



Commission Meeting of June 21, 2017 Town of Riverhead Town Hall

Present: Ms. Carrie Meek Gallagher (State of New York),
Mr. Andrew Freleng (Suffolk County), Mr. Edward P. Romaine (Brookhaven),
Mr. Sean Walter (Riverhead),
Mr. Jay H. Schneiderman (Southampton)

Approved Resolution Shwonik/Guyder Farm (Finks Country Farm, Inc.) Compatible Growth Area Hardship Waiver Application SCTM # 600-115-1-9

I. The Project

Carrie Meek Gallagher
Chairwoman

Steven Bellone
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

Sean M. Walter
Member

Whereas, Michelle and David Fink (the Applicant), lessee of the property owned by the Estate of Shwonik Guyder, by their Attorney, Nicholas Rigano, LLC proposes to clear 90% of a 21.5 acre parcel for agricultural use (the Project), located on the east side of Wading River Manorville Road, north side of New York State Route 25, south of Hidden Pond Path, in the Compatible Growth Area of the Central Pine Barrens, in the Town of Riverhead (the Project Site); and

Whereas, at the time of the adoption of the Central Pine Barrens Comprehensive Land Use Plan (CLUP), the Project Site was in the Riverhead Residence A Zoning District and the Project Site was subsequently placed into the RB80 Zoning District, and

Whereas, an 11.4 acre portion of the Project Site or 53% is cleared and presently used for agriculture, and the remaining area, 10.1 acres or 47%, is presently wooded with natural vegetation; and

Whereas, because the Project Site was in the A Residence District at the time of the adoption of the CLUP pursuant to the CLUP Standard, its total site clearance is limited to 53% or 11.4 acres; and

II. The Act and the Commission

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Whereas, the New York State Legislature passed the Long Island Pine Barrens Protection Act (the “Act”) which was signed into law on July 13, 1993 and codified in Article 57 of the Environmental Conservation Law (ECL),. The Act created the Central Pine Barrens Joint Planning and Policy Commission (the “Commission”), to, among other things, oversee land use activities within the specially designated Central Pine Barrens Area; and

Whereas, in furtherance of its mission and in compliance with the directives set forth in the Act, the Commission drafted the Central Pine Barrens

Comprehensive Land Use Plan (the “CLUP”), which was officially adopted on June 28, 1995; and

Whereas, Section §57-0107 of the ECL defines development to be the “performance of any building activity, . . . , the making of any material change in use or intensity of use of any structure or land. Without limitation the following uses shall be taken for the purposes of this article to involve development . . . (b) a material increase in the intensity of use of land or environmental impacts as a result thereof; . . . (c) commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land excluding environmental restoration activities;” and

Whereas, Section §57-0123 of the ECL provides that “no application for development within the Central Pine Barrens area shall be approved by any municipality, or county or agency thereof or the [C]ommission . . . unless such approval or grant conforms to the provisions” of the CLUP and Environmental Conservation Law Section; and

Whereas, the Project constitutes development as defined in the Long Island Pine Barrens Protection Act and requires a Commission waiver because it exceeds the CLUP’s Standard 5.3.3.6.1 Vegetation Clearance Limits and Standard 5.3.3.6.2 Fertilizer-dependent vegetation limit.

III. The Project Site, Materials Submitted to the Commission, and Relief Sought

Whereas, the Applicant leases the Project Site; the current lease period is three years; and

Whereas, the Applicant submitted a CGA Hardship Waiver application on February 1, 2017 and submitted additional information on March 8, 2017 (the Application); and

Whereas, a layout of the Project Site is illustrated in the Site Plan prepared by Howard W. Young last dated January 27, 2017; the Plan identifies conditions on the site prior to when the Applicant cleared to a limit of 53% by Town of Riverhead Building Permit # ZB160169 issued on March 9, 2016; and

Whereas, pursuant to the CLUP Standard and the Site’s Zoning District, the total site clearance is limited to 53% or 11.4 acres of the Project Site; and

Whereas, the Project would remove an additional 37% or 7.95 acres of existing natural vegetation on the Project Site, which is currently 53% cleared, thereby resulting in a total of 90% or 19.35 acres of existing natural vegetation having been removed from the site in order to expand the agricultural use on the Project Site; and

Whereas, the Applicant has applied to the Commission for an extraordinary hardship to clear 37% and apply fertilizer to the Project Site.

IV. Public Process

Whereas, on March 15, 2017, the Commission held a public hearing on the Project at which the Commission reviewed the Staff Report and Exhibits prepared for the hearing; heard testimony and received exhibits from the Applicant and heard testimony from the public; subsequently, a transcript of the hearing was distributed to the Commission; and

Whereas, the Applicant stated in their testimony that it is their goal to seek Suffolk County's acquisition of the Project Site's development rights under the Farmland Preservation Program, and if that occurs, the property value would be reduced and the Fink family would be enabled to subsequently purchase the Project Site. At this time, with development rights intact, the Project Site's value is too expensive for the Finks to purchase it for agricultural use; and

Whereas, during the public hearing, the Commission requested additional information from the Applicant; and

Whereas, the record was held open until the April 19th Commission Meeting when the hearing was closed; and

V. The Study Area

Whereas, the Staff Report defined a Study Area which consisted of all of the property within a one-half mile radius of the Project Site; and the Study Area contains land in the CGA and in the Core Preservation Area, south of Route 25; and

Whereas, the dominant land use in the CGA in the Study Area is residential and agricultural. Two, 16-acre parcels opposite the Project Site, on the west side of Wading River Manor Road, each developed with only a single-family dwelling, contain additional development potential. Remaining parcels in the CGA portion of the Study Area are developed with residential, agricultural or commercial land uses. The Core portion of the Study Area is largely composed of preserved land, with the exception of five lots with roadfront on Wading River Manor Road that are residential, commercial or industrial; and

Whereas, the Project Site is within an area identified as archaeologically sensitive according to the New York State Cultural Resource Information System (CRIS) database; and

Whereas, notwithstanding the Project Site's location in an archaeologically sensitive area, the Commission received a response from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) by letter dated March 3, 2017 which stated the project will have no impact on cultural resources in or eligible for inclusion in the State and National Register of Historic Places; and

Whereas, the New York Natural Heritage Program (NHP) responded to the Commission's request for information on rare, threatened or endangered animal and plant species on the Project Site by letter dated March 24, 2017. The NHP provided a report entitled "Report on State-Listed Animals" and listed Tiger Salamander (*Ambystoma tigrinum*), a State-listed Endangered amphibian, and Northern Long-eared Bat (*Myotis septentrionalis*), a State-listed Threatened species. The species are noted as documented near the Project Site, within 1.5 miles. The report states potential onsite and offsite impacts from the project may need to be addressed. The NHP response contained a report entitled, "Report on Rare Animals, Rare Plants and Significant Natural Communities" that listed Slender Pinweed, a State-listed Threatened species, the coastal barrens buckmoth, a State-listed species of Special Concern, and a wetland/aquatic community, specifically a coastal plain pond shore, Corey Pond; and

Whereas, the Project Site is ½-mile east of Corey Pond, and at this distance, the Project will not impact the resources or habitat of Corey Pond.

VI. Other Required Approvals

Whereas, the Project is an Unlisted Action pursuant to the State Environmental Quality Review Act (SEQRA); and

Whereas, the Commission coordinated the application with NYSDEC and the Town of Riverhead, pursuant to 617.6(b)(4) of the SEQRA regulations; and

Whereas, both the Town of Riverhead and NYSDEC declined Lead Agency in response to the SEQRA Coordination; and

Whereas, the NYSDEC responded on June 16, 2017 and stated that NYSDEC Wildlife staff have reviewed the documentation and are of the opinion that it would be possible to avoid any impacts to any of the noted species and therefore preclude the need for any NYSDEC permits if recommendations and guidance were adhered to. The NYSDEC letter continued with comments on two items pursuant to the NHP letter. In regard to the historical tiger salamander breeding pond within 535 feet of the Project Site, the NYSDEC will perform a field inspection of the habitat and confirm the pond, which was modified and converted to a rip-rapped drainage ditch, subsequent to its designation as a tiger salamander breeding pond, is dry and no longer holds water. In that case, it is not expected to be viable breeding habitat for this species. If the field inspection results are to the contrary, NYSDEC staff will coordinate with the Applicant to ensure habitat protection for this species. In regard to the Northern Long-eared Bat, the letter indicates that for projects requiring tree removal to convert forest habitat to another land use and that are conducted between April 1 and October 31 and are within five miles of an occupied hibernaculum or 1.5 miles of a documented summer occurrence, conditions would include leaving uncut all snag and cavity trees and leaving uncut all known and documented roost trees; and

Whereas, the alternative to restrictions on the cutting of trees and adherence to strict cutting conditions is to avoid tree cutting from April 1 to October 31; and

Whereas, the Project Site does not contain suitable habitat for the coastal barrens buckmoth, which requires scrub oak which does not appear to be present on the Project Site; and

Whereas, the Applicant is required to obtain any other approvals or permits required for the Project.

VII. Potential Adverse Environmental Impacts

Whereas, the Commission did not identify significant adverse environmental impacts as a result of the Project; and

Whereas, no significant adverse impacts on groundwater or surface waters were identified as the Project will not generate wastewater and is not located adjacent to any wetlands; and the Project is not within the groundwater contributing area of a public water supply wellfield; and

Whereas, the Applicant's agricultural practices require fertilizer and other chemically derived compounds to be applied on the Project Site; however, the Applicant expects to control and minimally use fertilizer products due to the cost of such products and to protect groundwater resources; and

Whereas, no significant adverse impacts on historic and cultural resources is expected as the State Historic Preservation Office did not identify any significant cultural resources as being present on the Project Site, and the Project Site does not contain nor is it adjacent to any historic sites or structures; and

Whereas, the Project will not result in potential adverse impacts on transportation because the Project Site will be used to grow crops and the lease agreement states the Project Site cannot be used for parking. The Project will not generate high volume traffic nor significantly alter the present pattern of movement of people or goods; and

Whereas, the Project will not generate significant air emissions and therefore will not result in any significant adverse impacts on air resources; and

Whereas, no significant adverse impacts on land are expected as the Project does not involve construction on land where the depth to water table is less than three feet. No soil resources will be removed from the site. No erosion is expected from vegetation removal and

no hard structures, drainage basin, or retaining walls are proposed for stormwater protection. The Project is not located in a Coastal Erosion Hazard Area; and

Whereas, no adverse impacts on natural resources, plant and wildlife habitat will occur. The Applicant will avoid cutting of trees to ensure protection of habitat and endangered species including northern long eared bat. Prior to cutting, the Applicant will obtain and submit to the Commission written confirmation from NYSDEC that the drainage pond is dry and no longer supports tiger salamander breeding habitat. No adverse impacts will occur to buckmoth since no suitable habitat to support the species occurs on the Project Site. Therefore, no significant adverse impacts to endangered or threatened species of animals and plants are anticipated; and

Whereas, no adverse impacts are expected on community character and aesthetic resources since the Project Site presently contains an active agricultural use and is in a community developed with other agricultural uses.

VIII. Commission Review of the Act's Extraordinary Hardship Criteria and Applicant's Materials

Whereas, pursuant to the Act, to determine whether an Applicant has demonstrated the existence of a hardship, the Commission shall consider, among other things, the criteria set forth in New York State Town Law §267-b and determine whether the Project is consistent with the purposes and provisions of the Act and whether the Project will result in a substantial impairment of the resources of the Central Pine Barrens area and consider the criteria in ECL §57-0123(3)(b); and

Whereas, the Applicant alleges that it cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. The Applicant's financial analysis indicates a yearly profit amount of \$5,415 derived from the Project Site in its current state. If the waiver is granted, the profit increases to \$15,852.25; and without the waiver, the Applicant will need to cease operations on the Project Site; and

Whereas, the Applicant alleges the "Project is unique as the Applicant cannot realize a reasonable rate of return by farming the Property due to the vegetation growing on the uncleared portion of the land. The hardship does not apply to a substantial portion of the applicable district or neighborhood;" and

Whereas, the Applicant alleges, "The variance will not alter the essential character of the neighborhood. The variance, if granted, will enable the Applicant to expand its farm by an additional 7.95 acres;" and

Whereas, the Applicant alleges it "Will continue to comply with best management practices as stated in the Agricultural Management Practices Catalogue for Nonpoint Source Pollution Prevention and Water Quality Protection in New York State, June 2007;" and

Whereas, the Applicant alleges, “The requested variance would not alter the essentially character of the neighborhood or district as agriculture has been a mainstay in the Pine Barrens;” and

Whereas, the Applicant alleges the Project Site was farmed 35 years ago by the Fink family; and

Whereas, the Applicant alleges, “The Hardship has not been self-created. The vegetation that currently exists in Area B and Area C is native to the Pine Barrens. Without clearance of this vegetation, the Applicant cannot realize a reasonable rate of return;” and

Whereas, the Commission has considered all of the materials submitted in connection with the application including the transcript of the public hearing; and

Whereas, the Commission finds the Applicant has established the existence of a hardship and that the Project is designed to be compact, efficient and orderly development in the CGA, consistent with the purposes and provisions of the Act. The proposed agricultural use of the site is consistent with the character of the area; and

Whereas, the Commission finds the Applicant has established the existence of a hardship because the Project is unique and does not apply to a substantial portion of the district or neighborhood because with the exception of the two parcels with development potential remaining in the Study Area, each approximately 16 acres with one single-family residence, activities similar to those which will occur pursuant to the Project are not expected to occur on other parcels in the Study Area; and

Whereas, in considering the second waiver criteria, the Commission finds that the hardship, as it relates to the Project Site, is unique because of the historic farming activity that occurred on the Project Site prior to the Act; it is one of only three parcels in the Study Area with development potential and does not apply to a substantial portion of the district or neighborhood because of the lack of land that remains available to farm; and

Whereas, the Commission, in analyzing the third waiver criteria, finds that granting the requested exemption will not alter the essential character of the neighborhood because the clearing is for an existing agricultural use and is consistent with the historic use of the Project Site for agriculture and pattern of development surrounding the Project Site, and that the Project is consistent with existing established land use and community character, and

Whereas, the Project accommodates development that is compact, efficient, and orderly as it retains an agricultural use in the CGA and in proximity to other land comprising approximately 40 acres that is currently farmed by the Applicant; and

Whereas, the Commission finds the Applicant has established the existence of a hardship which has not been self-created because the existing natural vegetation on the Project Site has created a financial hardship preventing the Applicant from realizing a reasonable rate of return and without the waiver would force the closure of operations on the Project Site; and

Whereas, the Commission has considered the application, the Staff Report and Exhibits, and the transcripts of the hearings and its prior decisions; and

Whereas, due to the Project's nonconformance with the CLUP standards, the Applicant applied to the Commission for a waiver from strict compliance pursuant to Environmental Conservation Law Section 57-0123(3)(b), and

Whereas, the goals and objectives of the Act, outlined in ECL Section 57-0121, encourages and promotes appropriate patterns of compatible agricultural development in order to accommodate regional growth influences; and

Whereas, the Project will comply with all other Standards of the CLUP, and

Whereas, the Commission has considered all of the materials submitted in connection with the application including the transcript of the public hearing.

IX. Mitigation

Whereas, if the agricultural use ceases on the Project Site, an unfragmented block of 47% of the site shall be left to undergo natural restoration and revegetation, now, therefore, be it,

X. Commission Determinations

Resolved, the foregoing recitals are incorporated herein and made a part hereof; and be it further

Resolved, that pursuant to SEQRA, a Negative Declaration is adopted for the Project as the Commission has determined that the Project will not result in significant adverse environmental impacts provided that the Applicant adheres to the conditions outlined below regarding endangered species protection; and be it further

Resolved, the Commission finds the Applicant has demonstrated an extraordinary hardship for the reasons set forth above and is approved; and be it further

Resolved, the Commission finds that the Project is not inconsistent with the purposes and provisions of the Act, including but not limited to, the goals and objectives to “[p]reserve the functional integrity of the Pine Barrens ecosystem, protect the quality of surface water and groundwater, discourage piecemeal and scattered development, [to] accommodate development in a matter consistent with the long-term integrity of the Pine Barrens ecosystem and to ensure that the pattern of development is compact, efficient, and orderly;” and be it further

Resolved, the Project is unique as it seeks to reestablish an agricultural use where the use previously existed 35 years ago; and be it further

Resolved, the granting of this hardship exemption will not result in a substantial impairment of the resources of the Central Pine Barrens because the Project will occur on a Project Site that was previously disturbed for agricultural activity, and be it further

Resolved, if agricultural activity ceases on the project site, the owner shall cause 47% of the site, in an unfragmented pattern, to succeed to a naturally vegetated state with no active restoration requirements; and be it further

Resolved, the Applicant shall obtain additional permits and approvals, as required by law, prior to commencement of the Project, and be it further

Resolved, that the Commission hereby determines the Application, as submitted, meets and satisfies the criteria for a Compatible Growth Area Hardship pursuant to the Act; that the requested use variance, if granted, will not alter the essential character of the neighborhood, as the Applicant presently cultivates approximately 40 acres in the Study Area and agricultural uses are consistent with the community character; and be it further

Resolved, the Commission hereby determines the waiver is the minimum variance deemed necessary and adequate to address the unnecessary hardship proven by the Applicant, and with mitigation, preserves the essential character of the Central Pine Barrens pursuant to ECL Section 57-0121; be it further

Resolved, that the Application is approved, subject to the following specific conditions:

1. Clearing authorized by this resolution shall occur between November 1 and March 31.
2. 10% of the Project Site, on the east side of the Project Site, as shown on the survey prepared by Young and Young last dated January 27, 2017 shall remain in its existing natural state.
3. Prior to conducting any clearing activity on the Project Site, the Applicant shall first submit a written notice to the Commission office notifying the Commission of the commencement of clearing at least 5 days prior to said activity. Prior to clearing, the Applicant shall submit a letter from NYSDEC confirming the tiger salamander habitat is no longer viable breeding habitat.
4. Within 45 days of clearing to a limit of 90% of the Project Site, the Applicant shall submit a plan to the Commission that is certified by a surveyor that demonstrates 90% of the site was cleared.

5. Declaration of Covenants and Restrictions:

The Applicant shall submit draft Covenants and Restrictions (C&Rs) to Commission counsel for review and approval. The C&Rs must be granted to the Commission. Once approved, the C&Rs must be recorded against the Project Site and filed in the Office of the Suffolk County Clerk with proof of filing provided

to the Commission office no less than one week prior to site disturbance or any other activity on the project site, and prior to the issuance of clearing or other permits by the Town. In any case, the C&Rs must be filed with the Suffolk County Clerk no more than six months after the date of this resolution.

The objective of the C&Rs are to ensure that if the use of the site for an agricultural use, as defined by New York State Agricultural Markets Law, ceases or changes, an unfragmented block of 47% of the site shall be set aside for natural restoration to its prior naturally-vegetated state to occur. No active planting or landscaping is required in order to re-establish the natural vegetation. If a future owner seeks to utilize any portion of the 47% area to remain natural, review by and a decision from the Commission is required, including but not limited to a CGA Hardship Waiver. The C&R must state specifically:

- a. The hardship waiver is approved solely to utilize the project site for an agricultural use, as defined by New York State Agriculture and Markets Law. The agricultural use is permitted to continue in perpetuity on 90% of the Project Site, with 10% remaining in its existing natural state.
- b. If the agricultural use ceases on the Project Site, an unfragmented block of 47% or 10.1 acres of the site shall be protected and required to revert to natural vegetation. No active replanting is required, but 47% of the Project Site must be set aside to naturally restore itself if and when cessation of agricultural activity occurs on the Project Site. The site shall be deemed no more than 53% cleared for the purposes of the application of the CLUP clearing standard.
- c. Any and all future owner(s) of the Project Site are hereby notified that the Project Site must comply with this decision. Development as defined in the Act shall be subject to Article 57 of the New York State Environmental Conservation Law and the Central Pine Barrens Comprehensive Land Use Plan.

6. Any modifications to the existing Site Plan must first be reviewed and approved by the Commission.
7. The Applicant shall obtain additional permits and approvals, as required by law, prior to commencement of the Project.

Resolved, this decision applies only to the instant Project and is subject to change if any element of the Project is modified; and be it further

Resolved, this approval shall expire five years from the date of adoption by the Commission; therefore, if the Applicant has not achieved the clearing permitted by this waiver, in accordance with conditions of approval, the decision will be considered expired, and the Applicant must seek an extension of time or re-approval providing a status report of the Project; and be it further

Resolved, a copy of this resolution shall be recorded in the Office of the Suffolk County Clerk within one year of the date of approval and indexed against the property.

Record of Motion: Fink's Farm (Shwonik/Guyder Farm) Compatible Growth Area Hardship Waiver, Wading River, Town of Riverhead; SSTM # 600-115-1-9

Decision to Approve

Motion by: Mr. Walter

Seconded by: Mr. Romaine

In Favor: 4

Opposed: 0

Abstention: 1 (Mr. Freleng)