



## Commission Meeting of March 21, 2012 Riverhead Town Hall

Present: Peter Scully (New York State), Mark Lesko (Brookhaven), Sarah Lansdale (Suffolk County), Sean Walter (Riverhead), Marty Shea (Southampton)

### **Adopted Resolution Compatible Growth Area Hardship Waiver Kealos Subdivision Hamlet of Manorville, Town of Brookhaven SCTM #'s: 200-509-7-13.10 and 13.11**

**Whereas**, Daniel Kealos (the “applicant”), owns two parcels of land (the “Project Site”), designated as #200-509-7-13.10 and 13.11 on the Suffolk County Tax Map, in the A Residence 2 Zoning District, located on Bruce Drive, in the Compatible Growth Area of the Central Pine Barrens, in the hamlet of Manorville, Town of Brookhaven (the “Project Site”); and

**Whereas**, the Project Site is 81,340 square feet; tax lot #13.10 is 40,435 square feet and is developed with one single-family dwelling occupied by the applicant; and tax lot #13.11 is 40,905 square feet and is undeveloped; and

**Whereas**, the applicant purchased the two parcels with two separate deeds in 2004 and has held them in common ownership; and

**Whereas**, the two tax parcels have been merged due to their non-conformance with the Town of Brookhaven Zoning Code and not being held in single and separate ownership; and

**Whereas**, in 1989, the Project Site was in the B Residence Zoning District (minimum lot area 15,000 square feet), and the Town amended the zoning map containing the Project Site, which resulted in a rezoning of the Project Site and surrounding area to the A Residence 2 (A2) Zoning District (minimum lot area 80,000 square feet); and

**Whereas**, the applicant filed an application with the Town of Brookhaven Board of Zoning Appeals (BZA) to subdivide the Project Site; a BZA decision is pending Commission action on the CGA Hardship Waiver; and

**Whereas**, the land use of the immediate neighborhood is developed with single-family residential land uses on lots with an estimated average area of 40,000 square feet; and

**Whereas**, the Project constitutes development under the Long Island Pine Barrens Protection Act (New York State Environmental Conservation Law Article 57); and

**Whereas**, the Project does not conform to the Central Pine Barrens Comprehensive Land Use Plan (CLUP) Standards: 5.3.3.6.1 (Vegetation Clearance Limits) and 5.3.3.6.3 (Fertilizer-dependent vegetation limit); and

**Whereas**, as the Project does not comply with the CLUP, the applicant, by its consultant, Cramer Consulting Group, submitted an application dated December 2, 2011 (the “Application”) to the Central Pine Barrens Joint Planning and Policy Commission (the “Commission”) for a Compatible Growth Area (“CGA”) Hardship exemption to authorize the Project; and

**Whereas**, approximately 46% (37,853 square feet) of the Project Site is currently cleared, and 54% (43,757 square feet) is naturally vegetated; and

**Whereas**, the Project proposes to exceed the Vegetation Clearance Limit Standard of 35% by 11% for a final clearing limit of 56%; the Application includes the clearing of 7,835 square feet of existing vegetation on Lot # 13.10 to allow for the construction of the proposed house, sanitary system and driveway, while providing enough of a rear yard if the future homeowner would like to install a swimming pool; and

**Whereas**, approximately 34% of the Project Site currently contains fertilizer dependent vegetation; and

**Whereas**, the Project proposes to reduce the amount of fertilizer dependent vegetation via revegetation but will still exceed the Fertilizer Dependent Vegetation Limit Standard of 15% by 3% for a final limit of 18% Fertilizer Dependent Vegetation; and

**Whereas**, the applicant proposes to mitigate the project through revegetation of 21% (17,118 square feet) of the Project Site, as shown on the map entitled “Pine Barrens Restoration Plan Kealos Land Division” prepared by Cramer Consulting Group last dated 9/26/2011 (the “Plan”) and after revegetation, an estimated 35% (28,300 square feet) of the Project Site will remain cleared, and 65% (53,040 square feet) of the Project Site will remain natural; and

**Whereas**, the Project was approved by the Suffolk County Department of Health Services (SCDHS), and the application contains a map approved by the SCDHS on June 28, 2007 for the development of a single-family dwelling on tax lot #13.11, Permit #R02-07-0336; and

**Whereas**, the Hardship petition included an analysis of the hardship criteria contained in ECL §57-0121 in support of its Waiver application; and

**Whereas**, the applicant submitted an economic analysis as part of the application, which identified a financial loss on the applicant’s investment if the Project was not approved; and

**Whereas**, the Commission held a public hearing on the Project on January 18, 2012 during which Mr. Kealos testified that he resides in the existing dwelling on tax lot #13.10, that he wishes to sell tax lot #13.11, and that he will have to move and sell his property if he cannot subdivide and sell tax lot #13.11; and

**Whereas**, subsequent to the public hearing, the Project was discussed during the February 15, 2012 Commission meeting, and the Commission concluded that the applicant could further reduce the amount of fertilizer dependent vegetation on the Project Site to a maximum of 15% in accordance with the CLUP Standard, which would result in protection of groundwater resources; and

**Whereas**, the Project is an Unlisted Action pursuant to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act, SEQRA), and the Commission performed a coordinated review; and

**Whereas**, no objection was raised by involved agencies concerning the Commission's request to assume SEQRA Lead Agency status, and the Commission therefore assumed SEQRA Lead Agency; and

**Whereas**, the Commission has considered the Application and all related documents, including the Environmental Assessment Form Part I submitted by the applicant; and

**Whereas**, the New York State Office of Parks, Recreation and Historic Preservation, by letter dated February 15, 2012, 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 Project Site is approximately 755 feet from the boundary of Cranberry Pond, a New York State Department of Environmental Conservation (NYSDEC)-regulated freshwater wetland and documented habitat of the Eastern tiger salamander, a State-listed endangered species; and

**Whereas**, in order to comply with CLUP Standard 5.3.3.7.1, *Special species and ecological communities*, the applicant shall seek a determination of jurisdiction or "no-take" pursuant to a New York State Environmental Conservation Law Article 11, Part 182 Permit regarding Endangered and Threatened Species of Fish and Wildlife, since Cranberry Pond is within the jurisdictional boundary of protection for the tiger salamander habitat; and

**Whereas**, pursuant to the Act, in determining whether to grant a CGA hardship exemption for the Project, the Commission shall consider, among other things, the criteria set forth in New York State Town Law § 267-b(2) 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

**Whereas**, in considering the criteria set forth in Town Law §267-b(2)(1), the Commission finds that the applicant submitted competent financial evidence in the application; and

**Whereas**, in considering the criteria set forth in Town Law §267-b(2)(2), the Commission finds that the hardship, as it relates to the Project Site, is unique due to the build out of the surrounding community in conformance with the proposed development and the applicant's proposal to retain 65% of the Project Site as natural vegetation, which includes revegetation of 21% of the Project Site; and

**Whereas**, in considering the criteria set forth in Town Law §267-b(2)(3), as it relates to character of the neighborhood, tax lot #13.11 is the only lot in the immediate area that is not developed but was created as part of the surrounding subdivision; and

**Whereas**, the Project Site is situated in an area characterized by single-family residential development on lots that average 40,000 square feet and the Project does not propose a land use that is inconsistent with the existing neighborhood character; therefore, the proposed development conforms to its surroundings and the Commission finds that the Project will not alter the essential character of the Project Site's neighborhood; and

**Whereas**, pursuant to Town Law §267-b(2)(4), the Commission finds that hardship is not self-created since the applicant purchased two separate parcels as two separate deeds, has been paying two separate tax bills, and suffers from the legal ramifications of maintaining the two non-conforming lots in common ownership as opposed to keeping them single and separate; and

**Whereas**, in the past, the Commission granted other CGA Hardship Waivers for similar projects including R. Strauss (3/6/1996), Fredrick Walter Land Division (8/5/1998), Penatello Land Division (10/15/2003), All Island Purchase Corp. (2/18/2004), and Cavallo Two-lot Subdivision (1/19/2005); and

**Whereas**, the Commission also finds that the applicant's proposal to mitigate Project impacts through revegetation of 21% of the Project Site results in no net loss of natural vegetation; and

**Whereas**, successful implementation of the Project's mitigation proposal will require the preparation, submission, and approval of a Revegetation Plan; and

**Whereas**, the Commission has previously required restoration of vegetation and habitat as mitigation for development projects requiring its approval including the applications of Willow Wood at Coram, Flowerwood Development Corp., and the Long Island Power Authority Riverhead Substation Expansion; and

**Whereas**, the Project will comply with all other Standards of the CLUP including, but not limited to, Standard 5.3.3.6.2 (Unfragmented Open Space), as the natural area to remain will be connected to other backyard natural areas on adjoining lots and will provide benefits to wildlife as stopover and foraging habitat; and

**Whereas**, the Commission has considered all of the materials submitted in connection with the Project, now, therefore, be it,

**Resolved**, that pursuant to New York State Environmental Conservation Law (ECL) Article 8 (State Environmental Quality Review Act (SEQRA)) and its implementing regulations 6 NYCRR Part 617, the Commission hereby adopts a Negative Declaration pursuant to SEQRA for the Project, and be it further

**Resolved**, the foregoing recitals are incorporated herein, and be it further

**Resolved**, the Commission finds that in order to minimize potential adverse impacts to groundwater resources in the CGA, the applicant shall be required to further reduce the amount of proposed fertilizer dependent vegetation over the Project Site so that overall fertilizer-dependent vegetation does not exceed the CLUP standard of a 15% maximum; 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 and grants the requested CGA Hardship Waiver for Kealos Subdivision in accordance with the map entitled "Pine Barrens Restoration Plan Kealos Land Division" prepared by Cramer Consulting Group last dated 9/26/2011 (the "Plan"), subject to the following conditions:

1. On Tax Lot #13.10:

- a. Approximately 37,583 square feet (92.95%) is currently cleared. No additional clearing is permitted.
- b. The existing natural vegetation, which comprises 7% of the parcel, shall be protected.
- c. No fertilizer dependent vegetation is permitted beyond its current extent.
- d. Revegetation Plan.

Within one year of the date of adoption of this resolution and prior to any development activity on the Project Site, the applicant must submit a revised Revegetation Plan to revegetate 21% (17,118 square feet) of tax lot #13.10. The Revegetation Plan must:

1. Retain the existing trees on Lot 13.10, as shown on the "Pine Barrens Restoration Plan" prepared by Cramer Consulting Group dated June 21, 2011 and supplement the existing trees with the Recommended Plant Species including trees, shrubs, and groundcover, also listed in the current plan.
2. Contain a list of plantings native to the Central Pine Barrens including trees, shrubs, and groundcover, and planting specifications including spacing, height, quantity, and size.
3. Reference recorded Covenants and Restrictions that ensure the protection of the revegetated area, which is 21% of the parcel.
4. Ensure survival of plantings for a minimum of three years. Any plantings that do not survive during the three year period after planting must be replanted and managed to survive for a minimum of three years from the date of replanting.
- e. Provide notification to the Commission office within 48 hours of the completion of revegetation activity to commence the three year time period to ensure planting survival. Commission staff will inspect the property immediately after planting and at three years after the planting date, and at any time requested by the owner/applicant.

2. On Tax Lot #13.11:

- a. No more than 7,835 square feet (19.15%) of clearing is permitted.
- b. Clearing will occur in the building envelope illustrated on the Plan, which protects the rear of the property adjacent to the existing cemetery and natural vegetation on adjacent lots.
- c. Protect 33,070 square feet (80.85%) to remain natural through the filing of a Declaration of Covenants and Restrictions.

3. Declaration of Covenants and Restrictions. Incorporate the terms and conditions of this resolution into a Declaration of Covenants and Restrictions (C&Rs) for the Project Site to be filed in the Office of the Suffolk County Clerk. The contents of the C&Rs and related measures are as follows:

- a. Designate the applicant as the Grantor and the Commission is the Grantee.
- b. Submit the same to the Commission for its review and approval, prior to filing.
- c. Until the Declaration is approved and recorded, no construction, demolition, or development activity may occur on the Project Site.
- d. Attach this resolution to the C&Rs.

- e. After approval of C&Rs by the Commission, file them in the Office of the Suffolk County Clerk within one year of the date of this resolution.
- f. C&Rs must contain language as follows:
  - i. Protect existing natural vegetation to remain on the Project Site.
  - ii. Protect the area to be revegetated on current Lot 13.11, which is 21% of the Project Site or 17,118 square feet.
  - iii. Total area to be protected encompasses 65% or 52,871 square feet of the Project Site.
  - iv. Provide notice to future owners of the current parcels in the Project Site, SCTM #s: 200-509-7-13.10 and 13.11, or any tax lots assigned in the future, that the C&Rs and conditions of this Waiver apply to the Project Site.
  - v. No more than 15% fertilizer dependent vegetation on the Project Site.

4. Copy the Commission on the As Built survey for Lot 13.11.
5. Obtain additional permits and approvals, as required by law, prior to commencement of the Project including, but not limited to, NYSDEC permit(s), Suffolk County Department of Health Services Article 6 approval, Town of Brookhaven BZA land division approval and Building Permits. Prior to site work being undertaken, copies of all permits obtained for the Project shall be submitted to the Commission. All filed maps and permits shall reflect the C&Rs and clearing limits of the Project.

**Resolved**, this conditionally approved Hardship Waiver shall be valid for a period of five years from the date of approval. All construction work including building or action required in the conditions, where applicable, shall be completed within five years from the date of approval unless the applicant obtains an extension from the Commission; and be it further

**Resolved**, the applicant may apply for renewal of this conditionally approved Hardship Waiver for a period of not more than one year, provided that not more than one renewal of the conditionally approved Hardship Waiver has previously been granted and not more than three years have passed since the conditionally approved Hardship Waiver expired; and be it further

**Resolved**, a copy of this resolution shall be filed in the Office of the Suffolk County Clerk indexed against the property.

**Record of Motion**

Motion by: M. Lesko  
 Seconded by: S. Walter  
 In Favor: 5  
 Opposed: 0  
 Abstention: 0

cc: Town of Brookhaven Board of Zoning Appeals  
 Town of Brookhaven Building Division  
 New York State Department of Environmental Conservation  
 Suffolk County Department of Health Services