has not beneficial use if used for its present use . . . and the inability to have a

beneficial use results from unique circumstance peculiar to the subject parcel which:

- (i) Do not apply to or affect other property in the immediate vicinity.

**Assessment:** There are no unique circumstances with respect to this parcel or its status. The property is in its natural and undisturbed state and is one of the few such properties in the area. The parcel immediately to the south of the subject property is undeveloped and owned by Suffolk County. Permitting development of the subject property through the granting of the hardship application has the potential be both growth inducing and precedent setting.

- (ii) Relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant.

**Assessment:** There are no unique characteristics associated with the property. It is the decision of the property owner that has created this situation as the property owner was offered 12 Pine Barrens Credits. At the current time, a Pine Barrens Credit has a value of approximately \$25,000 for a total value of \$300,000 for the entire property. Furthermore, the property, if undeveloped, still has value to the owner for the personal enjoyment of open space, wildlife habitat, and nature viewing. It is the property owner's decision to not take full advantage of the Pine Barren Credits that have been offered that has created this application for a hardship.

- (iii) Are not the result of any action or inaction by the applicant or the owner or his predecessors in title including any transfer of contiguous lands which were common ownership on or after June 1, 1993.

**Assessment:** Although the applicant purchased the subject property prior to the enactment of the Act, that does not mean an "as of right" granting of a hardship permit. Development in the Core is prohibited unless the applicant can meet the criteria specified in the Act.

ECL 57-0121 (10)(c) states that an application for a permit in the core preservation area shall be approved only

if it is determined that the following additional standards also are met:

- (i) The granting of the permit will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, increase the danger of fire, endanger public safety or result in the substantial impairment of the resources of the core preservation area;

**Assessment:** The development of the parcel has the potential to increase the flooding of East Bartlett Road which will be injurious to the surrounding property owners. The parcel contains significant natural resources as described above that the Act seeks to preserve that would be impaired or lost by the granting of the permit. Wetlands, open space, and scenic vistas that are part of the fabric of the community will be impaired to the detriment of the community and surrounding properties.

- (ii) The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of the this article;

**Assessment:** The granting of the hardship application will be inconsistent with the purposes, objectives, and general spirit and intent of this article. The purposes of this article are to protect the hydrologic and ecologic integrity of the Central Pine Barrens area and to preserve the unique natural resources of this area. Furthermore, the subject property is located within the Core Preservation Area and because of the unique values inherent to the Core, properties within the Core merit special efforts to protect environmentally sensitive lands and the aquifers beneath these lands.

The granting of the hardship will be inconsistent with the Act in that it will allow clearing of undisturbed woodlands sufficient for a single family resident, driveway, and horse barn. It would allow the development of the parcel with the result being a loss of habitat and wildlife that the Act seeks to protect and preserve. The construction of a single family residence with a sanitary system and the presence of horses associated with the horse barn will generate additional effluent that will enter the aquifer. The property has steep slopes that are as high as

35 percent which well exceed the development guidelines set forth in the Comprehensive Land Use Plan. The granting of the hardship may impair property that has already been preserved.

- (iii) The waiver is the minimum relief necessary to relieve the extraordinary hardship, which may include the granting of a residential development right to other lands in the compatible growth area that may be transferred or clustered to those lands to satisfy the compelling public need;

**Assessment:** The applicant has been offered 12 Pine Barren Credits for the three parcels which comprise the property which have an estimated total value of approximately \$300,000. Lastly, other relief is available to the applicant other than the hardship application including additional Pine Barren Credits. The Pine Barrens Credits should constitute the minimum relief necessary if there was a hardship.

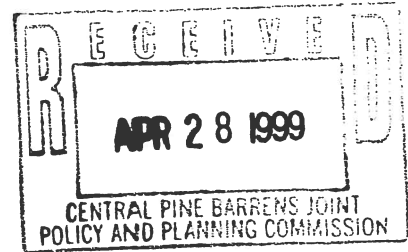
#### **CONCLUSION**

The request does not meet the criteria as set for in the Long Island Pine Barrens Act for a hardship. In addition, the applicant has been offered 12 Pine Barrens Credits which would mitigate any hardship. Finally, the property has high quality natural resources that merit preservation and development may adversely impact the surrounding community. **THEREFORE, BASED ON THE INFORMATION CONTAINED HEREIN, THIS APPLICATION FOR A HARDSHIP SHOULD BE DENIED.**

Dated: June 9, 1999



Town of  
Brookhaven  
Long Island



**Felix J. Grucci, Jr., Supervisor**

April 23, 1999

Central Pine Barrens  
Joint Planning & Policy Commission  
P.O. Box 587  
3525 Sunrise Highway, 2<sup>nd</sup>. Floor  
Great River, NY 11739-0587

Attn: Judy Jakobsen

RE: Property known as S.C.T.M.P. 0200 – 481 – 01.00 – 004.001 & 004.002

Dear Ms. Jakobsen:

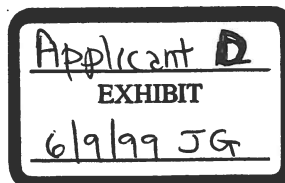
The above referenced property is currently comprised of two lots is zoned A-1 Residential.  
The zoning of these lots has been the same for both lots since 12-27-88

Should you have any questions, please do not hesitate to contact me.

Sincerely Yours,

*David Blackburn*

David Blackburn  
Planning Division



Department of Planning, Environment and Development • John Girandola, Commissioner  
Division of Planning  
3233 Route 112 • Medford • NY 11763 • Phone (516) 451-6400

**Central Pine Barrens  
Joint Planning and Policy Commission**

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Robert J. Gaffney, *Chairman*  
John LaMura, *Vice Chairman*  
Richard Blowes, *Member*  
Ray E. Cowen, *Member*  
James R. Stark, *Member*

P.O. Box 587  
3525 Sunrise Highway, 2nd Floor  
Great River, New York 11739

April 28, 1995

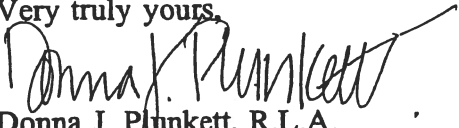
Philip H. Sanderman  
Attorney at Law  
1770 Motor Parkway  
Hauppauge, New York 11788

RE: Bartlett Associates - Three Lot Land Division  
Tax Map #: 0200-481-01-4

Dear Mr Sanderman:

I am writing in response to your letter dated February 1, 1995 requesting a determination of development for the above noted project. The Commission concluded at their meeting of March 30, 1995 that the land division of three lots as shown on a survey prepared by William R. Simmons III, East Islip, New York last dated April 28, 1990 is non-development as per ECL Section 57-0107(13)(ix) pursuant to the provision that these lots do meet current zoning of the A-1 Residence district in that lot sizes are 261,360, 261,360 and 49,223 respectively, as per said survey. Therefore, no approval from this Commission is necessary. If you have any questions regarding this matter, please contact me at 563-0384.

Very truly yours,



Donna J. Plunkett, R.L.A.  
Central Pine Barrens Commission Staff

cc: Doris E. Roth, Esq.