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MEETING OF CENTRAL PINE BARRENS
JOINT PLANNING & POLICY COMMISSION

Wednesday, October 4, 2000

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APPEARANCES:

GEORGE PROIOS - Representing Chairman Robert
Gaffney, Suffolk County Executive

BARBARA WIPLUSH - Representing Felix Grucci,
Supervisor Town of Brookhaven

JEFF MURPHREE - Representing Vincent Cannuscio,
Supervisor Town of Southampton

JOEY MACHELLAN - Representing Robert Kozakiewicz,
Supervisor Town of Riverhead

BILL SPITZ - Staff to Ray Cowen

JUDY JAKOBSEN - Commission Staff

DONNA PLUNKETT - Commission Staff

ANN CARTER - Commission Staff

MARK RIZZO - Commission Staff

LORRAINE TREZZA - Commission Staff

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P R O C E E D I N G S

THE CHAIR: Nonvoting issues. Today is there anyone from the public wanting to address the Commission before we begin?

Summary of the 9/13 meeting. Does anyone have any comments or corrections of the minutes?

We can't get approval, but at least we can go through the changes.

MR. RIGANO: There are minor changes.

On page 3, toward the bottom of the page, under core preservation area, under where it says summary, Mr. Rigano is explaining his opinion and we'll change opinion to view.

MR. CORWIN: I'm sure it's of great significance.

THE CHAIR: Off the top of his head as opposed to researching it.

MR. CORWIN: So in your opinion then if he were --

MR. RIGANO: All right. All right.

THE CHAIR: Does anyone else have any comments?

Set it aside until Southampton gets here.

Does anyone have any questions on the

Proceedings

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budget?

MR. MACHELLAN: I see the commissioners are getting a significant raise.

THE CHAIR: Two times what we got last year.

Are we sure that Southampton is coming?

MR. CORWIN: That's what I just asked.

MS. TREZZA: Yes. I called to check and they told me Jeff's coming.

MR. CORWIN: When was that?

MS. TREZZA: That was yesterday.

MR. SPITZ: Just call the governor and get me appointed.

MS. TREZZA: He's here.

(Tape inaudible.)

THE CHAIR: Are there any questions on it?

SPEAKER UNKNOWN: I see Bill --

(Tape inaudible.)

MR. SPITZ: No. If he ever finds out it existed --

MR. RIGANO: Just raise your hand and say agreed.

THE CHAIR: I'll take a motion to accept

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the minutes.

MR. MACHELLAN: Motion to accept the minutes.

THE CHAIR: Is there a second?

MR. CORWIN: Who made the motion?

MR. MACHELLAN: I did.

THE CHAIR: I'll second it.

Everyone in favor, signify with an aye.

MR. MURPHREE: Aye.

MR. MACHELLAN: Aye.

MS. WIPLUSH: Aye.

THE CHAIR: Aye.

Opposed?

Motion carries.

We'll get back to the budget. Did you get that faxed to you?

Does anyone have any questions on it?

Motion to accept the proposed budget?

MR. MACHELLAN: So moved.

THE CHAIR: Anyone second it?

I'll second it.

All those in favor, signify with an aye.

MR. MURPHREE: Aye.

MR. MACHELLAN: Aye.

Proceedings

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MS. WIPLUSH: Aye.

THE CHAIR: Aye.

Opposed?

Motion carries.

Pine Barrens Credit Program.

MR. RIZZO: I believe Dominick has a comment for you.

THE CHAIR: Dominick, did you want to address this Commission?

MR. NICOLAZZI: Alberto and Sipala credit appeal.

THE CHAIR: Good afternoon.

MR. NICOLAZZI: This is regarding Alberto and Sipala who had a discussion last time on the ability of paper streets to help the lots be single and separate. I have two letters that I wanted to read and give you. One is from Safe Harbor Title Agency in Port Jefferson addressed to Mr. Proios.

Mr. Proios, please be advised that this company when performing single and separate searches does not consider whether the adjoining streets are dedicated, approved or joined. A single and separate search is simply chains of title for

Proceedings

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2 contiguous property. For example, we would describe
3 tax map 200-562, Block 3, Lot 3, which is just for
4 an example Lot 3 in their map, as north by Jacwin
5 Nurseries, Inc., east by State Street, south by
6 Pacific Street, west by Clinton Street.

7 I hope that this information provided is
8 of help to you.

9 MS. WIPLUSH: Can I ask a question?

10 MR. NICOLAZZI: Sure.

11 MS. WIPLUSH: Have we in the past gone
12 by the single and separate definition as per the
13 towns or --

14 MR. NICOLAZZI: Yes. That's my
15 recollection.

16 MS. WIPLUSH: According to our records,
17 we have someone who verifies whether the parcels
18 were single and separate.

19 MR. NICOLAZZI: Right. I think the
20 discussion that went on was based on the
21 configuration of these lots, that there was such a
22 strong likelihood that they are single and separate,
23 every lot is separated by these paper streets, that
24 the Commissioner was saying, well, don't rush to do
25 these, to do a single and separate search which

1 Proceedings

2 would be thousands of dollars, let's look at the
3 information that you can get from the companies.

4 I have another letter from Hawkins Webb
5 Jaeger here. If I may read it also regarding that.
6 This one is addressed to me.

7 This letter is in confirmation of our
8 conversation regarding single and separateness of
9 the parcels referenced above.

10 Single and separateness is retained so
11 long as properties owned by the same owner are not
12 contiguous with each other. Therefore a property
13 remains single and separate as long as the adjoining
14 property is a road right of way or is an even owner
15 different from the person or corporation that owns
16 the subject property. This separateness is
17 preserved even for unconstructed roads because the
18 road right of way ownership is vested in the
19 township. The only exception is if the adjoining
20 right of way has been abandoned and the ownership of
21 the right of way reverts to the adjoining
22 properties. In the event of a right of way
23 abandonment, the single and separateness is still
24 preserved if after the reversion of the property on
25 the original opposite side of the right of way

Proceedings

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2 remains in ownership different from the ownership of
3 the subject property.

4 Should you have any questions or wish
5 further clarification, please let me know.

6 And that's from Bill Jaeger.

7 THE CHAIR: Give me that one as well.

8 MR. NICOLAZZI: Yes.

9 MS. WIPLUSH: Who is? Bill Jaeger is?

10 THE CHAIR: Pass it along.

11 MR. NICOLAZZI: Bill Jaeger from Hawkins
12 Webb Jaeger Associates.

13 MR. CORWIN: Give me the original.

14 MS. WIPLUSH: Do you agree with that?

15 (Tape inaudible)

16 THE CHAIR: So --

17 MR. NICOLAZZI: So I think that -- I'm
18 hoping that that addresses this issue of whether or
19 not the parcels are single and separate.

20 THE CHAIR: So that's your argument, is
21 that they are --

22 MR. NICOLAZZI: They are single and
23 separate by virtue of the paper streets.

24 MR. MURPHREE: It sounds like the
25 professional engineer and land surveyor's legal

Proceedings

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opinion. Jim?

MS. WIPLUSH: That's not a legal opinion. That's Hawkin Webb Jaeger's --

MR. NICOLAZZI: Well, Hawkins Webb Jaeger are engineers and (tape inaudible) and then there's a letter from a reputable title company--

SPEAKER UNKNOWN: Who is it?

MR. NICOLAZZI: -- who are attorneys and title professionals.

MR. MACHELLAN: Do you all bring that one as backing up the other type of thing?

MR. NICOLAZZI: Yes. Exactly.

MR. NICOLAZZI: And then finally there was --

(Whereupon, there was a cross-conversation relating to copying of the letters.)

MR. NICOLAZZI: Secondly, there was a discussion about these lots not being exempt by the Board of Health because of Article 6 stating that there's a developer's clause that if five or more lots are owned by the same or controlled by the same person, that that exclusion (word inaudible) as of right. So I contacted bill Jaeger at Hawkins, Webb Jaeger to prepare a yield map showing 20 lots based

Proceedings

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2 on 20,000 square feet per lot because the indication
3 I got from the Health Department is that in the case
4 of a developer's clause, they will often use an
5 equation of 50 percent of the required square
6 footage.

7 That's Michael Strauss.

8 MS. WIPLUSH: Zoning?

9 MR. NICOLAZZI: Excuse me?

10 MS. WIPLUSH: Is that based on zoning,
11 what the zoning yields?

12 MR. NICOLAZZI: No. It's based on the
13 Health Department. It's not zoning.

14 I would ask Michael Strauss to just say a
15 few words.

16 THE CHAIR: You are talking about a
17 single and separate -- you're replotting this as a
18 single and separate from an old filed map?

19 MR. NICOLAZZI: No. What we are
20 discussing at this time is we would probably not
21 develop this configuration if the Board of Health
22 would say that we can configure it with a zone --
23 with a yield map. This yield shows 20 lots, of
24 course we only have 12 lots, but this is just to
25 show you that we have more than the amount of lots

Proceedings

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2 in the yield. There's a drainage requirement of
3 27,800 square feet which could be any lot, Jaeger
4 said maybe Lot 10, which is a cul-de-sac here, and
5 that would be a lot of 27,000 square feet, and Lot
6 10 could be the recharge, so we would have, say, 19
7 lots.

8 If I could just have Michael be the
9 expert witness.

10 MR. RIGANO: Dominick, the presentation
11 that is about to be made goes to the question of
12 Article 6 (word inaudible)?

13 MR. NICOLAZZI: Correct.

14 MR. RIGANO: Not the single and separate
15 issue?

16 MR. NICOLAZZI: Correct.

17 MR. STRAUSS: By the way, my name is
18 Michael Strauss, I'm a lawyer out east with offices
19 at 220 East Main Street in Port Jefferson, and
20 Dominick has asked me to speak more or less as an
21 expert witness on what my opinion would be as to the
22 yield the Health Department would give a parcel like
23 this that came in for development under Article 6.
24 If I could just add one thing though, I did do quite
25 a fair amount of zoning work in the Town of

Proceedings

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2 Brookhaven and in the past 15 years I probably
3 submitted well over a hundred single and separate
4 chains to the Town. Every single chain, because all
5 property, I shouldn't say all, but virtually all
6 property, unless it's landlocked, must front on at
7 least one street, and every single chain of property
8 simply describes the chain when it fronts on a
9 street or more than one street as fronting on the
10 east side of Smith Street, there's no other chain.
11 They don't look at the owner on the other side of
12 the street. So they've accepted, in my experience,
13 all hundred some-odd of those chains as valid unless
14 they were invalid due to a merger, for instance, the
15 property has the same owner on two sides. Every
16 time there's a street, because this list of streets
17 (word inaudible) to be edited, there's no chain that
18 says the owner on the other side, the normal
19 question in your mind whether they (tape inaudible)
20 to the center line, so the streets are separated
21 by --

22 MS. WIPLUSH: Are you saying that if
23 Mr. A owns a parcel on the east side and owns the
24 same parcel on the west side, that it's not single
25 and separate?

Proceedings

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2 MR. STRAUSS: They're otherwise single
3 and separate, but the street that's between them
4 keeps them apart.

5 MS. WIPLUSH: Right. And it --

6 MR. STRAUSS: It is not a merger
7 problem. That's correct.

8 MS. WIPLUSH: Right. And if they both
9 own the parcel on the -- they both own adjoining
10 parcels, one -- and it's just separated by a street,
11 it does merge?

12 MR. STRAUSS: If the owner in question
13 is already merged by virtue of the street between
14 the parcels, the street keeps them separate.

15 MS. WIPLUSH: Right. Okay.

16 MR. STRAUSS: Because it's a Town right
17 of way. Unless the street's abandoned, of course,
18 in which case it's as though the street wasn't there
19 and the map properly drawn would show the parcels as
20 one parcel because there would no longer be a
21 street. Unless that street is abandoned, and,
22 again, every chain has at least one street on it and
23 there's no search beyond the street, the street is
24 an acceptable border for single separateness.

25 I would just like to speak briefly about

Proceedings

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2 the yield that in my opinion the Health Department
3 would give a project like this if it came into in
4 under a subdivision approval Article 6.

5 The last paragraph in Article 6, I'll
6 give you -- I just made a couple of copies so you
7 can each go along with it -- Article 6 for a
8 property in this area would normally require 40,000
9 square feet per lot to develop parcels. However,
10 there are certain exemptions under Article 6 and the
11 one that's most commonly used and would be utilized
12 here is their version of single and separateness and
13 that is that the parcel is a separate parcel on the
14 1981 tax map, on the 1981 Suffolk County Tax Map.
15 However, there is a qualification to that, and it's
16 a short paragraph. I'll read it. What it says is:
17 The density requirements for one-family residences
18 on parcels which appeared as separately assessed on
19 the Suffolk County Tax Map as of January 1, 1981
20 which presently constitutes a buildable parcel under
21 applicable municipal zoning ordinances, which means
22 that they're single and separate residences, which
23 met the Health Department requirements in effect as
24 of January 1, 1981. And then this is the key
25 sentence here. No automatic waiver of these

Proceedings

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2 requirements of this article shall be granted where
3 five or more of such parcels are owned by a
4 developer.

5 So what they're saying is it's not that
6 you can't get the waiver, for instance, here for the
7 12 separate parcels on the 1981 Tax Map, it is not
8 automatic. So when you come in with more than five
9 parcels, they want you to go to their Board of
10 Review for them to look at the situation and
11 determine are you going to get the waiver and are
12 they going to recognize your 12 tax lots or are they
13 not. You understand that they made that five lot
14 division simply because that's the number of lots
15 where you go from a minor to a major subdivision,
16 and what they want to do is they want to draw some
17 line in the sand so that when someone comes in, they
18 want to take a look at it, they don't want someone
19 to come in with a hundred parcels of 50 by 100 each
20 even if they're single and separate, a hundred
21 separate tax parcels and 50 by 100 each on the 1981
22 map and all of a sudden be able to develop all
23 hundred. They want to look at it, and in that case
24 they wouldn't give a hundred, they would probably
25 group them together where you could develop parcels

Proceedings

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2 as Dominick spoke about before of at least 20,000
3 square foot each because that's generally what they
4 look as the benchmark of having at least half of
5 standards.

6 Now, when you're talking about 12 lots,
7 they're not necessarily trying to take away any of
8 your lots because if it's a modest project, and if
9 you look, you know, when you're looking at any kind
10 of statute, the first thing you do is look at the
11 plain language of the statute, the plain language is
12 that it's not an automatic waiver. So they're
13 implying that it's a waiver, it's just not
14 automatic. The Board has to look at it. Secondly,
15 they look at really the size and scope of the
16 project. This is 12 lots. This isn't a developer
17 trying to get around the rule to build hundreds of
18 units. This is somebody that just happens to have
19 more than five, but it's just a little group of
20 parcels, they are together 12 parcels, that's quite
21 modest.

22 The first thing they look at is what is
23 the size of the lots that you would have if you were
24 to build all 12. I didn't quite do the math, but I
25 believe Mr. Jaeger came up with 20 parcels that were

1 Proceedings

2 at least 20,000 square feet each, so it's at least
3 roughly 30,000 square feet would be attributable to
4 each parcel. So if you're only asking for 12 single
5 and separate parcels and they're three quarters of
6 standards, it's very likely the Board of Review
7 would give you all 12 of your lots.

8 Now, unless this case were actually heard
9 by the Board of Review, because every case is
10 obviously unique and every case goes before them,
11 there is no guarantee what the Board would do, but
12 in my experience and I've handled at least in the
13 past five years alone, there is somewhat of a flux,
14 so you wouldn't want to go back all 15 years that
15 I've done this because really every number of years
16 they tend to start looking at things a little bit
17 differently, but in the past five years I've done 20
18 or 25 cases and I think there would be a very good
19 case that all 12 lots would be granted for a modest
20 case like this. Unless it's before them and they
21 actually make a decision, as you know, no one can
22 guarantee you what they'd do, but I would not be
23 surprised under a case like this if that were the
24 determination that they'd make.

25 If you have any other questions, I'd be

Proceedings

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happy to try to answer them.

THE CHAIR: I'm not clear why you're starting with the 20,000 square foot level if it's in Zone 3.

When it's in Zone 3 and according to Article 6 --

MR. STRAUSS: You need 40.

THE CHAIR: You need 40.

MR. STRAUSS: It's just that when you're gonna get relief, for instance, if this were a four lot subdivision and there were four lots of even 60 by 100 each but there were four separate lots on the 1981 Tax Map, you would automatically be entitled to have your four 60 by 100 lots for Health Department purposes. It would just automatically be granted and you'd be exempt from the normal requirements under Article 6 of 40,000 square feet and they would stamp the map up if you met the other requirements. The reason it goes to the Board of Review is as soon as they're more than five, they won't give you an automatic waiver and generally they won't allow you to develop into parcels that are less than half of standards. Let's say here this is a case where we have 12 lots, but we only have three or four acres,

Proceedings

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2 and so we were asking for lots of 12, 14,000 square
3 feet each, they probably wouldn't let you do that
4 because they generally want to see that the lots you
5 end up with, once you're asking for more than five,
6 once you're going before them to make a decision,
7 they want to see that the lots you're ending up with
8 are at least half of standards, that's usually a
9 bottom line number. Okay? If they're more than
10 half the standards and it's a modest number of lots,
11 they generally will still give you that waiver for
12 separate lots on the 1981 Tax Map. However, if the
13 same set of facts that we're talking about a hundred
14 lots, they're not going to give you a hundred lots.
15 They're going to cut that down into some, you know,
16 middle ground somewhere because they don't want a
17 hundred lots coming on a particular area just
18 because they were separate tax lots even if they're
19 20,000 square feet each. They might give you, you
20 know, something in the middle between a 20 and, you
21 know, they might give you 20,000 square foot lots
22 and give you 60 or 65 of them.

23 MR. NICOLAZZI: My logic was just to
24 show the Commission that if we used half the
25 standards, we have 20 lots less one for the

Proceedings

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2 drainage, it would be 19, and that based on our
3 scenario of 12 lots, we would have three quarters of
4 standards, which would be 30,000 square foot lots.

5 MR. STRAUSS: When you're asking for a
6 waiver on just 12 lots and you're three quarters of
7 standards and you are separate lots on the '81 Tax
8 Map and you are single and separate, that's a pretty
9 good application before the Board of Review, and the
10 application is typically -- something like that is
11 typically granted.

12 MR. NICOLAZZI: Something like that
13 is -- oh, I'm sorry.

14 MR. RIGANO: I was just going to ask a
15 question.

16 MR. NICOLAZZI: Okay.

17 MR. RIGANO: Unless you want to talk.

18 MR. NICOLAZZI: No. I just have one
19 other.

20 MR. RIGANO: So is it possible for the
21 applicant to go to the Board of Review and get that
22 type of determination for this purpose?

23 MR. STRAUSS: That's an interesting
24 question whether it's possible or not. Normally the
25 Board of Review wants to see certain things to grant

Proceedings

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2 an application. They want to see subdivisions
3 approval. This property, of course, is in the core,
4 so that's not going to happen.

5 You could submit proof of single and
6 separate as we have here as opposed to they usually
7 want to see SEQRA determination. That's really not
8 going to happen here because there's not an action
9 that's going to generate a SEQRA determination. You
10 basically have to -- and I don't know whether to do
11 it or not quite frankly, but you would basically
12 have to go through a process -- see, normally you
13 get to the Board of Review by making a subdivision
14 application, they see that it's more than five lots,
15 that you don't have 40,000 square feet each, that
16 generates what's called a Notice of Nonconformance,
17 there's a box on there to check that the lots do not
18 meet the 40,000 square feet area under Article 6,
19 you need a waiver to the Board of Review, here's a
20 Board of Review application, it's a \$500 fee, go
21 look at the requirements and apply to the Board of
22 Review because they don't have the power to grant it
23 as of right when you're asking for more than five
24 lots and you don't have the 40,000 under the waiver
25 I was just describing. So the process to get to the

Proceedings

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2 Board of Review, it's not the same as a Board of
3 Appeals which has the power of interpretation which
4 you automatically could apply to under municipal law
5 in New York State under the county law in any Town
6 for an interpretation like this. I just don't know
7 off the top of my head if they would even take it
8 for such an interpretive kind of question. They
9 might say, well, this is in the core, it's not going
10 to be developed or, you know, you haven't gone
11 through the subdivision process, you haven't dug
12 test holes and this and that even though generally
13 that does not really --

14 MR. RIGANO: They want to see --

15 MR. STRAUSS: I don't know the answer
16 for sure, and it's possible, it may be possible, but
17 it's not a practical decision to actually get from
18 them.

19 MR. NICOLAZZI: My third item actually
20 speaks on that a little further. I can show you
21 Barkus. Before you on February 18 of 1997 was an
22 appeal by Martha Barkus and others and it's similar
23 to this appeal in that she was not -- she lost her
24 exemption from the Board of Health because she was
25 over five lots. Also no automatic waiver of these

Proceedings

1 requirements of this article shall be granted when
2 five or more parcels are owned by developer.

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4 However, there were actually two appeals presented
5 by Mrs. Barkus to the Commission and the -- in both
6 cases, I'm reading from the staff decision, in both
7 decisions, the Clearinghouse rested its decision on
8 the unique features of subject parcels. In
9 evaluating the arguments raised on appeal by the
10 applicant's attorney, the Clearinghouse determined
11 that unique features of the 37 lots are their
12 proximity to an existing improved road, their
13 ability to be developed in an economically
14 justifiable manner and the nature of the applicant's
15 holdings. The Clearinghouse finds while the 37 lots
16 are not immediately adjacent to an existing road,
17 they are proximate to parcels that are immediately
18 adjacent. For this reason, the Clearinghouse
19 believes that the development of the 37 lots would
20 be economically sustainable. Economies of sale
21 would be created because the applicants own or
22 control the 44 lots of the subdivision.
23 Infrastructure improvement costs would be
24 distributed among the 44 lots allowing the
25 applicants to recoup these costs as the lots were

Proceedings

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2 sold. This development scenario varies
3 significantly from the cost of developing a single
4 lot or a small number of lots that are a greater
5 distance from an improved road. Which is precisely
6 the argument I'm making here and I feel that our
7 argument is a little stronger because it's not 37
8 lots they're building a great distance from the
9 improved road, this is more like the other cases
10 that I raised, Fichter for example, where the lots
11 have always been 4 or 500 feet from improved roads
12 where you have allowed Ms. Fichter one full credit
13 for each lot as well.

14 MR. RIGANO: Dominick, on the one you
15 were reading, how many acres was involved?

16 MR. NICOLAZZI: 20 acreage. Let me see.
17 19.34 acres.

18 MR. RIGANO: Do you know what the
19 allocation was that was granted on the appeal?

20 MR. NICOLAZZI: I don't have it
21 highlighted in here. I would have to go through it,
22 but there was (word inaudible) given.

23 MR. RIGANO: On the single and separate
24 question, it is possible that you could go to the --
25 by the way, let me ask it as a question. Is it

Proceedings

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2 possible that you could go to the Town and get a
3 determination on whether these lots are single and
4 separate from the Town's perspective?

5 MR. NICOLAZZI: Well, it is possible,
6 but before I could do that, I would have to have the
7 formal single and separate search done by Safe
8 Harbor Title for 12 lots and the estimated cost for
9 that would be about \$5,000. I thought that the
10 letters from Hawkins Webb and the title company and
11 expert testimony from Mr. Strauss discussing how
12 each lot is separated -- there is a question on one
13 lot actually that there is not a road separating
14 them, so it would really be 11 lots technically. I
15 thought and I would hope that the Commission would
16 find that suffice.

17 MR. SPITZ: It's 11 lots, but your
18 appeal only relates to how many of that 11?

19 MR. NICOLAZZI: That's correct. The
20 appeal only relates to six lots, not 12 lots.

21 MR. SPITZ: And of the six, two of them
22 seem to be joined?

23 MR. NICOLAZZI: So there would be five.

24 MR. SPITZ: So you're looking for five
25 credits on appeal?

Proceedings

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2 MR. NICOLAZZI: Correct. Well, we're
3 looking for six, but yes, that is true, that there's
4 a question on, definitely a question on single and
5 separate (word inaudible).

6 MR. CORWIN: You're seeking -- I'm
7 sorry-- you're seeking how many credits? Six or six
8 and --

9 MR. NICOLAZZI: I'm seeking --

10 MR. SPITZ: I misspoke. I'm already
11 thinking ahead to something. He is seeking six.

12 MR. CORWIN: Six.

13 MR. NICOLAZZI: I'm seeking -- my
14 feeling is based on six. The reason I -- that we
15 turned this thing into looking at the whole thing is
16 by virtue of the questions (tape inaudible), but the
17 appeal is yes, on six lots, five of which are just
18 single and separate.

19 MS. WIPLUSH: Paper streets are still --
20 doesn't take away from the single and separate?

21 MR. STRAUSS: Paper streets are rights
22 of way. You have -- if you read your deed to a
23 piece of real property, you have rights to the
24 center line, but you don't enjoy those rights until
25 or unless you file abandonment under Section 335 of

Proceedings

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2 the Real Property Law which relinquishes those
3 rights with the Town's consents at which time you
4 would own to the center line, but when it's subject
5 to a right of way, anyone who bought that property
6 could just go in under the -- put in a road
7 improvement plan, put the roads in, and hopefully
8 they would be dedicated. The fact that they're not
9 dedicated yet doesn't make any difference because
10 they're public rights of way.

11 MS. WIPLUSH: They're not constructed
12 either there.

13 MR. STRAUSS: Yes. But that doesn't
14 matter because they're rights of way on the filed
15 map. It makes all the difference if they're
16 abandoned or not, however, which these are not.

17 MR. NICOLAZZI: I just want to add that
18 Mr. Cowen also suggested just looking at the whole
19 parcel, he wasn't really concerned about the
20 county-owned lots access and what we've done even
21 with this yield we've supplied access to the county
22 owned lots as well and of course subtracted those
23 lots out of the yield.

24 MR. STRAUSS: If I can just add one
25 overarching thought that I know you're aware of.

Proceedings

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2 That is, of course, there's no development being
3 proposed here. There's only an appeal for credits.
4 As you know, the Pine Barrens came up with the whole
5 system for credits and so on to compensate property
6 owners for the fact that their property is not going
7 to be able to be developed, and if there's any
8 ambiguity or any, you know, fine line on that,
9 typically it should be resolved in favor of the
10 property owner getting credits which ultimately
11 translate into development elsewhere, of course, not
12 in the core, so that there's no environmental
13 sensitive development going on in connection with
14 this in any way, it's simply compensating a property
15 owner for what they otherwise would have got as of
16 right to develop in terms of credits.

17 THE CHAIR: Are there any further
18 questions here?

19 MR. SPITZ: When is the decision due on
20 this?

21 THE CHAIR: Today.

22 MR. SPITZ: Do you want to have a
23 discussion so we can decide?

24 MR. MURPHREE: How many credits does he
25 have?

Proceedings

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THE CHAIR: I'm sorry? What?

MR. MURPHREE: I mean, he says he wanted six. I mean, was he given six?

MR. SPITZ: He had six as part of this application.

MR. RIGANO: There's -- they have actually 12 parcels altogether, right, six of which were road front and they were given a credit for each of those six road front. Those aren't being appealed.

THE CHAIR: Okay.

MR. RIGANO: But the other six that are inside, he is being given .75.

MR. MURPHREE: Okay.

MR. RIGANO: And they'd like to increase that from .75 to six.

MR. STRAUSS: They'd like to increase it from .75 to 6, but with the Health Department, it's almost impossible that they would turn it down. They're looking for five lots instead of six.

MS. WIPLUSH: But those others are (tape inaudible).

MR. STRAUSS: There's just no way they would turn it down.

Proceedings

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MR. SPITZ: They front on the paper streets.

MS. WIPLUSH: On the paper streets.

MR. SPITZ: Do you have the map in front of you because it makes it pretty clear?

SPEAKER UNKNOWN: I have it.

MR. SPITZ: It's the beige ones.

MR. MURPHREE: The thing is in determining an issue like this, the local municipality's determination is of a paper street being legal street frontage; is that correct?

MS. WIPLUSH: I want to make a phone call to the office to see -- I don't know how they --

MR. STRAUSS: You could -- I'm sorry. I don't mean to -- you could call Chris Hubbs who you know reviews all the chains.

MS. WIPLUSH: Right.

MR. STRAUSS: He would tell you as soon as they see a street on the (word inaudible.) That's the end of it. They don't -- the only way that would be an exception to not making a valid search is that, well, I want you to search what's on the other side of the street and, of course, they don't.

Proceedings

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MS. WIPLUSH: No.

MR. STRAUSS: I know they recognize it for sure.

MR. RIGANO: So they presented some items for the Commission's consideration that as we sit here to gauge, it would be nice to have some further support directly from the Town that these lots are in fact single and separate and from at least the head of the Board of Review that perhaps that has been presented as correct and it might be appropriate to extend the deadline, you know, to pursue those points.

MR. NICOLAZZI: May I speak to that?

(Tape inaudible.)

THE CHAIR: Yes.

MR. NICOLAZZI: May I speak to that? I don't understand why this application would receive, you know, receive greater hurdles and more rigorous review. I mean, in Fichter and in Barkus and in other things we've cited, we've never had to do these kinds of things and I just do not understand why this one seems -- the bar seems to have been raised on this application by Mr. Rigano.

MR. RIGANO: I think you'd find in those

Proceedings

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2 applications that they probably met zoning without
3 being single and separate or there was something
4 very compelling presented to the Commission that
5 they were single and separate and not just a letter
6 from an engineer as to what single and separate
7 means; that is, that in those applications either it
8 was going to meet the Town's definition of single
9 and separate, you know, there's lots of definitions
10 of single and separate. So in those cases, it's
11 probably something very clear that they met the
12 Town's definition of single and separate or likely
13 that they met the existing zoning without concerning
14 the single and separate.

15 MR. NICOLAZZI: If I got a letter from
16 Chris Hubbs, I reached out to Chris Hubbs to do a
17 map, because, I mean, it's not every day that you
18 have a configuration like this where they are
19 separated by paper streets.

20 MR. RIGANO: That would definitely be
21 more compelling than the position I think of the
22 letters from these folks. I mean, they're
23 not -- you know, they're respected professionals.
24 It's just that it's a question of -- you know, the
25 question -- the question is whether, whether you

Proceedings

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2 could put six additional residences here and
3 therefore whether six additional credits are
4 merited.

5 MR. NICOLAZZI: I can understand that.

6 MR. RIGANO: So the question to the
7 Commission is whether it meets current zoning,
8 whether --

9 MR. NICOLAZZI: I understand.

10 MR. RIGANO: -- single or separate or
11 otherwise.

12 MR. NICOLAZZI: Is it possible if I
13 could call her now, would the Commission accept
14 that?

15 MS. WIPLUSH: How about a letter?

16 THE CHAIR: Could she fax something
17 over?

18 MR. NICOLAZZI: If she could fax
19 something over?

20 SPEAKER UNKNOWN: We're assuming that --

21 MR. RIGANO: There were two more; right?

22 MR. NICOLAZZI: Okay. I'll work on that
23 right now.

24 MR. RIGANO: So then the other question
25 on Article 6 I think you'd also find in those other

Proceedings

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cases that they met the 40,000 square foot --

MR. NICOLAZZI: That's incorrect, Mr. Rigano.

MR. RIGANO: I would have to review the case.

MS. PLUNKETT: I think they submitted, in Martha Barkus she submitted single and separate reports.

MS. WIPLUSH: I would feel more comfortable putting it over to another meeting.

MR. NICOLAZZI: (Tape inaudible) -- in Article 6 --

MS. WIPLUSH: We still have another question.

MR. NICOLAZZI: In Fichter or Barkus --

MS. WIPLUSH: Jim.

MR. NICOLAZZI: -- we didn't get anything from Health Department.

MS. PLUNKETT: No. We didn't get anything from the Board of Health.

MR. NICOLAZZI: Nothing from the Board of Health.

MR. RIGANO: Were they 40,000 square feet?

Proceedings

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2 MR. NICOLAZZI: No, they were not. They
3 were not.

4 MR. STRAUSS: People just assume that
5 when you have that many single and separates on the
6 '81 Tax Map, it's grandfathered in.

7 MR. NICOLAZZI: Fichter was one third
8 acre, three one third acre lots, in 40,000 square
9 foot (word inaudible).

10 MR. STRAUSS: Three lots are exempt.

11 MR. NICOLAZZI: In 40,000 square foot.

12 MR. RIGANO: I'd like to see those
13 decisions.

14 MR. SPITZ: In the other cases, we got
15 the important information from the applicant
16 sometime before the day the decision was due. That
17 in and of itself would distinguish this from those,
18 and I think the Commission will be justified in
19 seeking an extension of three weeks to deliberate a
20 little further on this, particularly because the
21 Commission stopped short of asking you to get the
22 single and separate searches, and if we were to be
23 able to reach a decision before you go through that
24 formality, you would save your client a lot of
25 money.

Proceedings

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2 MR. NICOLAZZI: Okay. That's fair
3 enough and that would give me time to reach out to
4 Chris Hubbs to get a proper letter I think and if
5 there is any new information, that would give me
6 time to digest it.

7 MR. SPITZ: So am I hearing the
8 applicant grant us a three-week extension?

9 MR. NICOLAZZI: Yes. Absolutely.

10 MR. STRAUSS: Can I just ask one further
11 question about the information you might want
12 relating to the Board of Review?

13 If you're going to look at this as five
14 lots out of a possible six, you can virtually take
15 administrative notice or whatever you consider this,
16 there is no way that six tax lots on the '81 map
17 that are 30,000 square feet each and you're asking
18 for five lots, that's never going to be turned down
19 by the Board of Review. If you're talking about 11
20 out of 12, if Dennis Moran is still at all
21 affiliated -- is he still active at all or
22 completely retired? Because, as you know, he was so
23 integral in putting together the formula for the
24 credits in the Health Department and so on and I
25 know he would give such a letter. I'm just -- I

Proceedings

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2 would bet that given that the new chairman of the
3 Board of Review regardless of what you're asking him
4 to do, that it's just not something he's going to be
5 inclined to do, based on my experience with him in
6 the last, you know, over the past couple of months
7 that he's taken over the chairmanship. Dennis would
8 be.

9 THE CHAIR: Is that Paul?

10 MR. STRAUSS: Mr. Pim.

11 THE CHAIR: Pim.

12 MR. STRAUSS: Dennis certainly would be,
13 but I don't know if he's -- you know, I'd almost
14 like to get his home number and ask that the letter
15 be by him because I know that the letter -- you'd
16 give his letter a lot of weight and I know that he
17 would give such a letter, but I've spoken to Dennis
18 60 to 70 times on things like that in the past seven
19 or eight years, but I might not be able to get that
20 letter. I'm not going to -- not that he wouldn't
21 agree with what I'm saying, but I doubt it.

22 MR. RIGANO: So, Dominick, give us those
23 cases and the other appeal names that you were --

24 MR. NICOLAZZI: Oh, Fichter.

25 SPEAKER UNKNOWN: Is that with an S?

Proceedings

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MR. NICOLAZZI: F-I-C-H-T-E-R.

MR. RIGANO: And Barkus.

MR. NICOLAZZI: And I will get the letter from Chris Hubbs and Barkus. I'll see what I can do.

MR. STRAUSS: And if you're going to look at it as five of six, I hope you would realize that that's really something that would be granted.

MR. RIGANO: Five of six.

MR. STRAUSS: In other words, if this is an appeal for six more credits and if one lot is merged because there's no road so it's really a maximum of five lots under zoning, that the Health Department would recognize the five lots, even though this is five or more parcels, that they would never deny you a waiver on the six lots on the 1981 Tax Map of 30,000 square foot when we're asking for five. I mean, that case wouldn't be denied in anyone's lifetime, which --

MR. RIGANO: You mean we -- just to --

MR. STRAUSS: In other words, when we're speaking about --

MR. RIGANO: Let me just ask.

MR. STRAUSS: Sure.

Proceedings

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MR. RIGANO: We have six lots altogether, and you're saying if we weren't looking at six but rather looking at five --

MR. STRAUSS: Because of the merged lot and if you were in the Health Department --

MR. RIGANO: I'm sorry. Where did that merged lot come from?

MR. STRAUSS: He had mentioned that one of the lots may not have a road between it.

MR. RIGANO: Okay.

MR. NICOLAZZI: So what he's saying is it's not going from five to six, it's going from 12 --

MR. STRAUSS: To 11.

MR. NICOLAZZI: -- to 11 to six to five, and all I'm pointing out is that if you're --

(Tape inaudible.)

MR. STRAUSS: If you have six lots on the '81 Tax Map of 30,000 square feet each, do you think we need a waiver for your five lots? Never for five lots. It's just not possible.

MR. RIGANO: Five lots on 3.5 acres?

MR. STRAUSS: More or less.

MR. RIGANO: Yes.

Proceedings

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MR. STRAUSS: I mean, it's --

MR. RIGANO: That's what we have.

MR. MACHELLAN: So you guys are backing up into requesting for five credits?

MR. STRAUSS: We were never backing up. We were always only asked for six credits.

MR. NICOLAZZI: And now we're backing from six to five so the Commission --

MR. STRAUSS: Right. He is basically saying that --

SPEAKER UNKNOWN: You would find --

MR. NICOLAZZI: Yes.

SPEAKER UNKNOWN: You would find five an acceptable result?

MR. NICOLAZZI: That's correct.

MS. WIPLUSH: And each lot is 30,000 square feet?

MR. STRAUSS: I didn't do the math, but close --

MR. RIGANO: It's 5 into 3.5 acres --

MR. STRAUSS: -- pretty close.

MR. RIGANO: -- over 5 --

MR. STRAUSS: Pretty close.

MR. RIGANO: -- is .6 something, .7

Proceedings

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acres per lot.

MR. STRAUSS: It's in that ballpark. I don't want to give you the wrong numbers, but it's more than enough when you're talking about, I mean, four lots in case you could have 50 by 100s with four lots, you can't even (word inaudible) them out.

MS. PLUNKETT: But the reality is once you go back to Board of Review, you know they're going to look at the whole thing anyway, so it doesn't matter if you only have six lots as part of the appeal because this will never be looked at -- in the Board of Review's eyes, it will always be looked at as 12 lots even if you you're only appealing on six.

MR. STRAUSS: Well, I mean, let's just remember that might be true and it might not because in a sense you already have determination of six credits on the other lots. For instance, you had a built subdivision on the other six lots, there's a (word inaudible), there's a comparable situation.

They might look at the whole thing, but they're really looking at just the new situation of what's being built in the sense that they already have the credits, it's analogous. You know. I

Proceedings

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mean, I know what your point is, but --

THE CHAIR: The credits that you have
now --

MR. STRAUSS: -- (word inaudible) minor
relief.

THE CHAIR: -- are just a letter of
interpretation. You haven't filed an easement --

MR. STRAUSS: I'm not saying -- I've
tried to be honest. I'm not sure if I've --

(Tape inaudible.)

MR. STRAUSS: I'm not sure if the
current chairman is going to give such a letter even
if he agrees with me. I don't -- I (words
inaudible) public hearing. I mean, he's a perfectly
reasonable man for me to deal with.

MR. RIGANO: You don't know whether he
would grant it or not.

MR. STRAUSS: Right.

THE CHAIR: Are we clear though on what
additional information we want so we know how to --

MR. RIGANO: Dominick --

THE CHAIR: -- deal with this when we --

MR. RIGANO: Is going to get the letter
from --

Proceedings

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2 MR. NICOLAZZI: I'm going to get it from
3 Chris Hubbs.

4 MR. STRAUSS: I'm going to attempt with
5 the Health Department, but I've tried to make clear
6 before I leave today is that if I can't, please
7 don't take it that you won't give it because it's
8 something on the merits. It may not be something
9 that they're willing to do regardless of the merits.

10 MR. NICOLAZZI: At this point Mr. Rigano
11 was just asking for the letter on the --

12 MR. STRAUSS: I don't want the lack of
13 the letter to reflect that they are against (word
14 inaudible).

15 MR. SPITZ: Those two items may be
16 forthcoming or they may not depending on whether
17 these gentlemen can get other people to give it to
18 us, but the three week extension was for the
19 purposes of taking what's in the record as of today.
20 Barbara, you wanted to go back to talk to somebody
21 in the Town and Jim wanted to look at it.

22 MS. WIPLUSH: Right.

23 MR. SPITZ: So regardless of their
24 success or failure --

25 MS. WIPLUSH: Right.

Proceedings

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2 MR. SPITZ: -- we are prepared to make a
3 decision based on what we have as potentially
4 amended by what they might give us next time.

5 MS. WIPLUSH: Yes.

6 MR. CORWIN: Get the letters to us,
7 Dominick, before the next meeting, we will give them
8 to the Commissioners so they can see them before
9 they walk in.

10 MR. NICOLAZZI: Correct. Okay. Thank
11 you very much.

12 MR. STRAUSS: Thank you.

13 THE CHAIR: Walter, do you have a
14 question?

15 MR. OLSEN: Yes. Is this still open for
16 public comment?

17 THE CHAIR: This isn't a public hearing.
18 We just asked them for more additional information.

19 MR. OLSEN: Well, I just want it to go
20 on the record that my name is Walter Olsen, Civil
21 Property Rights Associates. In listening to the
22 expert testimony and everything that was given here,
23 it seems pretty clear that what has really happened
24 here by the creation of the core of the Pine Barrens
25 is that you put many people including the applicants

Proceedings

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2 in this case in a Catch 22 situation where on one
3 hand you want definitive answers as to whether or
4 not something can be done while at the same time the
5 applicant isn't in a position to where he can ever
6 make those applications to get those particular
7 answers, if you follow my train of thought, and I
8 don't think that the -- that the Pine Barrens
9 legislation was ever intended to be that finite in
10 detail that you need to split hairs to the extent
11 that I see you splitting hairs in recent months on
12 little details. I think that the expert witness has
13 given you ample testimony as to his experience as to
14 how these cases were handled in the past and what
15 the probable outcome would be and I think the need
16 to go even beyond that is rather unnecessary and
17 really puts the applicant in a position of a great
18 deal of burden beyond what I think you need in order
19 to make these decisions. After all, all they're
20 asking for here -- and they alluded to this -- is
21 they're asking for an appeal of the number of
22 credits given. They're not actually asking to do a
23 development project, and this is not something
24 that's going to ever be reality, and if you end up
25 preserving property and treating a property owner

Proceedings

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2 (word inaudible) without putting them under undue
3 stress to achieve that, I think everybody wins. You
4 are doing the job you are supposed to do, the
5 property owner is getting the just compensation that
6 he was promised under this legislation and it's
7 finished because you probably are going to hear
8 other cases similar to this where you're in file
9 maps, where you have paper streets and all these
10 little details that come into play, and, like I say,
11 you're asking an applicant to prove something that
12 he will never be in the arena where he can actually
13 prove it, and I don't think that's a reasonable
14 thing to ask and I would urge you to grant the
15 credit appeal based on what you already heard and
16 not put any more burdens on an applicant such as
17 this.

18 Thank you very much.

19 THE CHAIR: Thank you.

20 Number 4 is Protected Lands Council,
21 field project results from this week.

22 MR. CORWIN: Yesterday.

23 THE CHAIR: Yes.

24 MR. CORWIN: Yesterday the Protected
25 Lands Council started or continued, I should say,

Proceedings

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2 its implementation of portions of what they call
3 unit 6, management plan, which is the Peconic River
4 stewardship unit, one of the largest stewardship
5 units in the Pine Barrens. You may recall a few
6 months back they had done a trail closure on Suffolk
7 County park land in Ridge, south side of Route 25,
8 and that had been replanted. As part of the Council
9 meetings since last March, roughly March/April, the
10 Council has been planning a number of trail
11 rehabilitations, closures, reopenings,
12 rearrangements, whatever you want to call them, and
13 yesterday's action was an attempt to continue that.
14 Many of the people in this room, some of the folks
15 in the audience were a part of that team that Donna
16 put together, admirably put together I might add
17 yesterday. You may be aware that there was one
18 controversy over the use of some of the horse trails
19 or trails for horses. It's an ongoing controversy.
20 I believe the County Exec's office sent a letter, we
21 had received a letter over whether or not the trails
22 are traditional horse trails and there's a back and
23 forth debate on that as to whether the folks ever
24 had permission to do that or whether they just
25 (whereupon, the tape was turned over). About a week

Proceedings

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2 and a half ago, something like that, they went out
3 in the field with the regional parks supervisor and
4 they tried to point out alternatives and trade-offs
5 and rationales and I think as of the close of
6 yesterday's business there was still some, some
7 consternation on the part of I guess about half a
8 dozen folks in the Ridge area who felt that what the
9 PLC or what County Parks, depending on their point
10 of view, is doing may not be completely to their
11 personal advantage, it may be to their personal
12 disadvantage, and there's a range of opinions on
13 that. I think the PLC though has been doing an
14 admirable job and Donna's organization of
15 yesterday's event was certainly not simple, we had
16 well over 80 --

17 MS. PLUNKETT: We had about 65 people,
18 about from ten different volunteer agency groups.

19 MR. CORWIN: More than we expected
20 showed up. I mean, it was quite crowded in Ridge
21 yesterday, and we -- very crowded. It was very
22 crowded in the woods yesterday now that I think
23 about it. I personally walked to all the sites
24 which took me the better part of the afternoon and I
25 can attest that they've done a fantastic job and

Proceedings

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2 Shelly was part of the team, she was there
3 yesterday, Ann was part of the team, wouldn't
4 recognize her with a chainsaw, and I think that the
5 PLC is just going to have to continue doing this.
6 The only way that we're going to find out whether
7 undeveloped lands management, park land management
8 is going to work is by starting to do it, and I
9 think that the long planning process and the PLC, by
10 the way, is trying to produce certain unit
11 management plan segments -- certain segments of
12 their overall plan based on their stewardship units
13 to present to you in the coming months. Donna and I
14 have been sort of gently pushing them, Shelly has
15 been on the subcommittee that's helping to write the
16 plan, because we've been frustrated over the past
17 couple of years with the PLC's reluctance to make
18 detailed on site decisions and after yesterday's
19 experience hopefully they will continue to do that
20 because they need to identify trail heads, they need
21 to identify recreational uses, they need to take a
22 hard look at making decisions that have an impact in
23 the real world. So depending on one's point of
24 view, it was either a great day or unfortunately six
25 people felt that it wasn't a great day, you've lost

Proceedings

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2 one of your favorite riding trails. I can assure
3 you there's tens and tens of miles of trails in that
4 several hundred acres and having walked I think most
5 of them yesterday, there's certainly no shortage of
6 places to ride all sorts of conveyances including
7 horses. So is there anything you want to add,
8 Donna, Shelly, anybody? Anything you want to add to
9 that? Ann?

10 Okay.

11 Mark, you were out there. I saw you.

12 So that's it. That's what happened
13 yesterday.

14 MR. MACHELLAN: That's what you guys do
15 on your day off.

16 MR. CORWIN: Yes.

17 MR. MURPHREE: You take vacation days.

18 MR. CORWIN: We'll check the time cards
19 on this.

20 THE CHAIR: You should take next Monday
21 off.

22 Research Forum.

23 MR. CORWIN: I should have called you
24 yesterday morning.

25 THE CHAIR: I didn't get one.

Proceedings

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MR. CORWIN: You didn't get one?

THE CHAIR: No.

MR. CORWIN: You're on every one of our lists, George. There's not a list that you're not on.

(Tape inaudible.)

MS. PLUNKETT: It's on your desk, George.

MS. TREZZA: You're on every list that we have.

SPEAKER UNKNOWN: Call your secretary and see where --

THE CHAIR: I have the dates there. I have something else though. It just didn't look like this. I don't know.

MR. CORWIN: So the annual Research Forum, our fifth annual is almost upon us, next Thursday is the -- we didn't expect to be doing this annually, but it is up to that -- each year we get representation from different parts of the country and it sort of expands. We have a heavy representation from the Harvard Forest this year partly because of prior research forums that they learned about the work, the opportunities for research available in the central Pine Barrens, they

Proceedings

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2 have been conducting a number of research projects
3 with the nature conservancy and some other groups'
4 support, and they are here partly to report the
5 results of that research, but partly to sort of
6 share their other Pine Barrens work in other parts
7 of the country, obviously Massachusetts included.
8 We also have if you look at our registration list,
9 which, of course, is not in front of you, we have a
10 fairly heavy representation from the New Jersey
11 Pinelands, both the Commission and the Pinelands
12 region. We in fact have -- this is actually true
13 for both the Wildfire Academy and the Research
14 Forum -- we have the heaviest preregistration that
15 we had in the years that we started the Research
16 Forum, about 120 folks preregistered for the forum,
17 which is as many as we've ever had in the entire
18 forum attending in past years. So there's no
19 charge. I encourage you to take some extra copies,
20 distribute them to your staff. You can wander in
21 for part of the day in one or two talks of interest,
22 wander out, lunch is on your own, parking is free.
23 We are a little bit oversubscribed on the field
24 trips. We have something like 90-some people
25 registered for the field trips and we had sized it

Proceedings

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2 for about 50. So we have a little bit of a crisis
3 to handle tomorrow morning, but that's a good crisis
4 to have. We'd rather have greater interest than
5 lesser interest. And, George, I don't know if you
6 know that, but your boss can't make it unfortunately
7 that day for the opening remarks, we have a
8 suspicion, and I know who's going to be asked to
9 make the opening remarks.

10 THE CHAIR: Already was.

11 MR. CORWIN: So start writing a speech
12 tonight.

13 THE CHAIR: On the Calverton Ponds, are
14 they going to talk about the projects, the water
15 project they've been doing for the last several
16 years?

17 MR. CORWIN: Shelly, on the Calverton
18 Ponds field trip, are we going to talk about some of
19 the specific research projects that are out there?

20 SHELLY: Sure.

21 MR. CORWIN: Was that your question?

22 THE CHAIR: Yes. That's definitely
23 something that I want to hear about.

24 (Tape inaudible.)

25 MR. CORWIN: So that's it, that's the

Proceedings

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Research Forum.

THE CHAIR: Now that Jan has retired, have we given him anything?

MR. CORWIN: Oh, yeah. I'm tell you about that later. I'll tell you about that. There's a little bit of a surprise for Jan.

THE CHAIR: So you haven't forgotten about him. Okay.

MR. CORWIN: No. We haven't forgotten him.

THE CHAIR: Okay.

MR. SPITZ: I get these two things confused.

THE CHAIR: That one I get.

Number 5. Lakeside -- I wish they'd take this big hotel out of their -- Lakeside Manorville Hotel.

MS. JAKOBSEN: I'm still getting people that are confused with the name hotel. The Suffolk County DPW guy thought it was a hotel.

MS. PLUNKETT: Well, that's what it sounds like.

MS. JAKOBSEN: Tell them to read page 2 of the traffic study. It tells you that it's two

Proceedings

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2 10,000 square foot buildings, that it is confusing
3 and (word inaudible) explains it because it's the
4 owner and whatever. It's very confusing to people
5 who are dealing with this project.

6 THE CHAIR: There was some (word
7 inaudible) action filed with the corporation name of
8 some sort that has some legal status or -- I can't
9 see the point of leaving --

10 MR. CORWIN: They're going to have a
11 hard time marketing this.

12 THE CHAIR: Yes.

13 MS. JAKOBSEN: Okay. Just George had
14 asked for kind of an outline on the progress on this
15 project. As you know, you guys are lead agency on
16 this and --

17 THE CHAIR: Of the process, the process.

18 MS. JAKOBSEN: The process.

19 THE CHAIR: Where we're going.

20 MS. JAKOBSEN: Okay.

21 So, as you know, at the last meeting we
22 had a hearing for the additional information
23 submitted by the applicant and they had submitted a
24 Part 3 assessment form. Since that time, we have --
25 I've asked the consultant for the applicant to

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forward to the involved agencies copies of the Part 3 I've asked for them to review. In addition, I sent to all of them, I cc'd to them in a letter stating that I would like to receive comments back, hopefully by October 12 on that Part 3.

THE CHAIR: We don't have time frames for this?

MS. JAKOBSEN: Well, the SEQRA determination usually is made once you have all information considered reasonably necessary. So at this point we do not have all that information. It could -- if we do receive the -- depending on what we receive back in terms of comments, we could potentially maybe make a determination the next meeting, but it depends -- that's why I can't give you specific dates on that. There are some factors here.

THE CHAIR: Well, once the lead agency accepts the EAF as being complete, isn't there a 45 day time frame?

MS. JAKOBSEN: No.

THE CHAIR: Or 30?

MS. JAKOBSEN: You will see in my outline there is a reference -- I think it's in this

Proceedings

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2 one -- let me see where it is -- it might be in the
3 other one that I have -- basically there is a
4 provision in SEQRA that addresses, you know, that a
5 determination -- if you have an application,
6 determination of significance has to be made 20 days
7 after receipt of an EAF, application EAF or there's
8 also this provision that if you have all the
9 information you basically consider reasonably
10 necessary to make that determination, and right now
11 we don't have all that information because we need
12 the feedback from the other involved agencies on
13 that Part 3 EAF.

14 MR. SPITZ: We'll have that by the next
15 meeting.

16 MS. JAKOBSEN: Also we have asked
17 Suffolk County and this is something I wanted to
18 bring up, we would like to have Suffolk County
19 Planning Department assist us with reviewing the
20 Part 3 specifically in areas that we don't have that
21 expertise that they can obviously, you know, traffic
22 and all the components and lend their expertise in
23 reviewing the Part 3. So I --

24 THE CHAIR: Such as what besides
25 traffic?

Proceedings

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2 MS. JAKOBSEN: Just an overall to
3 provide some guidance with us on reviewing this Part
4 3 and I have spoken with Steve Jones just to get a
5 feel for what he thought would be something he would
6 consider doing for us, and he had no problem with
7 it, and I would like to request sort of to formalize
8 things a little bit to ask you guys to do a motion
9 to enable the Planning Department to do this review
10 on the Part 3 of the EAF for us.

11 MR. RIGANO: To make it clear, so you
12 need the review in order to assist you?

13 MS. JAKOBSEN: To assist in the review.
14 I'm sorry.

15 MR. CORWIN: You're authorized to do
16 that on Pine Barrens statute and the last time you
17 did that you used a motion to invoke an assistance
18 on I believe it was the LI compost project. I'm not
19 drawing a parallel here. I'm just telling you.

20 MS. JAKOBSEN: Because we're the lead
21 agency in this, I think we should be fairly
22 particular about and in depth on our review in this
23 process.

24 THE CHAIR: There are too many issues
25 that the Commission is going to be concerned with in

Proceedings

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2 terms of the environmental impacts which are water
3 and vegetation, I don't know if that would even come
4 from them. I mean, if anything, I would hope that
5 the Health Department --

6 MR. CORWIN: The lead agency --

7 MS. WIPLUSH: But if this other --

8 THE CHAIR: But if there's nothing
9 there --

10 MS. WIPLUSH: You still have to look
11 under the factors that come under SEQRA. You can't
12 just say that because all concerned is water and
13 vegetation, you know, SEQRA --

14 THE CHAIR: But that's what I'm trying
15 to figure out though, what are the other issues. I
16 don't see any of the issues that I'm asking Barbara
17 a question on. Possibly traffic, but even then --

18 MS. WIPLUSH: But the other lead
19 agencies will have an issue --

20 MR. CORWIN: We're also lead agency on
21 the zone change.

22 MS. WIPLUSH: The zone change is for a
23 Town determination.

24 MR. CORWIN: That's what I'm saying, if
25 we're liaison on this project which involves zone

Proceedings

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change and construction --

MS. WIPLUSH: Right. But you have to --

MR. CORWIN: -- I'm just saying, so you have to have some assistance. I mean, it can't just be water and vegetation.

THE CHAIR: I'm trying to figure a couple of questions out that somebody is going to have an answer to. I don't have a question right now to what he's answering.

MR. CORWIN: It's what might be in a Part 3. So you can be as elaborate as you want.

MS. WIPLUSH: But you just can't say our only concern is X, therefore it's limited to X. If you're lead agency, you have to look at all the considerations.

MR. SPITZ: When we ask them for assistance, we should caveat it that we have to receive it sufficiently in advance of our next meeting to have it be of use to us in our determination at the next meeting because I believe what you just distributed instructs us to be prepared to make a decision in three weeks. You don't want us to send it off to them and have it come back in six months.

Proceedings

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2 MS. JAKOBSEN: Definitely I don't -- you
3 know, I think that we are all just looking for --
4 they're all -- they were included in the listing of
5 receiving the document anyway as part of an involved
6 agency, it is on CR-111.

7 MR. SPITZ: So you're expecting comments
8 from them either way?

9 MS. WIPLUSH: If it's on a major road,
10 you have to send it in.

11 MR. CORWIN: Yeah. They normally would
12 produce comments even if it was the Town of
13 Brookhaven, but, you know, maybe they'll take a more
14 extensive look if they're doing it on behalf of the
15 Commission, they might -- who knows? They might
16 just take a different slant on it.

17 THE CHAIR: But no matter what comes
18 back from them, we're still going to be stuck with
19 the more difficult decisions which they're not going
20 to provide us more information on unless they come
21 up with something that shows that there are major
22 problems and they can't proceed any further, so I
23 don't know if it's going to lead us any further to
24 helping us make a decision.

25 MR. CORWIN: It might. It certainly

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can't hurt. It might help.

MS. JAKOBSEN: We are going to be receiving information from like if it goes up to SHPO, the EAF goes up to SHPO, it goes to DPW, it goes to the Health Department, it goes to all the involved agencies. It's just that they would provide an additional broader overview review of the document. I don't see any negatives in reviewing it.

MR. CORWIN: But you're --

THE CHAIR: I don't see any negatives.

MS. JAKOBSEN: And they're willing to do it.

THE CHAIR: I don't know if it brings us closer to helping make the decision final. I just don't know if it takes a bigger review than the issues that we're faced with.

MR. CORWIN: I mean, one issue alone is traffic. If nothing else, we already know one issue -- but getting past the review of that section as lead agency, I mean, that's fine.

THE CHAIR: I would like to have a motion to ask or request the Suffolk County Planning Department to assist us in review of the Part 3 EAF.

Proceedings

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MR. MACHELLAN: So moved.

THE CHAIR: Does anyone second?

MR. SPITZ: Will that be done in time?

THE CHAIR: Yes. It will be prior to
three weeks, within the next two weeks.

Will somebody second?

MR. MURPHREE: Second.

THE CHAIR: Any further discussion?

All those in favor, signify by saying
aye.

MR. MURPHREE: Aye.

MR. MACHELLAN: Aye.

THE CHAIR: Aye.

MS. WIPLUSH: Brookhaven is not voting
on this project --

THE CHAIR: So opposed?

MS. WIPLUSH: -- because we have a change
of zone, so I abstain.

THE CHAIR: Abstention?

MS. WIPLUSH: Yes. Abstention.

THE CHAIR: So three approved and one
abstention.

MS. PLUNKETT: Keep in mind that we may
want to have at the next meeting a review of the EAF

Proceedings

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2 Part 3, you may want to review (tape inaudible)
3 documents that we have to review, so we have to
4 prepare a full report of the review of that report
5 of the EAF, you may not -- you may want to digest
6 it, you may not actually want to vote on that.

7 (Tape inaudible.)

8 I think there's plenty of time to (tape
9 inaudible.)

10 MS. JAKOBSEN: On the schedule to do
11 that.

12 They are aware, Lakeside applicant is
13 aware that there is a potential they may need to do
14 another extension because their decision deadline is
15 the 30th.

16 THE CHAIR: Okay. That's it.

17 MS. JAKOBSEN: For that one.

18 The next thing is just some miscellaneous
19 correspondence I've received from Joe Gazza.

20 MS. WIPLUSH: Are we going to do a
21 motion to (tape inaudible)?

22 MR. CORWIN: You're abstained.

23 MS. TREZZA: You're abstained.

24 MS. WIPLUSH: Thank you.

25 MS. JAKOBSEN: I just have some copies

Proceedings

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2 of some correspondence that Joe has had with the
3 Town Board and Zoning Department. Basically you had
4 asked him to find out whether the -- his proposed
5 use for the property with the agricultural storage
6 building is a committed use within CR-200 and there
7 was also a question about whether their site plan
8 review was required, so if you want copies, and
9 basically he sent me a letter saying that
10 Mr. Houlihan who is with the Southampton Town
11 Building and Zoning Department, his initial response
12 wasn't responsive, so he sent another letter, and
13 then hot off the fax machine this afternoon I
14 received a handwritten letter from Joe, which is
15 hard to read, and attached to it, which I don't have
16 copies of this -- if you want this, I can make
17 copies for you and give it to you -- basically he
18 received from the Town of Southampton a letter
19 regarding the Community Preservation Project Plan --
20 he has a whole bunch of parcels I guess he had
21 submitted to them here to see if they would be
22 interested in acquiring them and basically says
23 their response was that they regret to inform him
24 it's -- they're not listed in the Community
25 Preservation Plan, therefore they are unable to

Proceedings

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2 expend any funds under this program at this time for
3 these properties, and Mr. Randall -- I'm sorry --
4 Wetbow -- Wipow --

5 MR. MURPHREE: Oh, Randall. I have a
6 hard time with his last name, too. Just call him
7 Randy.

8 MS. JAKOBSEN: And then he goes on to
9 say, we will, however, recommend to the Board that
10 these properties be added to the Community
11 Preservation Project Plan in August 2001 as
12 permitted by statute, and then Joe had a little
13 commentary letter that he scribbled out to me
14 which --

15 MR. MURPHREE: You have a hard time
16 reading.

17 MS. JAKOBSEN: I have a hard time
18 reading, but he's a little upset and I can provide
19 you with copies of this letter also.

20 THE CHAIR: What's the gist of that
21 letter?

22 MS. JAKOBSEN: Well, basically I am
23 living in the United States of Iran, but --

24 SPEAKER UNKNOWN: I'd like a copy of
25 that.

Proceedings

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2 MS. JAKOBSEN: Well, if you want -- I
3 mean, it says as per Town letter dated September 28,
4 copy attached, the Town will not --

5 SPEAKER UNKNOWN: Nothing like living in
6 the United States, not Iran.

7 MS. JAKOBSEN: -- buy my land at this
8 time. The Town does not want to -- does want to
9 collect \$6,500 in realty taxes from me in December
10 though. My law is held, however, with the
11 repertory --

12 MR. MURPHREE: Isn't that land is held?

13 And each year I have to pay ransom realty
14 taxes on government takings of my land from me. I'm
15 living in the United States of Iran.

16 MS. JAKOBSEN: I have to send you those
17 copies.

18 THE CHAIR: Will there be any other
19 information regarding the Gazza project? Has the
20 Town made a decision?

21 MS. JAKOBSEN: We will -- the staff is
22 in the process of reviewing and we will need to be
23 making a determination.

24 MR. MURPHREE: I know that Paul Houlihan
25 met with Joe either this week or last week and I

Proceedings

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2 don't know the outcome of it. I know that there was
3 some question as to whether or not -- how -- you
4 know, whether or not Joe was actually a farmer or
5 not and what his actual intent on the building was
6 (tape inaudible). No official decision was actually
7 rendered.

8 MS. WIPLUSH: So he wanted to build
9 agriculture structures?

10 MR. MURPHREE: Joe built warehouses, and
11 he's using the fact that he grows or may grow crops
12 somewhere else and store, that he wants to store --

13 MS. WIPLUSH: Store in his warehouses?

14 MR. MURPHREE: Well, not the crops, but
15 like umpteen like (word inaudible) equipment and
16 things like --

17 MS. WIPLUSH: In furtherance of his
18 agriculture use?

19 MR. MACHELLAN: He explained to us that
20 he wanted to house plants and put them in pots or
21 something.

22 THE CHAIR: He was going to hire people
23 to transplant them.

24 MS. WIPLUSH: And store it in the
25 warehouse?

Proceedings

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2 MR. MURPHREE: He's got to satisfy the
3 chief building inspector on that one.

4 MS. WIPLUSH: And his argument is that
5 it's an exempt use because of the agriculture?

6 THE CHAIR: Yes. Yes. He owns a
7 nursery somewheres else and he was going to move
8 them in transport.

9 MS. WIPLUSH: So he was saying his
10 storage would be in furtherance of his agriculture?

11 MR. MURPHREE: Yes. That's his
12 argument.

13 THE CHAIR: That's his argument.

14 Do we have to do anything before we -- we
15 have the time, I guess.

16 MS. JAKOBSEN: We have some time. The
17 decision deadline is not until December.

18 THE CHAIR: So you can let us know if
19 the Town takes action before then?

20 MR. MURPHREE: They may have already
21 taken action. I don't know.

22 MS. JAKOBSEN: That's it for that.

23 THE CHAIR: Compatible Growth Area,
24 American Tissue, deadline extension.

25 MS. JAKOBSEN: Okay. We received a

Proceedings

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2 letter from American Tissue because their current
3 deadline is October 25. They have not yet filed --
4 sent their IES to the Town. I did another little
5 outline for this project since this has been kind of
6 an ongoing long-term project before the Commission.
7 They sent us a letter to extend the deadline till
8 November 30 and while I was preparing this outline,
9 I realized that their offer, November 30 change of
10 deadline, is not going to work because basically
11 that would mean you would -- we would have to have
12 the FEIS and schedule a hearing at your October 25
13 meeting which would then take place at your November
14 30 meeting, so it's not a workable deadline. I
15 called Eric and left a message, but I have not heard
16 back from him. I think the earliest they could do
17 it then would be -- they have to file also with the
18 Commission's meeting at -- and so they would need to
19 at least extend that deadline to the December
20 meeting. And, again, it depends on the timing of
21 when they get the FEIS into the Town.

22 THE CHAIR: So they haven't officially
23 requested it yet. So you want to ask them to write
24 us a letter?

25 MS. JAKOBSEN: They had sent me a letter

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Proceedings

that said they want to extend it to November 30.

When I was doing this outline --

THE CHAIR: Okay. I see.

MS. JAKOBSEN: -- I realized that there's a problem.

THE CHAIR: So why don't we just grant this now. This is the only thing we have in front of us, so we can't do anything other than what they're requesting. In the interim, you can ask them to send us a letter --

MS. JAKOBSEN: Okay.

THE CHAIR: Well, the next time it would make sense to just leave it open. We're not going to hold it up, you know, or you can send that --

SPEAKER UNKNOWN: We can do that now.

MS. JAKOBSEN: Counsel -- and also Jim has preferred that they give us --

MR. RIGANO: Well, I don't want it held that (tape inaudible) and they don't.

MS. JAKOBSEN: They also -- well, I had suggested originally the December deadline.

MR. RIGANO: That would be perfect.

MS. JAKOBSEN: And they didn't want --

MR. RIGANO: The other thing is so they

Proceedings

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2 complete the FEIS, it's done, we then have to have a
3 hearing and then before there can be a decision or
4 at the same time as a decision, we also have to do a
5 findings statement, so that means two months, maybe
6 three, once the FEIS is done, a hearing,
7 decision/findings statement. It's hard to do a
8 findings statement without a meeting. A findings
9 statement has to be written.

10 MS. WIPLUSH: Can I keep these?

11 MS. JAKOBSEN: And they -- again, they
12 also --

13 MR. RIGANO: So two or three meetings --

14 THE CHAIR: They're not mine. They're
15 Mark's.

16 MR. RIGANO: At least two, maybe, more
17 likely three after (tape inaudible).

18 MS. JAKOBSEN: So you're saying prior to
19 January?

20 THE CHAIR: So we just want to --

21 MS. JAKOBSEN: If there's flux, because
22 we don't know when the FEIS is going to be, they're
23 willing to work with us on the decision for
24 extensions. They just don't like to see -- they
25 just didn't want to see December. I even mentioned

Proceedings

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2 January and they're like oh, no, no, November.

3 MR. RIGANO: They can do what they like
4 as long as we get to our default deadline.

5 THE CHAIR: We can always deny it.

6 MR. RIGANO: There can be denial because
7 of (word inaudible).

8 THE CHAIR: I would like to have a
9 motion accepting a request to extend this November
10 30th.

11 MS. WIPLUSH: Motion.

12 THE CHAIR: Is there a second?

13 MR. MACHELLAN: Yes.

14 THE CHAIR: All those in favor, signify
15 by saying aye.

16 MR. MURPHREE: Aye.

17 MR. MACHELLAN: Aye.

18 MS. WIPLUSH: Aye.

19 THE CHAIR: Aye.

20 Opposed?

21 Motion carries.

22 Do you have any more information for
23 Brookhaven on the power plant that was proposed
24 (tape inaudible)?

25 That's another one. No. There was one

Proceedings

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over in this area. Do you ever hear anything, Judy?

MR. RIGANO: There is one right off the LIE in Brookhaven.

The CHAIR: What was -- there was two though. One was just north of the County Park and the other one was by the American Tissue.

MS. JAKOBSEN: There's Caithness Energy Plant which is being proposed right next to American Tissue.

MR. RIGANO: But that's --

MR. RIGANO: What is that?

MS. JAKOBSEN: Caithness,
C-A-I-T-H-N-E-S-S.

THE CHAIR: I wasn't able to find it.

MS. JAKOBSEN: It's in the CGA. It's right -- the parcel just west of where American Tissue is proposed and I have corresponded with Mr. I think it's McBrarity. I happened to see it because I review projects for the Water Authority and we hadn't received a document for the Pine Barrens even though we are mentioned in it in their scoping document. So --

MR. MACHELLAN: So we haven't received anything on it?

Proceedings

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2 MS. JAKOBSEN: We now have a document
3 thanks to, you know, DEC's forwarding us a copy and
4 I also sent them a letter, an e-mail and a letter
5 telling them that basically we have to be on their
6 mailing list and that they -- and basically that
7 they have to -- what they have to be looking at in
8 terms of --

9 THE CHAIR: No, you don't.

10 MS. WIPLUSH: And the location is in?

11 MS. JAKOBSEN: Well --

12 MS. WIPLUSH: -- Medford?

13 MS. JAKOBSEN: I'm sorry?

14 THE CHAIR: They don't.

15 Do you know article 12 proceedings under
16 public service law --

17 (Tape inaudible.)

18 THE CHAIR: So --

19 MR. RIGANO: I'm not sure --

20 (Tape inaudible.)

21 THE CHAIR: Well, that's the only issue
22 that's going to be raised in case more of these
23 start popping up as they are starting to do. I
24 actually got on a Web site today, there's like 15 on
25 there, and --

Proceedings

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2 MR. RIGANO: Power plants proposed on
3 Long Island?

4 THE CHAIR: No. Not just on Long
5 Island. They're all over the place, but I can't
6 tell which ones are where, and I think this name was
7 actually up there.

8 MR. SPITZ: Were some of the worst all
9 in the Pine Barrens?

10 MS. JAKOBSEN: There is another one in
11 Kings Park.

12 THE CHAIR: Kings Park, Yaphank.

13 MS. WIPLUSH: Yeah. Kings Park,
14 Yaphank.

15 THE CHAIR: There's one in Calverton.

16 MS. WIPLUSH: They're not fighting that
17 one.

18 THE CHAIR: There's at least four plus
19 two that Keyspan hasn't filed for in Jamesport. So,
20 I mean --

21 MS. JAKOBSEN: I don't understand why we
22 need two right on that 101 area, one south of the
23 expressway and one north.

24 THE CHAIR: I don't understand why you'd
25 put one in the middle of developed land. When we

Proceedings

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2 develop opposition, we can put it anywhere in the
3 distribution system and have the energy going in any
4 direction you want. Poor planning. But anyway if
5 you go through and read Article 10, basically local
6 government is preempt from mostly getting involved
7 in any kind of actions, every government is. The
8 only agencies that are involved are DEC, state,
9 health, economic development and Public Service
10 Commission. It doesn't go through SEQRA, there's an
11 exemption for SEQRA under this, it goes back to I
12 think the first days that SEQRA was passed back in
13 '78, but it was always with the intention that these
14 were publicly owned utilities of a sort and what
15 changed is when the deregulation came into effect,
16 nobody had envisioned way back then that there would
17 be an onslaught of private companies coming in of
18 all different sizes without any planning where they
19 were going to go as it's happening now in
20 competition, and I think there was a case recently,
21 is it Athens, where a community there tried to
22 oppose one and they lost the case, again saying that
23 there was nothing in the legislative bill jacket or
24 in testimony from the legislature to indicate that
25 their intent was just to make this law applicable to

Proceedings

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2 publicly owned utilities, that it applies to all
3 utilities until the legislature says otherwise. So
4 the process right now is that unless you get on the
5 Web site or get a mailing every week from the state
6 to state register, it's hard to know when the Public
7 Service Commission has received applications. From
8 the time they receive their applications, the
9 Commissioner forwards a letter over to the Governor
10 at some point and that's at his discretion when, so
11 right now I called up, they don't even know if
12 letters have gone over to the Governor, they think
13 some of them have, they're not even sure, they have
14 to check back with the Commissioner, but once the
15 letter goes to the Governor, the Governor sets up a
16 siting Board for each of these power plants
17 different plants which consist of the four
18 commissioners and two additional local people
19 appointed by the Governor, one county representative
20 or somebody from the county and one from the
21 judicial area of the county, so there are two more
22 people, so those six people become the siting Board
23 that makes the decision as to whether it should
24 proceed, but it doesn't have -- at that point,
25 unless you intervene and request to be a party in

Proceedings

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2 interest, you basically are precluded from even
3 commenting on the project, the project does not have
4 to conform to zoning or any other standards that
5 have been created, so I would assume even in the
6 Pine Barrens it may not be applicable there.

7 MS. WIPLUSH: It doesn't have to conform
8 to the zoning?

9 THE CHAIR: The only other case that
10 they said that there was a court decision on was
11 that the Department of State intervened in another
12 situation that did not preempt the federal
13 government and so through the Federal Coastal Zone
14 Management Act which delegates authority to the
15 Department of State and the Department of State has
16 consistency requirements, they did have the ability
17 to review the power plant because of its location in
18 the coastal zone area.

19 MS. WIPLUSH: And what law --

20 THE CHAIR: But other than that --

21 MS. WIPLUSH: And what law was this?

22 THE CHAIR: Article 10 of the Public
23 Service Law.

24 MS. WIPLUSH: Public Service Law.

25 THE CHAIR: So it's just a concern now

Proceedings

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2 because I've looked on the -- if you go on the Web
3 site you'll see there's a lot of plants that are
4 popping up all of a sudden.

5 MR. MACHELLAN: The Calverton proposal is
6 not in the Pine Barrens.

7 THE CHAIR: It's not going to be in Pine
8 Barrens at all, compatible (word inaudible).

9 MR. MACHELLAN: It's going to be by the
10 industrial zoned property on the site which is
11 outside of (word inaudible).

12 MS. WIPLUSH: Judy, you said there's one
13 near American Tissue in Yaphank?

14 THE CHAIR: I'm just raising this in
15 terms of (word inaudible), but our only ability --
16 we have only two areas we can possibly have
17 involvement, one in trying to get the appointment to
18 the siting board that is representing the county's
19 interests and then secondly that (word inaudible)
20 has a window of opportunity to become a party in
21 interest so they can address issues raised by those
22 parties, and I think you have to file from them, I
23 think it's 30 to 45 days from the notice that
24 appears on the Web site in the state register, so
25 you have a very limited opportunity it seems to get

Proceedings

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2 involved in this whole process, no matter where
3 they're being located. You can probably correct me
4 on this. I've just been picking this up in the past
5 two weeks. I just find it fascinating. I didn't
6 know all this existed.

7 Do you know anything different than what
8 I've said?

9 MR. RIGANO: Yes. Maybe we should have
10 a brief Executive Session because there are some
11 questions.

12 THE CHAIR: And the big one is obviously
13 the one in Commack that has created all the
14 controversy.

15 MS. WIPLUSH: Kings Park; yeah.

16 THE CHAIR: All right. Do we have any
17 other issues?

18 SPEAKER UNKNOWN: I think Jim --

19 MR. RIGANO: I just had some Executive
20 Session items that there should be no action on
21 afterwards.

22 THE CHAIR: Okay.

23 Mr. Olsen?

24 MR. OLSEN: (Tape inaudible.)

25 THE CHAIR: Yes?

Proceedings

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2 MR. OLSEN: I just feel compelled to
3 remark on a couple of things. On the -- I couldn't
4 help but notice the discussion about on the Joe
5 Gazza property, and believe me I have no affiliation
6 with Joe Gazza whatsoever and Joe Gazza cringes at
7 the thought of me making any remarks about any of
8 his projects that I might do him wrong, but I
9 just -- I don't understand the mindset of people who
10 find it at all amusing what Joe Gazza is going
11 through, and I don't care about the fact whether Joe
12 Gazza is a speculator or a developer or just a
13 private individual that owns one lot. What Joe
14 Gazza is and what the people who Dominick represents
15 are are people who made a realistic investment and
16 bought some property and had the realistic goal of
17 some day being able to utilize that property and we
18 can all appreciate the fact that economic conditions
19 can change and somebody who speculates can lose that
20 opportunity due to normal economic conditions or
21 natural conditions and that sort of thing, but what
22 isn't acceptable is when government comes along and
23 does something that changes those conditions, and
24 when that happens, when that happens to a person, I
25 think that government is obligated and I think our

Proceedings

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2 constitution says that they're obligated to justly
3 compensate those people when that happens, and I
4 just see in many of these cases, particularly
5 recently, this Commission balancing these applicants
6 between other Town boards and other entities and
7 then that other entity bouncing them back again and
8 forever keeping these people in limbo so that they
9 are never able to achieve either use of their
10 property or just compensation and I find that
11 deplorable. It's deplorable. And when Joe Gazza
12 writes you a letter and makes the remarks about
13 being -- not being in Iran yet and still having the
14 obligation to pay his taxes every year, I don't find
15 that one bit amusing. That's not one bit amusing to
16 me. And it shouldn't be one bit amusing to anybody
17 in this room and it's too bad this room isn't full
18 instead of the paltry few people that I see that
19 show up at these meetings, and I think that this
20 Commission has to have themselves a meeting with all
21 the powers that be and come up with a solution to
22 the problems of the property owners who find
23 themselves in the situation where they're in the
24 core and can never realistically go before the Town
25 Board of the Town of Brookhaven, for example, or the

Proceedings

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2 Town Board of the Town of Southampton, and present a
3 full application in order to give you the answers
4 that you feel you need as to whether or not this
5 person could have ever realized the type of project
6 that they are proposing and could then have had the
7 kind of value to their property -- it puts
8 everything in a gray area, where these people are
9 never able to answer the questions that you want
10 answered, and yet you won't make your decision until
11 every one of those finite questions are answered,
12 and I think that's totally unreasonable of you and I
13 don't think for one moment that your mandate from
14 the legislature through this legislation was to do
15 this to property owners. I don't think for one
16 moment that that is true. I don't think that they
17 intended that you deprive property owners of a quick
18 and fair solution to their problem, and this act has
19 been in place now for I forget how many years, but
20 that's how many years it's been that my memory now
21 doesn't even let me remember how many years it's
22 been, and yet these people still are not compensated
23 and they're still being bounced back and forth using
24 the law as a weapon against these people, and that's
25 wrong. You have to have yourselves a meeting, you

Proceedings

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2 have to direct the Town of Brookhaven, for example,
3 to look at a project such as Dominick proposed and
4 say without going through all the formality, is
5 there a quick way that you can give an answer to
6 this as to just a rule of thumb what would have been
7 acceptable here, what could this person
8 realistically have expected and then be able to come
9 back to him and give an answer and say this is what
10 we can do, because the way you're doing it, you're
11 never going to get the answers. Paul Houlihan, for
12 example, is never going to give Joe Gazza an answer
13 as to whether this particular project that he's
14 proposing would ever be acceptable under code unless
15 he's got a complete application that goes through
16 the whole process and comes right down to his desk
17 where Paul Houlihan is forced to make that decision,
18 and yet you're using that process to keep Joe Gazza
19 in limbo and other people in limbo, and I don't
20 think that Dick Amber or anybody else that was part
21 of getting this legislation together or the
22 legislators that sponsored it ever intended for you
23 to treat property owners in that fashion. I do not
24 believe that. And I don't think you believe it
25 either. And I just hope that you will get your

Proceedings

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2 heads together and come up with a solution to that
3 particular problem, the problem being trying to
4 answer these unanswered questions that you keep
5 asking the finite details about so that you don't
6 continually keep these people in limbo the way
7 you're doing. I just hope you'll all take my advice
8 and you'll do something to remedy that situation.
9 It's deplorable in this country. It's deplorable.
10 Thank you.

11 THE CHAIR: Any comments?

12 MR. DITTMER: Excuse me.

13 THE CHAIR: Yes, sir?

14 MR. DITTMER: I would like to answer
15 that, that you have a duty and an obligation to
16 perform and any variance from that is a malfeasance
17 in office. Some of you have even taken an oath,
18 you're in violation of your oath of office. I think
19 it's deplorable, too.

20 THE CHAIR: Well, the reason why the
21 room is not more fuller is because 99 percent of
22 what we're doing is done in a way that most people
23 approve. What you see here are the very, very, very
24 small exceptions to those rules.

25 MR. DITTMER: That's not true.

Proceedings

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2 THE CHAIR: In the Clearinghouse, we
3 don't get a heck of a lot of appeals because the
4 process is working.

5 MR. DITTMER: That's not true.

6 THE CHAIR: We get things that come out
7 that don't fit into the mold. When we created a
8 procedure, it wasn't meant to be absolute and
9 perfect, and so that's why there's appeal back here.
10 You have things that don't fit into the norm and as
11 we went through this --

12 MR. DITTMER: Most people are disgusted
13 and will not come here.

14 THE CHAIR: We disagree on that point.
15 But we don't have much vacant land left in the core,
16 so hopefully this whole thing will be concluded in a
17 short time.

18 MR. OLSEN: The only thing that was
19 appalling to me was the comment that came back from
20 this community development or whatever that was at
21 one time offering this little carrot in front of Joe
22 Gazza's face that they, you know, they would be
23 purchasing property and everything and then at the
24 last minute they turn around, well, we changed our
25 mind, we're not going to be purchasing property, so

Proceedings

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2 wait till next year or whatever. That's the very
3 thing that's wrong with this whole process. You
4 people can address it. You absolutely have the
5 power to address it.

6 MR. MACHELLAN: That's the Town of
7 Southampton. That has absolutely nothing to do with
8 the Commission.

9 MR. OLSEN: I understand that and that's
10 what I'm talking about, is the fact that you pass it
11 to them, they pass it to you and it keeps -- as long
12 as you can keep the ball in the air, you're okay --

13 MR. DITTMER: But you haven't answered
14 the question --

15 MR. OLSEN: -- and that's not acceptable.

16 MR. DITTMER: -- that people are
17 disgusted. People are disgusted. You want somebody
18 to come in here with a gun and shoot you? I mean,
19 you know, people are disgusted.

20 SPEAKER UNKNOWN: That's really an
21 intelligent statement.

22 MR. DITTMER: I think you ought to
23 realize that. You're very unpopular.

24 MR. MACHELLAN: Have we received any
25 letters to that effect?)

Proceedings

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MR. SPITZ: That someone's gonna shoot us?

MS. TREZZA: Or that the (word inaudible) have disappeared.

MR. DITTMER: They're afraid of you.

MR. SPITZ: Well, Mr. Nicolazzi has never been unhappy to tell us what's on his mind and frankly, gentlemen, he's sitting right in front of you and he's not doing any complaining on his own behalf.

As a matter of fact, I suggest when you talk to him when he leaves, he's going to explain to you we've been very fair with him on this particular appeal and how we've handled it and what we haven't made him do at this point at cost to his client. But be that as it may, he's sitting in front of you and he ain't bitching and moaning.

MR. OLSEN: I think he's being very diplomatic.

THE CHAIR: I think I know him better than that. He's been very frank with this Commission when he's been unhappy with how we've treated his clients in the past.

MR. NICOLAZZI: I will speak on to that.

Proceedings

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2 I would like to speak to that.

3 I do not share in the frustrations that
4 Mr. Olsen and the other gentleman feel, although I'm
5 not in their shoes. The Commission has been very
6 fair to me and all of the applicants that I've put
7 forward I believe in this Commission. I believe
8 that all of the members of this Commission are very
9 fair and just and Mr. Olsen does make some good
10 points on occasion, but I can't say I share his
11 frustration.

12 THE CHAIR: Okay. If there's no more
13 comments, motion to go into Executive Session?

14 MR. MURPHREE: Motion.

15 THE CHAIR: Is there a second?

16 MR. MACHELLAN: Second.

17 THE CHAIR: All those in favor, signify
18 by saying aye.

19 MR. MURPHREE: Aye.

20 MR. MACHELLAN: Aye.

21 MS. WIPLUSH: Aye.

22 THE CHAIR: Aye.

23 Opposed?

24 Motion carries.

25 And we will not be conducting any

Proceedings

business after this.

(Whereupon, the meeting was concluded.)

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C E R T I F I C A T E

I, ROBIN LaFEMINA, a Shorthand Reporter and Notary Public, within and for the State of New York, do hereby certify that I transcribed the proceedings in the above entitled matter on October 10, 2000, at 3525 Sunrise Highway, Great River, New York, and that this is an accurate transcription of said proceedings.

Robin LaFemina

ROBIN LaFEMINA,
Shorthand Reporter