

ORIGINAL

In the Matter Of:
EQUINE FACILITY



PROCEEDINGS

April 18, 2018



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EQUINE FACILITY LLC
REPRESENTED BY JOHN BRESLIN, ESQ.
1 Independence Hill, Farmingville, New York
----- x

April 18, 2018
3:35 p.m

PRESENT:

CARRIE MEEK GALLAGHER
JOHN MILAZZO
DAN McCORMICK
JOHN PAVACIC
EDWARD P. ROMAINE
DORIAN DALE
JANET LONGO
KYLE COLLINS
JOHN TVERDDY

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MS. MEEK GALLAGHER: Okay. I think we are all set. We are holding a public hearing today on the letter of interpretation credit allocation appeal for Equine Facility LLC in the Town of Brookhaven media room. What else do I need to read? John, is that enough?

MR. MILAZZO: Yes. Why don't we put appearances on?

(Appearances obtained prior to the start of hearing.)

MR. TVERDYI: So I am submitting the staff Exhibits A through J into the hearing record. So the Equine Facility LLC is appealing the Pine Barrens credit allocation for a parcel number 200-460-1-5. The parcel is located in the Town of Brookhaven Exit 69 on LIE north of Main Street, west of Shultz Road. As you can see it on the Suffolk County tax map Album page, section 460 which is Exhibit E. The length use on the parcel is a commercial horse farm operation with barns, trailers, and (inaudible). The list of services the farm provides is in Exhibit J. The 2016 Aerial Map is Exhibit G. Natural Pine Barrens vegetation

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2 exists predominantly on the perimeter of the
3 site. The system of DEC regulated fresh
4 wetlands is located adjacent to the parcel on
5 its south and west sides. The Peconic River
6 head waters exist on the north of the parcel.

7 According to the March 17, 2006 survey,
8 which is Exhibit F, the parcel is developed,
9 it's a two-family residence, the storage
10 building, four mobile homes, and two horse
11 stables. One of the stables has 55 horse
12 stools and the other 43 stools. The site of
13 inspection on September 24, 2013 confirmed the
14 existence of structures depicted on the survey.
15 The parcel is within the horse farm zoning
16 district and the plan doesn't have a specific
17 development yield factor for such zoning
18 category. So in order to calculate the amount
19 of credits we have used all other districts
20 yield factor which is .1 credit per acre.
21 Based on the extent of improvement of the
22 parcel, it's allocation of 3.43 credits was
23 reduced by 9.82 credits. You can see all the
24 reduction calculations on the second page of
25 Letter of Interpretation which is Exhibit C.

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2 Therefore, the parcels location was zero
3 credits.

4 In 2015, the commission received four
5 hardship waiver application from Carol and Joe
6 and James Eagan for a subdivision about
7 24-acres of the project site to develop 72
8 single-family dwellings. Positive Declaration
9 for the waiver application is Exhibit I. You
10 can find more details on the history of the
11 parcel in the timeline of the staff report
12 which is Exhibit A. That's all I have and we
13 have representatives.

14 MS. MEEK GALLAGHER: So who would like to
15 --

16 MR. BARON: I will go first. Should I
17 remain seated?

18 MS. MEEK GALLAGHER: (Nods head.)

19 MR. BARON: Good afternoon. My name is
20 Peter Baron, I am the attorney for the
21 applicants. I am going to hand out the
22 packets. I am submitting the binder for
23 record. In the binder is a seven-page
24 statement to be read in the record by Armand.
25 He will once I am finished. Also in the binder

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2 is a six-page exhibit index referencing
3 Exhibits 1 through 7, having subcategories in
4 Exhibit 1, A through H; Exhibit 2, A through C;
5 and Exhibit 3, A through D; Exhibit 4, A
6 through I; Exhibit 5, A through I; Exhibit 6,
7 A through K; Exhibit 7, A through G. The
8 curtailed exhibits backing up our points are
9 crucial, crucial exhibits. Backing up our
10 points are as follows, I'll be brief. Exhibit
11 A which is the Initial Staff Report; analysis
12 of the property. That's the A-Residence, one
13 house per 30,000 square feet, Exhibit 1B,
14 Mr. Milazzo: the Yield Factor created for Horse
15 Farm Zoning, No Yield Factor existed prior to
16 the Cavalli application; Horse Farm Zoning
17 A-residence one house per 30,000 square feet.
18 1.2 Pine Barrens credits per acre. CLUP
19 Section 6.3.1.1.13; Commission adopted
20 Resolution.

21 Going onto Exhibit 1H, Commission approved
22 an Agricultural Easement for Cavalli. No
23 reductions were made for barns, or stalls.
24 Once again referencing CLUP Statute Sections
25 3.3.3.4. Credits were also allocated on a

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parcel with a house, which should not have been allowed because it did not double the minimum lot size referencing CLUP Section 6.3.3.6. The language of the Easement expressly understood the property to only be used as a Horse Farm, Conveyance constitutes agriculture, meaning within ECL Article 57.

Mark as Exhibit 2 and then we are going onto Exhibit 2B. The Commission increased Credit allocation to one credit per acre, basing off what could have been developed under Article 6 of The Suffolk County Health Code, referencing CLUP Section 6.4.5. The Commission total totaled Barkus's holdings of 54 lots or 19.34-acres and allocated 19.34 credits.

Moving on to the Warner Duck Farm, Olin Warner Exhibit 3. Clearinghouse Staff conducted an analysis using current use Horse Farm "Boarding Horses."

Exhibit 3B, Commission made a resolution allocating 48.01 Pine Barrens credits. Staff also noted three barns used to Board Horses. There was no public hearing held. Survey showed 18 buildings not mentioned on the Staff

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Report and not considered when allocating PBC's. No deductions were made for any building and only one primary residence.

Exhibit 3C, Commission permitted Conservation Easement excluding the primary residence from the Easement, referencing CLUP Section 6.7.5 through section 6.7.5.3.

Exhibit 3D, Commission upon request of the applicant permitted a three lot subdivision after Conservation Easement was filed.

Moving on. Equine Facilities, LLC. Formally Harrick Horse Farm Inc., Exhibit 4. Exhibit 4A, Clearinghouse staff conducted an analysis under CLUP 6.7.3.2. A-Residential one house per 30,000 square feet. Clearinghouse required all C/O's for buildings prior to issuance.

Going onto 4 -- Exhibit 4B, LOI allocated Credits based on A-5 Residential, one house per 200,000 square feet. Staff Report stated Horse Farms zoning A-Residential one house per 30,000 square feet. Letter of Intent did not reflect Staff Report -- Letter of Interpretation. I'm sorry.

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Exhibit 4D, Equine Facilities LLC requested a new Letter of Interpretation. Staff conducted an analysis new site inspection and used Article 6 of the Suffolk County Health Code, referencing CLUP Section 6.4.5 to deduct credits from the LOI.

Exhibit 4E, Appellants applied for an Indoor Riding Barn in keeping with 2.4. The application was approved by the Commission as Non-Development. No clearing was necessary. The Pine Barrens Society objected and commenced Article 78 proceeding against the Commission. The Courts annulled the resolution and the Commission did not appeal pursuant to 2.4 57-0121(3)(B) promoting compatible agriculture, which an indoor riding barn is.

Exhibit 4F, 2014 Appellant applied to the ZBA of The Town of Brookhaven because the only authority that can interpret the zoning code of the town is the town ZBA, See Town Law 267A. The ZBA interpreted the subject parcel as Horse Farm District all principle uses in A-residence district, once again, one house per 30,000 square feet.

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2 Exhibit 4G, Applicant's requested a new
3 LOI. Staff deducted the allocation to zero
4 Credits.

5 Exhibit 4H, applicant requested a new LOI
6 referencing CLUP Section 6.7.3.1. due to the
7 expiration of the old LOI. Clearinghouse Staff
8 conducted an analysis and allocated zero PBC's
9 and informed the appellant that if barns and
10 buildings were removed from the property,
11 applicants can apply for an increase in
12 allocation.

13 Exhibit 4I. 2018: Real Estate Appraisal
14 of the Equine Facilities LLC Property, the
15 subject premises, from Licensed Real Estate
16 Appraiser John J. Breslin, Jr. of Breslin
17 Appraisal Company, Inc. He is the gentleman to
18 the right of Mr. Eagan.

19 The last one I am going to reference for
20 the record is the Klug Corporation
21 900-235-1-47.1, Exhibit 5A which is a 2018
22 letter from the Principal Environmental Planner
23 for Central Pine Barrens. The letter
24 references 57-0107.13(v) and the CLUP 5.2.
25 Stating no approval is necessary from the

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Commission for construction of Labor Housing
and a barn on the Klug Property. The property
has no development rights. They were sold off
in 1982. Thank you and I now turn over to Mr.

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MR. MILAZZO: I am sorry to interrupt.

MR. EAGAN: No. I am going to --

MR. MILAZZO: I'm sorry.

MR. EAGAN: No.

MR. MILAZZO: No, I have a question for
your counsel.

MR. EAGAN: Well, we are not done with the

--

(Whereupon, there were multiple speakers
at one time.)

MR. MILAZZO: Mr. Eagan. Can I just ask
you a question?

MR. EAGAN: No.

MR. MILAZZO: We don't have Exhibit 4G.

MR. EAGAN: Let me read through the whole
thing. I know --

MR. MILAZZO: Mr. Eagan.

MR. EAGAN: I made the mistake, I marked
it off in my book.

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MR. MILAZZO: I just want the record to be clean when you refer to an exhibit that's not included. If you want to provide 4D, please do so. If not, we will confer that there is no 4G.

MR. EAGAN: I am going to get to it. Just let me finish the whole presentation before anybody asks any questions. At the end, please save all the interruptions and questions to the end.

MS. MEEK GALLAGHER: We will try. If it's relevant right to the moment though, we might want to jump in at that moment.

MR. MILAZZO: So the record will reflect that at present there's no Exhibit 4G, without objection. Is there an objection, counsel?

MR. BARON: There's no objection.

MS. MEEK GALLAGHER: I see 4H and I see no 4G. Mr. Egoen, there's a lot of material here so we may have questions on each individual item you bring up because it is easier at that time than wait until you've gone through 47 exhibits.

MR. EAGAN: The goal is to -- I have a lot

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2 of the answers that may be unclear at the
3 beginning of the hearing but at the end of the
4 hearing everything is going to be clear. If
5 you would, it answers a lot of questions
6 throughout my testimony. If you would please
7 save all your questions to the end, that would
8 be great, as they might be answered during the
9 course of the hearing.

10 Okay. I will start.

11 MR. MILAZZO: Why don't we swear him in
12 first?

13 A R M A N D E A G A N, the witness herein, having
14 been first duly sworn before a Notary Public of the
15 State of New York, was examined and testified as
16 follows:

17 MR. EAGAN: Introduction. We (The
18 Applicant) in this credit appeal seek to
19 overturn the previous determination of a credit
20 allocation for the subject property. In this
21 appeal, we rely on the precedents set by the
22 Commission in similar situations. It should be
23 noted that the New York State Supreme Court on
24 the Matter of Henry Dittmer -v- John Pavacic,
25 et al (Index No.: 16-2657) (Honorable Joseph

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2 Farneti) and further citing Matter of c/o
3 Hamptons -v- Zoning Board of Appeals of
4 Incorporated Village of East Hampton, (98AD3d &
5 38, 950 NYS2d386(2012), held that "An agency's
6 determination which neither adheres to its own
7 prior precedent nor indicates its reasons for
8 reaching a different result on essentially the
9 same facts is arbitrary and capricious."
10 (emphasis added) and is subject to being
11 overturned by the Court.

12 We are here to appeal the allocation of
13 Equine Facilities, LLC. property known as
14 200-460-1-5. The property was allocated zero
15 (0) Pine Barrens Credits by the Clearinghouse.
16 The property is at 34.22-acre parcel located at
17 the in the Core area in Brookhaven Town. It is
18 zoned Horse Farm (A-Residential, one house per
19 30,000 square feet) (see ZBA determination &
20 Dimensional Use Table; Exhibit 4F.

21 We are requesting an increased credit
22 allocation with no deductions for outbuildings
23 or labor housing on the property, only reducing
24 one Credit for the Primary Residence as
25 similarly situated applicants were granted.

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(see Exhibit 1H and 3B).

In the CLUP an acre for the purpose of allocating PBCs is defined as 43,560 square feet. (see CLUP 6.3.1.)

The CLUP states that "One Pine Barrens Credit shall be allocated for each single family dwelling on a residentially zoned parcel of land located within the Core Preservation Area. (see CLUP 6.3.1.)

The Math: 34.22-acres times 43,560 square feet equals 1,490,623.2 square feet divided by 30,000 square feet equals 49.68 building lots under the current zoning. If the above referenced section on the CLUP was applied we would be entitled to 49.68 PBC's. (see CLUP 6.3.1)

The next section; Maintenance and Value: In the introduction to the Pine Barrens Credit program in the CLUP states that; "It is the primary purpose of the Pine Barrens Credit program to maintain the value in the lands designated for preservation or protection under the Plan by providing for the allocation of Pine Barrens Credit -- a use of Pine Barrens

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Credits (PBCs." (see CLUP 6.1.)

The Property appraised at \$5.88 million and \$120,000 per building lot multiplied by 49 building lots. The average sale price of a Pine Barrens Credit is currently \$77,000 in December of 2017 for PBC. The final appraisal after the anticipated cost worked out to \$3,773,000.00 divided by \$77,000 equals 49 PBC's. (see Exhibit 4I). The allocation of PBC's would maintain the value of the property. (see CLUP 6.1.). This allocation method was applied in the Cavalli application. An "Opinion of Value" as it was titled, was submitted of the property, which was being used as a Horse Farm, and the Commission matched the "Opinion of Value" with a credit allocation of similar value. Also, the Commission made no deductions for barns on the Cavalli property and it only reduced one PBC for the primary residence. (see CLUP 6.4.5.)

In another precedent case, applicant Olin Warner (Warner Duck Farm) was allocated credits based on the zoning of the property and the CLUP Yield Factor. (see CLUP 6.3.1.1.3) In the

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2 Clearinghouse Staff Report ,three barns used to
3 house horses and one primary residence were
4 mentioned. (see Exhibit 3A). In the survey
5 submitted with the application, 18 buildings
6 were depicted (see Exhibit 3B). There was no
7 mention of the 18 buildings nor were there
8 deductions for them or the three barns
9 mentioned, or the stalls in the barns. The
10 Commission instead of deducting PBC's for the
11 Primary Residence, excluded it from the
12 conservation easement (see Exhibit 3C).

13 Overview of Precedent Cases: Cavalli- The
14 Cavalli properties were initially interpreted
15 by the Clearinghouse staff as having Brookhaven
16 Towns Horse Farm Zoning Classification (one
17 house per 30,000 square feet.) (see Exhibit
18 one A) The CLUP did not yet have a Yield Factor
19 for such a zoning class. Therefore the
20 Commission and the Clearinghouse Staff (Mr.
21 Milazzo) Created a Yield Factor by
22 "extrapolating" from the upper and lower Yield
23 Factors already in the CLUP. (see Exhibit 1B).
24 He determined that 1.2 PBC's per acre is a
25 proper Yield Factor (see CLUP 6.3.1.1.13) for

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such a zoning classification that would allow one house per 30,000 square feet like Horse Farm zoning does. (One acre equals 43,560 square feet., [43,560 square feet divided by 30,000 square feet equals 1.452]).

The Clearinghouse Staff realized they had made an error in interpreting the zoning of the property (see Exhibit 1C). It was not Horse Farm Zoning as it was initially interpreted, instead it was A-5 Zoning (see Exhibit 5D (One house per 200,000 square feet). The Clearinghouse rescinded the LOI's allocating PBCs based on the Horse Farm Zoning and instead allocated based on A-5 zoning (see CLUP 6.3.1.1.9). The Cavalli's appealed these new Letters of Interpretation. They submitted an appeal with affidavits stating that the property was a Horse Farm. Also, they submitted an "Opinion of Value" by a real estate professional (see Exhibit 1B), and a Commission prior precedent case, The Barkus application. In this application the Commission determined that based on the "Single Separate Status" of the 54 properties totaling

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2 19.34-acres, the applicants would meet the
3 standards of the Health Department Article 6
4 (see CLUP 6.4.5) and therefore were entitled to
5 one PBC per acre for their total holdings (some
6 of these properties had a utility easement
7 running through them, therefore would be
8 unbuildable (see Exhibit 2C). Although the
9 Commission granted that Cavalli -- the same
10 formula that they did -- although the
11 commission granted Cavalli the same allocation
12 formula, they differentiated (see Exhibit 1G)
13 in a regular Commission meeting, stating that
14 the applications were not similar. The
15 Cavalli's were granted one Pine Barren Credit
16 per acre because it maintained the value of the
17 property. The value of 19.03 PBC's allocated
18 to the property about matched of the "Opinion
19 of Value" of the properties (see Exhibit 1E and
20 1F). Only one PBC was deducted from the
21 primary residence, no deductions were made for
22 the barns or stalls in the barns (see Exhibit
23 1D). The Cavalli's were allowed to continue
24 using the property as a horse farm after the
25 conservation easement was filed. The easement

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was limited to the use of the property -- the easement limited the use of the property to a horse farm. (see Exhibit 1H).

Warner Duck Farm, it's 30.067-acres. The applicant was allocated PBC's based on the zoning of the property, Recreational District (one house per 20,000 square feet). They were allocated 1.6 PBCs per acre (see CLUP 6.3.1.1.3) (43,560 square feet times 30.067 equals 1,309,718.52 square feet divided by 20,000 (zoning) equals 65.485 houses permitted).

They were 48.01 PBCs allocated to the property based on the Yield Factor. It was noted that there were three barns on the property and one primary residence. There were no deductions made for the three barns "used to house horses" or the stalls in the barns (see CLUP 6.4.5). Instead of deducting one PBC for the Primary Residence, the Commission allowed it to be excluded from the conservation easement. The survey of the subject property submitted with the application depicted 18 buildings on the property (see Exhibit 3B) these buildings were not taken into account

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2 when allocated PBCs to the property. The
3 Clearinghouse or the Commission required no
4 C/Os for the buildings (see Exhibit 2B).

5 Equine Facilities, LLC (Subject property).

6 The property has four LOIs (see Exhibits 4A, B,
7 D, H) in the past 20 or so years. In the first
8 ever Staff Report created by the Commission
9 regarding this property, the zoning was

10 interpreted as -- interpreted as "HF Farm
11 one house per 30,000 square feet (see Exhibit
12 4A) although the first LOI did not reflect the
13 Staff Report, the Clearinghouse asked the
14 Advisory Board how to allocate credits to this
15 parcel, to which the Advisory Board, advised
16 the Clearinghouse to allocate parcels PBC, "as
17 they see fit" (see Exhibit 4C). So the

18 Clearinghouse deducted one PBC for the primary
19 residence and allocated PBCs under the A5
20 Zoning Yield Factor of .16 PBCs per acre (see
21 CLUP 6.3.1.1.9) (see Exhibit 4C). The final
22 allocation worked out to be 4.48 PBCs minus one
23 for the primary residence making a final
24 allocation of 3.38 PBCs for the 34.22-acres of
25 property zoned Horse Farm (one house per 30,000

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1 square feet). The LOI was not appealed. The
2 new owners requested a new LOI; no changes had
3 been made to the property except ownership.
4 The Clearinghouse in its new LOI allocated zero
5 PBCs to the same property. In 2013 the same
6 owners requested another LOI, no changes had
7 been made to the property since the first LOI.
8 The Clearinghouse Staff again allocated zero
9 PBCs to the property (see Exhibit 4G and 4H).
10 4G is a lost LOI but it's the same as 4H.

11
12 In 2014, the applicants applied for a
13 zoning interpretation of the subject property
14 from the ZBA. The ZBA found the zoning to be a
15 Horse Farm Residence District which they went
16 on to declare: "Permitted uses of a property
17 located within Horse Farm Residence District
18 includes "all principle uses permitted in the
19 A-Residence District," Code Section 85-367A."
20 When reviewing Chapter 85 Attachment one of the
21 Brookhaven town code, it states that the
22 minimum area (square feet) in the A-Residence
23 One-Family district is 30,000 square feet (see
24 Exhibit 4G) Town of Brookhaven Residential
25 District: Table of Dimensional Regulations

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laces 85-177 (see Exhibits 4F and 7D).

In a 2016 LOI; again requested by the same owners, zero credits were allocated (see Exhibit 4H), The Clearinghouse stated that if the buildings were to be removed, we could apply for an increase in allocation. Along with the LOI came a deduction sheet that showed Suffolk County Health Department Standards converted into residential use sanitary flow equivalents (see Exhibit 4G and 4H). The commission allocated PBCs under the Yield Factor "All Other Districts" using a formula of .10 PBCs per acre (see CLUP 6.2). This worked out to 3.43 PBCs, then the Clearinghouse deducted 9.82 PBCs for the barns and staff housing, which was not deducted for any other application, and further deducted PBCs for the Primary Residence.

Next case is Klug Corporation

900-235-1-47.1- This is a 2018 case. "The 182-acre site is located southeast of County Road 51 and north of Sunrise Highway (SR 27)." This is a direct quote which is the exact Commission resolution and it's Exhibit 5A. The

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current land use of the site is agriculture.

In, 1982, the development rights was sold by the owner, Orenstein Brothers to the Town of Southampton.

The proposal is for the construction of a barn for storage of agricultural equipment and the request for agricultural labor housing on the property. According to the Town Site Plan/SE Application, the proposed barn is 2,016 square feet. An additional two open wall pole building for hay storage are proposed totaling 2,080 square feet. The site contains five existing sheds and two open leans totaling 1,112 square feet.

At the Commission meeting of December 20, 2017, the Commission acknowledged receipt of the referral. At this meeting of January 17, 2018, the Commission determined the activity does not require approval pursuant to New York State Environmental Conservation Law 57 Section 57-0107.13(v)d of the Central Pine Barrens Comprehensive Land Use Plan, Section 5.2 which states, "the use of any land for the purpose of agriculture or horticulture" does not

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constitute development provided that it does not involve material alteration of native vegetation. Therefore, no permit from the Commission is required." (see Exhibit 5A).

The property has no sanitary flow/development rights left on the property. The Commission granted a barn and agricultural labor housing stating, "no permit from the Commission is required." We are requesting that no deductions are made for the labor housing or barns on the property. As the Clearinghouse Staff defined in the above reference letter, the barns and labor housing is allowed under ECL 57-0107.13(v), and under the CLUP in section 5.2 (see Exhibit 5A).

The Conclusion. The Fifth Amendment to the United States Constitution and Article 1, Section 7A of the New York State Constitution provides that in the event that the property is taken for public use, he owner must recieve "just compensation" (see Exhibit 7G). This is determined by the concept of "Fair Market Value," the price for which the property would sell for if there was a willing buyer who was

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2 under no compulsion to sell. The question
3 asked is; what has the owner lost? This is
4 because the owner is to be put in as good of a
5 position (pecuniarily) as it would have been if
6 the property had not been taken. The property
7 must be valued at its highest and best use,
8 regardless of its actual use.

9 The allocation of zero PBCs to this parcel
10 constitutes a taking of the property without
11 "Just Compensation" and is arbitrary and
12 capricious, and does not promote the goals and
13 objectives of the Long Island Pine Barrens
14 Protection Act ("The Plan" or "The CLUP").

15 We are requesting 49.68 PBCs reducing only
16 one for the primary residence and an
17 agricultural easement. This request adheres to
18 the plain language of the CLUP as well as the
19 Commissions prior precedent. The math is:
20 34.22-acres times 1,490,623.2 square feet
21 divided by 30,000 which is 49.68 building lots
22 under the current zoning. In Tuccio V. Pine
23 Barrens Staff, the Appellate Division
24 determined that the act diminished the value
25 of, stating "Finally, the Commission's

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determination was arbitrary and capricious, an abuse of discretion, and irrational to the extent that it was based on a finding that the "implementation of the act has not prevented reasonable use of the property," since the petitioners were prevented from the act by developing approximately 7.16 additional acres on the property (see Town Code 330-37, 330-38). In place of the development in the core, the Pine Barrens Credit Program was created in order to compensate property owners for what they could have done if it wasn't for the Act (see CLUP 6.1). The primary purpose of the Pine Barrens Credit program is to "maintain the value in the land designated for preservation." If the commission were to deny this application, it will force us to develop the farm under its underlying A-Zoning and will ultimately go against the intent of the act. We are requesting fair and equal treatment. This is an opportunity for the Commission to preserve this property and prevent development in the Core, as well as preserve the dwindling Equine Industry in Suffolk County.

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And the Cavalli Property was right next door to the Equine Facility property and that might have been why Mr. Milazzo made that mistake. I'm done. Thank you. Now on to Mr. Breslin.

MR. BRESLIN: Good afternoon.

MR. MILAZZO: Can you swear him in?

J O H N B R E S L I N, the witness herein, having been first duly sworn before a Notary Public of the State of New York, was examined and testified as follows:

My name is John Breslin, I am the principal and president of Breslin Appraisal Company with offices at 44 Elm Street and I am also a licensed attorney to practice in the State of New York.

I have testified as a real estate expert before all of the municipal bodies on Long Island, all of the counties, almost all of the villages, the courts, and even before this body a couple of times over the years. I was requested by the applicant to make a study with respect to the value of the property under certain assumptions. I was provided all the

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2 application materials that you have before you.
3 I have read the cases and the prior
4 determinations that are referenced in these
5 materials, and what I think -- and to go
6 just -- quickly, all of the discussion that
7 Mr. Eagan Mr. Baron referenced to, I think to
8 simply the basis of what the applicant is here
9 before, I think the underlying premises, when
10 the allocation of the credits were made, there
11 were, I think, two simple mistakes that were
12 made. The first is that there was no -- there
13 was no -- on the underlying zoning there was no
14 per unit amount that's allocated and that's
15 clearly incorrect. The zoning says,
16 specifically, it's one unit per 30,000 square
17 feet. That's clearly what the Horse Farm
18 Zoning provides and that's also consistent with
19 your prior practice, how you've recognized it.
20 Not only with respect to horse farm zoning but
21 for other overlay districts and that's been
22 your precedent in Cavalli, Warner and most
23 recently included, where you look at the zoning
24 that's on the property consistent with the use
25 that's taking place and acquire requirements on

PROCEEDINGS

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2 a per-unit basis consisting with those zonings.
3 So this applicant is looking for the same
4 treatment that you did in those specific -- you
5 and your predecessors -- Cavalli being
6 obviously, the most germane one because it's
7 right next door and likely was the mistake that
8 was made originally was this zoning for this
9 property.

10 The second issue with respect to the
11 deductions made for the structures, the
12 deductions for the structures is inconsistent
13 with the other practices most recently denoted
14 include where you are taking away from the
15 buildings in an agriculture use. That hasn't
16 been done in other cases.

17 The last component and part that I was
18 asked to talk about was to maintain the value.
19 One of the benefits of the Pine Barrens as a
20 preservation tool is the ability to use private
21 money to preserve property. It is a wonderful
22 concept and almost all of the other
23 situations where the municipalities or any
24 agencies are looking for property, they have to
25 use government funds or tax payer funds through

PROCEEDINGS

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2 the preservation. They are paying for it
3 whether it's development right that you are
4 acquiring, or the county is acquiring or the
5 town is acquiring, they are using government
6 funds. In this case with respect to the idea
7 of Pine Barrens Credits which are then acquired
8 by individuals, you are using private money to
9 pay for this preservation. It's a great
10 concept that it works out that way. In this
11 case the applicant is looking to be made whole
12 with respect to the value of the property and
13 as Mr. Egoen indicated in his report that's
14 before you, we analyzed the value based upon
15 the 30,000 square foot credits indicating the
16 number of plots that you can get, did research
17 with respect to the per plot value, came to a
18 gross sellout number, and then deducted the
19 cost anticipating. In order to do that, he
20 would have to go through a subdivision and
21 incur very substantial costs and time in order
22 to get that to arrive at a value, which I
23 didn't even realize it at the time they did it,
24 it equates to pretty much the value of what
25 would be 49 Pine Barrens Credits. So that

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would be a way for the applicant to maintain his value.

So I think for the reasons that, you know, they have been explained, that's the reason the applicant is looking for it, it would be a way for them to sustain their value. I would be happy to answer any questions.

MS. MEEK GALLAGHER: Mr. Eagan, anyone else from your team that will be speaking?

MR. EAGAN: Nope.

MS. MEEK GALLAGHER: Okay. So, any questions from the Commission Members at this time or do we need to digest the information?

MR. MILAZZO: I just want one thing just so there's an exhibit -- Commission Exhibit B? Commission Exhibit H, it doesn't have the complete deed so I just want to substitute this document for that. So what this is is the 2004 deed into Equine Facilities. I just want to make sure that we have it for the complete record.

Was the -- just a matter of clarification. The CLUP matter wasn't a matter about Pine Barren Credits. They didn't have an LOI, they

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didn't appeal a letter of interpretation, they weren't seeking primary credits. I just want to put that onto the record. And then also, Jerry, there was a plan amendment in 2000 -- what year was there a plan amendment?

MR. TVERDY: 2012.

MR. MILAZZO: And what happened in 2012?

MR. TVERDY: There was some Yield Development Factors reviewed and has changed some of them and the table was updated.

MR. BARON: I think one of the ones that was added was not in the original.

MR. BRESLIN: That was in 2001.

MR. EAGAN: There's been no changes as far as 6.1.1.13.

MR. MILAZZO: Whatever the number is.

MR. EAGAN: I'll get it for you because you seem to be getting into it a little bit, so we will get into it too.

MR. MILAZZO: Well, why don't we -- Jerry, you have the new formula, right?

MR. EAGAN: Exhibit 6F 6.3.1.1.13, one dwelling unit per 30,000 square feet. That is in the current CLUP, that is in there now.

PROCEEDINGS

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2 It's been in there now since you made it. You
3 made it for Horse Farm Zoning and we were not
4 allocated it.

5 MR. MILAZZO: So let me start with this
6 question. Jerry, what's the zoning of this
7 property?

8 MR. TVERDY: Horse Farm.

9 MR. MILAZZO: And there's a table in the
10 plan, correct?

11 MR. TVERDY: Correct.

12 MR. MILAZZO: And when you allocate the
13 LOI, you look at that table, right?

14 MR. TVERDY: Correct.

15 MR. MILAZZO: So where did you place Horse
16 Farm District Property to figure out what
17 allocation formula to apply for this lot?

18 MR. TVERDY: It would go under all other
19 districts.

20 MR. MILAZZO: What is the allocation for
21 all other districts?

22 MR. TVERDY: .1 credit per acre.

23 MR. MILAZZO: And then the plan also has a
24 provision prior to the table which lists the
25 deductions, correct?

1 PROCEEDINGS

2 MR. TVERDYY: Correct.

3 MR. MILAZZO: Okay. And that was fourth
4 in the LOI, correct?

5 MR. TVERDYY: I'm sorry?

6 MR. MILAZZO: That was set forth in the
7 table and the deduction was explained in the
8 LOI, correct?

9 MR. TVERDYY: Correct.

10 MR. MILAZZO: And those deductions are
11 based on the Health Department (inaudible),
12 correct?

13 MR. TVERDYY: Correct.

14 MR. BRESLIN: But those are inconsistent
15 with the prior determinations and also
16 inconsistent with other parts of the CLUP.

17 MR. MILAZZO: That's your argument.

18 MR. BRESLIN: It is. But again, as you
19 know -- well know statutory construction has to
20 be construed against the drafter with represent
21 to land use regulations under Alan B.
22 (inaudible). You know, it has to be construed
23 in favor of the taxpayer.

24 MR. MILAZZO: And again, what I did was I
25 asked -- I don't need to explain why I did what

PROCEEDINGS

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2 I did. I understand that's your argument,
3 thank you for bringing that to the commission.

4 MR. EAGAN: So are you trying to
5 differentiate between ours and Cavalli's saying
6 that you didn't create this for -- you created
7 this Yield Factor for Horse Farm District and
8 now it's on there currently. It's still --
9 Cavalli was interpreted probably because our
10 property was right next door and it's Horde
11 farm District. You, yourself, accidentally
12 interpreted it as Horse Farm A-Residential (one
13 house per 30,000 square feet) and the
14 commission in Exhibit 1, whatever it was, if
15 you give me a second, I will get to it. In
16 Exhibit 1D, Mr. Milazzo reported the
17 Clearinghouse Board at it's last meeting
18 examined an application for the Letter on
19 Interpretation for four parcels with Horse Farm
20 Zoning in Brookhaven Town. He explained that
21 the plan does not provide for an allocation
22 formula for this zoning category which requires
23 30,000 square feet in each residential parcel.
24 The plan does -- should I keep going?

25 MR. BRESLIN: No.

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2 MR. MILAZZO: Just as a -- I already had
3 this discussion today. If you read, the
4 commission may have done something, the
5 commission may not have done something, so
6 let's not address that this individual did
7 something when you are addressing staff.

8 MR. BRESLIN: Fair enough.

9 MR. MILAZZO: Right? So that's
10 Commission's decision. If you read the text of
11 the minutes, it said he report -- it said he
12 explained what the Clearinghouse, what have
13 you, -- if you have an issue with the
14 commission, let's say the commission did
15 something.

16 MR. MILAZZO: Sorry about that.

17 MR. MILAZZO: Now, when was Cavalli
18 issued.

19 MR. EAGAN: (Witness nods head.)

20 MR. MILAZZO: Want to go to your exhibits
21 and check? 1997, right?

22 MR. EAGAN: Right.

23 MR. MILAZZO: So, Jerry, when was the
24 change in the plan with respect to allocation
25 for, other than property that's listed? When

PROCEEDINGS

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2 was that change made? You just testified in
3 2012, correct?

4 MR. TVERDY: Right.

5 MR. MILAZZO: Did commission pass a
6 resolution?

7 MR. TVERDY: Yes, it did.

8 MR. MILAZZO: And, Commission, do you seek
9 a review as part of that process?

10 MR. TVERDY: Yes.

11 MR. MILAZZO: Can we introduce that? Do
12 we have copies of that resolution?

13 MR. TVERDY: I believe you have it.

14 MR. MILAZZO: I have it? So, Jerry, your
15 testimony is that in 2012, the commission
16 adopted a new allocation formula for parcels
17 that are other and you testified the horse farm
18 would fall into the other?

19 MR. TVERDY: Right.

20 MR. BRESLIN: Can I ask a question? Do
21 you have that document with you?

22 MR. MILAZZO: Yeah, we have it available.
23 This is just leading to another point which I
24 would like to bring now. I think it would be
25 in the best interest of everybody that this



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2 hearing was kept open and it was continued at
3 the next meeting. I know we have a hearing at
4 the next meeting for the same principles so it
5 won't be an imposition for them to address that
6 as well, so I am going to recommend to the
7 commission to keep this record open and the
8 hearing itself open so at the next meeting if
9 there is new information to be brought in and
10 we no confusion and no issue with respect to
11 that. Again, I recommend that to the
12 commission, ultimately it's your decision on
13 how you wish to proceed.

14 MR. EAGAN: Mr. Milazzo, can I see the
15 change that you are talking about in 2012
16 before we go any further about the hearing
17 thing. We want to see the documents about the
18 2012 change.

19 MR. BRESLIN: Specifically we want to see
20 if it addresses what you are referring to and
21 indicates that Horse Farms fall under that
22 category.

23 MR. MILAZZO: Well, I will read it. It
24 says all other districts were provided to you.

25 MR. BRESLIN: Does it specifically



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reference horse farms?

MR. MILAZZO: So let me back up. Can you just read back from the record. Did I ask the question of what the zoning --

I will ask the question to Mr. Eagan. We don't have to read it back.

MR. EAGAN: It's Horse Far, District.

MR. MILAZZO: Okay. That's all I need to know. That's fine. So having said all of that which wasn't that much today, and having received from the applicant, a presentation of materials of one to two inches of paper, I would recommend to the commission that this hearing be kept open --

MR. EAGAN: Mr. Milazzo, that's about an inch by the way, and we didn't get the document for the 2012 amendment. I just want to clarify.

MR. MILAZZO: That's fine.

MR. EAGAN: I want to get the facts exact. If you are going to say it's 2 inches, it's one inch. It is all prior commission precedent, most of it is commission prior precedent.

MR. MILAZZO: Okay.



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MR. EAGAN: So it's not anything that you shouldn't be familiar with. Also there's (inaudible) pages in there too and we should all be familiar with that.

MR. MILAZZO: We will --

MR. BARON: We are objecting. We ask that the commission close the hearing today. There is absolutely no legal basis or reason to keep this hearing open. We request the hearing be closed today and let the record stand as it is.

MR. MILAZZO: I am not going to argue about whether it's an issue.

MR. McCORMICK: So let's adjourn the hearing on the advice of counsel to review the documents.

MR. COLLINS: I second.

MS. MEEK GALLAGHER: All in favor?

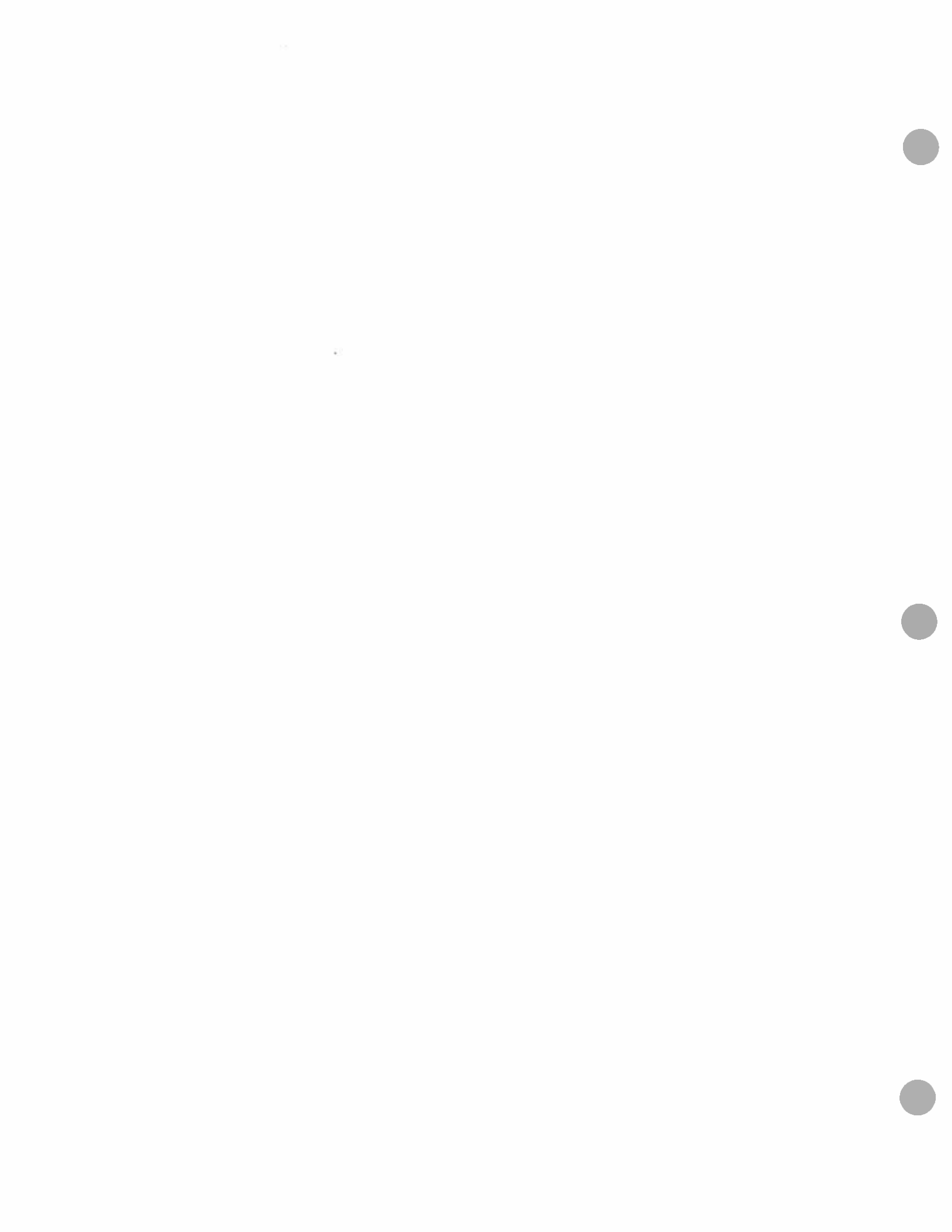
(Chorus of ayes.)

MR. EAGAN: Sorry, what did you? Mechanic.

MR. McCORMICK: I moved, on the advice of counsel, to adjourn the hearing and keep it open.

MR. EAGAN: No, we disagree to that.

MR. McCORMICK: I respect that. But I am



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made that motion and I look for a second.

MR. COLLINS: I second.

MS. MEEK GALLAGHER: All in favor?

(Chorus of ayes.)

MS. MEEK GALLAGHER: All in favor?

(Chorus of ayes.)

MS. MEEK GALLAGHER: Any abstentions?

(No verbal responses given.)

MR. MILAZZO: We will continue it at 3:00.

We will do it before the other matter next
month. We will provide by letter to your
counsel, the information.

(Time Noted: 4:27 p.m.)



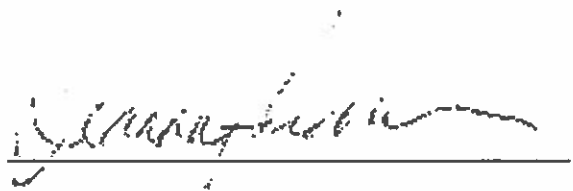
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C E R T I F I C A T E

I, DEANNA HUDSON, a shorthand reporter and Notary Public within and for the State of New York, do hereby certify:

That the within statement is a true and accurate record of the stenographic notes taken by me.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



DEANNA HUDSON



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