



**Commission Meeting of November 17, 2010
Town of Brookhaven Town Hall, Farmingville, New York**

Present: Peter Scully (State of New York), Mark Lesko (Town of Brookhaven), Carrie Meek Gallagher (Suffolk County), Sean Walter (Town of Riverhead),
Marty Shea (Town of Southampton)

**Adopted Resolution
Willow Wood at Coram Compatible Growth Area Hardship
Hamlet of Coram, Town of Brookhaven, SCTM No. 200-523-1-1.002**

Peter A. Scully
Chair

Mark Lesko
Member

Steve A. Levy
Member

Anna E. Throne-Holst
Member

Sean M. Walter
Member

Whereas, Yaphank Realty Corp., owns a 25.4 acre parcel of land located on the west side of State Route 112, in the Compatible Growth Area in the hamlet of Coram in the Town of Brookhaven (the “Project Site”) designated as #200-523-1-1.002 on the Suffolk County Tax Map; and

Whereas, the Klar Realty Corp. (“Klar”) controls the Yaphank Realty Corp.; and

Whereas, the Project Site, is undeveloped but was mined in the late 1960s and early 1970s for mineral soils and as a result the Project Site contains a mix of cleared areas and isolated patches of vegetated areas. Specifically, 61 percent of the Project Site (15.55 acres) is cleared and 39 percent of the Project Site (9.85 acres) is naturally vegetated; and

Whereas, on June 1, 1993, the Project Site was part of a larger 34.5 acre parcel identified as SCTM No. 200-523-1-1.1, which was in the D-1 Residence Zoning District; and

Whereas, in 1997, the Town Board of the Town of Brookhaven approved Klar’s request for a change in zoning for 9.1 acres of the 34.5 acre parcel from the D-1 Residence zoning district to the NH-H zoning district; and

Whereas, in 1999, the Town approved a two-lot subdivision, which subdivided the 34.5 acre parcel into two lots, the Project Site and the 9.1 acre NH-H parcel which was subsequently sold to the Miller Realty Corp.; and

Whereas, on September 23, 2008, the Town of Brookhaven and Yaphank Realty Corp. entered into a Stipulation of Settlement concerning the Project Site’s development. The Stipulation provides for a 140 unit multi-family unit development and requires that Klar provide a ten (10) foot public trail easement along the Project Site’s southern boundary; and

Whereas, Klar proposes to construct 140 duplex residential condominium units on the Project Site, of which 28 units will

P.O. Box 587
3525 Sunrise Highway
2nd Floor
Great River, NY
11739-0587

Phone (631) 224-2604
Fax (631) 224-7653
www.pb.state.ny.us

“affordable/workforce housing units,” a 3,300 square foot community recreational building, a tennis court and swimming pool, 283 parking spaces and an internal road network, and dedication to the Town of the 10 foot wide trail easement (the “Project”) and

Whereas, the proposed development of the Project Site will require clearing of 5.31 acres of the natural vegetated areas and will result in the creation of 6.73 acres of maintained landscape area; and

Whereas, Klar, subject to the approval of the Suffolk County Department of Health Services, proposes to treat sanitary waste generated by the Project at the existing Bretton Woods Sewage Treatment Plant (STP), which is situated on a parcel that adjoins the Project site on the west; and

Whereas, in order to transmit the sanitary waste generated by the Project to the Bretton Wood STP, Klar proposes to develop a 5,000 square foot pump station on the parcel owned by the Miller Realty Corp. and

Whereas, Klar also proposes to construct a 50 foot wide access road across the Miller Realty Corp. parcel between the Project Site and State Route 112; and

Whereas, the Project must conform to the provisions of the Central Pine Barrens Comprehensive Land Use Plan (CLUP), including CLUP Standard 5.3.3.6.1 authorizes Klar to clear up to 70% of the Project Site based upon the Project Site’s inclusion in the D-1 zoning district on the date of the CLUP’s adoption; and

Whereas, the Project does not comply with CLUP Standard 5.3.3.6.1 because Klar proposes to clear an additional 5.31 acres of the Project Site resulting in the total clearance of 20.86 acres (82%) of the Project Site (15.55 acres of the Project Site is currently cleared which, when combined with the proposed clearing of 5.31 acres, results in total clearing of 20.86 acres or 82% of the Project Site); and

Whereas, as the Project does not comply to the CLUP, Klar, by its consultants, Nelson, Pope and Voorhis submitted an application dated May 2010 (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 development of the Project Site; and

Whereas, the Commission received the Application on May 28, 2010; and

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

Whereas, the Commission held a public hearing on the Project on July 21, 2010 during which Klar submitted five Exhibits including an accounting report; Environmental Assessment Form (“EAF”) Part III; a PowerPoint presentation about the Project; a Site

Plan package with 16 sheets; and a copy of the Town's Zoning Code relating to the D-1 zoning district; and

Whereas, Klar submitted a Financial Accounting Report prepared by Alperin & Alperin, P.C. dated July 6, 2010 to demonstrate the Project provides Klar with a reasonable return which was defined by Alperin & Alperin to be a six percent return on Klar's investment; and

Whereas, Mr. Steven Klar, President of Yaphank Realty Corp., testified during the hearing that his company has owned the Project Site since 1986; and

Whereas, the Project is a Type I Action pursuant to the New York State Environmental Quality Review Act ("SEQRA") for which the Town of Brookhaven performed a coordinated review; and

Whereas, a coordinated SEQRA review was performed because the Project requires other permits and approvals including, but not limited to, Suffolk County Department of Health Services (SCDHS) approval, New York State Department of Transportation road opening permit; and

Whereas, the Commission did not object to the Town serving as Lead Agency for purposes of the Project's SEQRA review by letter dated July 23, 2010 and on September 13, the Town declared itself to be the Lead Agency and adopted a Negative Declaration declaring that the Project would not have a significant adverse impact on the environment; and

Whereas, Klar's EAF Part III included analysis of an alternative that considered clearing more than proposed in the Project in order to provide a tighter cluster of developed areas in the eastern portion of the Project Site and also resulted in a wider buffer to the adjoining open space; and

Whereas, by letter dated November 11, 2010, Nelson & Pope submitted a site plan that "would not require a Hardship" and illustrates the development of 36 units, however, according to the description of said plan in the cover letter, it does not meet engineering and other design requirements; moreover, the submission states, "If the site were developed pursuant to the plan, it would result in financial loss to the developer of \$2,860,000"; the letter further states, "It is not possible or practical to avoid any clearing of vegetation as Standard 5.3.3.6.1 would require. A plan which comes close to meeting this standard is flawed because it results in only 36 units and fragments open space on the site, thus causing a conflict with Standard 5.3.3.6.2;" and

Whereas, pursuant to the Act, in determining whether to grant Klar 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 Klar submitted competent financial evidence in the form of the Aleperin & Alperin Report, which concluded that the Project is expected to take 3.5 years to develop and the return over the period will only be 6%, which according to Alperin is “not a reasonable, return,” but “in spite of this, the applicant is ready to accept such a risk and proceed with the Project; 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 previous disturbance of the Project Site and the existing configuration of fragmented and dispersed patches of existing natural vegetation on the Project Site that constrain the ability to develop the Project Site without disturbing the existing natural vegetation; and

Whereas, in considering the criteria set forth in Town Law § 267-b(2)(3), as it relates to character of the neighborhood, the site is set back from the north-south artery of State Route 112 and is situated in an area characterized by a variety of land uses representing commercial, industrial, residential, and open space uses; due to the range of existing land uses in the immediate area, the Project does not propose a land use that is not inconsistent with the existing neighborhood character; and

Whereas, the adjacent land uses include a high density residential community to the west, single-family residential and office uses to the north, an industrial land use to the south, and natural open space to the east which reflects the developed and undeveloped land uses that exist in the area immediately adjacent to the Project site; and

Whereas, the Commission finds that the Project will not alter the essential character of the Project Site’s neighborhood given the pattern of development surrounding the Project Site, the Project will be consistent with the high density residential community to the west and the land uses to the north and provide a transition from the industrial uses on the south, and

Whereas, in considering the criteria set forth in Town Law § 267-b(2)(3), the Commission finds that the requested exemption will not alter the essential character of the neighborhood since the proposed use is consistent with the established community character; and

Whereas, pursuant to Town Law § 267-b(2)(4), the Commission finds that hardship is not self-created since Klar did not cause or permit the disturbance of the Project Site. Klar has demonstrated that the Project Site was disturbed and mined prior to his ownership of the Project Site and prior to the Act’s enactment. These pre-Act land uses have caused the fragmentation of the Project Site; and

Whereas, the Commission finds that Klar cannot satisfy the requirements contained in Standard 5.3.3.6.1 (the Vegetation Clearance Limits) while simultaneously satisfying the requirements of Standard 5.3.3.6.2 (the Unfragmented open space) because in order to meet the clearing standard the site plan would require additional fragmentation of open space and natural vegetation on the site, while in order to meet the unfragmented open space standard the site plan would require additional clearing of native vegetation, beyond that permitted by the clearing standard; and

Whereas, the Commission finds that the Project is consistent with the purposes because the prior clearing and soil disturbance on the Project Site has produced fragmentation of habitat and by retaining the existing vegetation that remains to the extent practicable will provide benefits to wildlife as stopover, and foraging habitat; and

Whereas, the Commission finds the Project is consistent with the Act because the Project has been designed to minimize its environmental impacts without seeking additional units to increase the rate of return; and

Whereas, the Commission also finds that Klar's proposal to mitigate the Project's impacts by revegetating 3.91 acres of the project site with one acre of transplanted shrubs and new seedlings from the New York State Department of Environmental Conservation's Saratoga Nursery and 2.91 acres of Long Island Native Meadow Mix hydroseed will increase the amount of edge habitat at the Project Site; and

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

Whereas, the Commission finds that the successful implementation of Klar's mitigation plan will require the preparation of a Revegetation Plan, and

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

Resolved, that the above recitals are incorporated herein and made a part hereof, 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 be it further

Resolved, that the Application is approved in accordance with the Alignment Plan prepared by Nelson, Pope & Voorhis, last dated August 25, 2010 and Landscape Plan prepared by Nelson, Pope & Voorhis last dated October 12, 2010, subject to the following specific conditions:

1. The Alignment Plan must be modified to state:
 - a. “Amount of area to remain natural: 4.54 acres”
 - b. “Amount of clearing: 5.31 acres”
 - c. “Amount of area to be revegetated: 3.91 acres, which is composed of one acre of transplanted shrubs and new seedlings from the DEC Saratoga Nursery and 2.91 acres of Long Island Native Meadow Mix hydroseed. Note: See separate Revegetation Plan”
 - d. “Amount of natural area to be managed by the Homeowner’s Association: 8.45 acres”
 - e. “Note: See conditions of approval in the Central Pine Barrens Joint Planning and Policy Commission decision dated November 17, 2010.”
2. Submission of Amended Alignment Plan modified in accordance with this approval.
3. At maximum a five foot wide path is permitted to be established in the 10 foot wide easement area to be dedicated to the Town. The trail shall be composed of natural groundcover or bare soil. No placement of fill, stone or other material is permitted. Clearing of trees for the trail shall not be permitted.
4. A plan for the creation of the trail shall be submitted to Commission staff for review and approval prior to commencement of any physical activity required for trail establishment. The trail plan shall depict the trail location, location of trees, signage, trail composition and trail construction requirements.
5. Submission of a Revegetation Plan, subject to Commission review and approval. Until approved by the Commission, no activity may commence on the Project Site. The Revegetation Plan must contain: a Revegetation Detail Plan, a Maintenance Plan, an Invasive Species Monitoring Plan and a Reporting Plan, as follows:
 - a. Revegetation Detail Plan: The Revegetation Detail Plan must:
 - i. Cover the 3.91 acre area to be revegetated.
 - ii. Contain a minimum of 1 acre of transplanted shrubs and DEC Saratoga Nursery supplied native seedlings.
 - iii. Contain a minimum of 2.91 acres of Long Island Meadow Mix hydroseed composed of grassland species native to the Central Pine Barrens.
 - iv. Planting specifications, composition of species in the meadow mix, and source of seed for review by the Commission.
 - b. Maintenance Plan: The Maintenance Plan must:
 - i. Designate the entity responsible for its implementation.

- ii. Be designed to ensure that at a minimum 85 percent survival rate of plants planted pursuant to the Revegetation Plan survive for a minimum three (3) year after the Commission approves the revegetation.
 - iii. Specify how the revegetation area will be maintained, including, but not limited to, irrigation details and mowing specifications.
 - iv. Contain a replanting schedule.
 - c. Invasive Species Monitoring Plan: The Invasive Species Monitoring Plan must:
 - i. Ensure that the revegetated area is kept free of invasive species.
 - ii. Provide an invasive species monitoring schedule.
 - iii. Ensure that invasive species are manually removed. Commission approval shall be required if herbicides or other chemicals are proposed for use to control invasive species.
 - d. Reporting Plan: The Reporting Plan must:
 - i. Set forth a schedule for submitting reports, on at least a biannual basis for four years, to the Commission concerning the status and success of the Revegetation Plan.
 - ii. Set forth the Reporting Plan elements including, but not limited to, the date and time of inspection, name and qualifications of person conducting inspection, color digital photographs of the revegetated area taken at the time of each inspection, relative health of revegetated area including whether or not an 85 percent survival rate of native species is being attained and, if not, corrective methods to be employed and whether or not invasive species are present and, if so, name of invasive species and corrective methods to be employed.
 - iii. Commission Staff must be permitted site access to perform inspections during the minimum three year maintenance period.
- 6. Prior to the commencement of activities on the Project Site, Klar must:
 - a. Stake limits of clearing for inspection by Commission Staff prior to commencement of construction activity.
 - b. Notify the Commission's Compliance and Enforcement Coordinator a minimum of 48 hours in advance of initial site disturbance to inspect site disturbance limits.
 - c. Install snow fencing around the existing 4.54 acre area that will remain natural. This area shall be set aside in its current natural state to undergo natural ecological processes. No clearing of the understory or other activity is permitted in this area.

7. Klar shall submit documentation to the Commission that it has dedicated to the Town a trail easement as per its stipulation with the Town.
8. Prior to application to the Town for Certificates of Occupancy, Klar must certify to the Commission that revegetation is complete and that Commission conditions have been fulfilled. Klar may not request Town Certificates of Occupancy until it has received written verification from Commission staff that the revegetation is complete and that Commission conditions have been fulfilled.
9. In the event Klar or any of its related entities transfers ownership or responsibility for compliance with the terms of this approval to any other entity, including a Homeowner's Association, arrangements, approved by the Commission, must be made to ensure that the new entity will be responsible for implementing the terms of this approval. Absent such approval, Klar shall retain responsibility for the implementation of the conditions of this approval.
10. Obtain additional permits and approvals, as required by law, prior to commencement of the Project. Klar must forward copies of such approvals including, but not limited to the SCDHS approval for connection to the Bretton Woods STP, and any other applicable permits to the Commission Office two weeks prior to commencement of site work.

Resolved, if any changes occur in the elements of the project, Klar must notify the Commission and submit an amended application, subject to review and approval, prior to implementation; and be it further

Resolved, Klar shall cause the terms and conditions of this approval to be incorporated into a Covenant and Restriction and submit the same to the Commission for its approval. If approved by the Commission the Covenants and Restrictions shall be filed promptly with the Suffolk County Clerk. If rejected, Klar shall revise the draft Covenant as per the Commission's comments and re-submit the same for its approval. This cycle shall continue until the Commission approves the Covenant and Restriction. Until the Covenant and Restriction is approved and recorded no activity may occur on the Project Site.

Record of Motion:

Motion by: M. Lesko

Seconded by: S. Walter

In Favor: 4

Opposed: 1 (M. Shea)

Abstention: 0