

CENTRAL PINE BARRENS COMMISSION

COUNTY OF SUFFOLK: STATE OF NEW YORK

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In the Matter of the Application of
FKK, INC.

For a Hardship Exemption, Pursuant to
Environmental Conservation Law Article 57

-----X

Public Hearing

Southaven County Park
Victory Avenue
Yaphank, New York 11980
December 19, 2018
3:00 p.m.

A P P E A R A N C E S:

John Milazzo, ESQ.
Daniel P. McCormick
Julie Hargrave
Ed Romaine
Janet Long
Andrew Frelong
Carrie Gallagher, Chair
Laura Jens-Smith
Kyle Collins
Kevin Papasian
James Egan
Eugene DeNicola
Richard Amper



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1	PUBLIC HEARING	1	PUBLIC HEARING
2	MS. GALLAGHER: Notice of Public	2	parking for other vehicles and some
3	Hearing, Pursuant to the New York State	3	landscaping. Most of the site is
4	Environmental Conservation Law Article	4	significantly disturbed. There are a
5	57-0121(10) and the Central Pine	5	few pitch pine trees and cedars in the
6	Barrens Comprehensive Land Use Plan.	6	rear of a property and a mote area,
7	Notice is hereby given that the Central	7	buffer area, to the fence, which
8	Pine Barrens Joint Planning and Policy	8	delineates their property line.
9	Commission will hold a public hearing	9	
10	on Wednesday, December 19, 2018, on the	10	MR. ROMAINE: Essentially this
11	matter of a Core Preservation Area	11	property has not been changed since it
12	Extraordinary Hardship Waiver.	12	was built in '73?
13	The name of the project is FKK Inc.	13	MS. HARGRAVE: Right, that is my
14	Core Preservation Area Hardship Waiver	14	understanding.
15	Application.	15	And, over their fence, on the other
16	Okay, so, you may start.	16	side of the fence is the estate land,
17	MS. HARGRAVE: This is the site of	17	and this property is like a triangle
18	a gas station in Calverton, in the Town	18	shape, it has two road frontages, one
19	of Brookhaven, on the north side of the	19	on Edwards and one on the north service
20	LIE. At Exit 71, if you are on the	20	road.
21	south side. You can't go north where	21	So, again, just to go over their
22	this exit exists, but this is on the	22	proposal, this is the convenience
23	corner of the north service road going	23	store, the existing convenience store,
24	onto the LIE at Nugent Drive, Edwards	24	and this is the area of the gas pumps,
25	Avenue, where they merge.	25	and the project proposes to move the
			convenience store a little further east

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1	PUBLIC HEARING	1	PUBLIC HEARING
2	So, you are probably familiar with	2	on the site and further in the rear,
3	this site and it contains a gas station	3	and then develop more of a larger area,
4	and an existing convenience store.	4	bay area for gas dispensers, on the
5	This was built in 1973. The	5	east side of the site.
6	convenience store was developed or	6	MR. ROMAINE: Is the number of gas
7	there was a service station converted	7	dispensers changing?
8	to a convenience store in 2000.	8	MS. HARGRAVE: It is increasing to
9	Again, this is in the Core	9	six, from four.
10	Preservation Area. It is near the	10	MR. FRELONG: Are the tanks being
11	border of the Core, but you will see in	11	relocated, the underground tanks?
12	the study area map, a little further to	12	MS. HARGRAVE: Well, there are
13	the north, north of the Peconic River	13	existing underground tanks. That was
14	is the compatible growth area, but this	14	one question we had. The new tanks
15	is not the Core Preservation Area, and	15	would be developed in accordance with
16	because the applicant proposes to	16	existing current Health Department
17	expand the convenience store and	17	regulations for lining and storage, but
18	redevelop the site, this is development	18	we maybe have to clarify with, the
19	activity and they submitted a hardship.	19	engineer is here, with whether the
20	To go over some of the site	20	existing tanks will be replaced and
21	structures, it is a one acre site and	21	stored in a way that is up to current
22	there is a 1,500 square foot	22	standards.
23	convenience store, and a gas station.	23	There will be more parking on the
24	There is a canopy and multiple floor	24	site as well, and most of this buffer
25	product dispensers. There is some	25	area, will be disturbed, some trees

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2 will be removed, but again that is a
 3 more grass area with trees and the
 4 canopy.

5 So, just to go over some of the
 6 other conditions of the site, it says
 7 we received a response from the
 8 Historic Preservation Office and there
 9 is no concern for historic or cultural
 10 resources on this site. The project
 11 may require a DEC permit for the Wild
 12 and Scenic Recreational Rivers permit
 13 since it's in the jurisdiction of that
 14 zone.

15 MR. FRELONG: Does that mean it's
 16 within a mile, half mile, do we know
 17 what the buffer is?

18 MS. HARGRAVE: It's completely
 19 within that boundary. It's very close
 20 to the river.

21 MR. ROMAINE: It's very close to
 22 the river.

23 MS. HARGRAVE: You can see --

24 MR. ROMAINE: There is the gas
 25 station, there is Mill Road, and then

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2 go through the exhibits and then the
 3 applicant will speak.

4 The Staff Report is Exhibit A.

5 You can see the site in Exhibit B
 6 in an aerial, it's almost at the corner
 7 of South River Road and to the north is
 8 the Peconic River.

9 Exhibit C contains pictures of the
 10 site, it's an existing operating gas
 11 station and convenience store. There
 12 was a fire in the convenience store,
 13 electrical fire earlier this year, but
 14 that is reopened and continuing to
 15 operate, and you will see some of the
 16 existing vegetation that remains on the
 17 site and the rear fence boundary.

18 The existing survey is in Exhibit
 19 D, you can see the placement of the gas
 20 station and convenience store, and the
 21 convenience store is going from about
 22 1,500 square feet to almost double the
 23 size, to 2,950 square feet is the
 24 proposal.

25 The site plan is in Exhibit E,

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2 there is the river. That is
 3 essentially the configuration of the
 4 land.

5 MR. FRELONG: I know where the site
 6 was, I was just looking for a distance
 7 for the record.

8 MS. HARGRAVE: I don't have the
 9 exact distance from the river, from the
 10 surface water of the river, but it is
 11 within the boundaries, I know that, and
 12 you are aware of that too.

13 MR. DENICOLA: Well, we know the
 14 river runs on the other side of Mill
 15 Road and Mill Road is just slightly to
 16 the east.

17 MR. MILAZZO: Why don't you
 18 introduce yourself, for the record.

19 MR. DENICOLA: Oh, I'm sorry.
 20 Eugene DeNicola, D-E-N-I-C-O-L-A,
 21 200 Rail Road Avenue, Sayville, New
 22 York.

23 (Whereupon Mr. DeNicola was sworn
 24 in.)

25 MS. HARGRAVE: I am just going to

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2 showing the proposed canopy, and gas
 3 pumps, and the convenience store, and
 4 additional parking.

5 Exhibit F is just a record that we
 6 were able to obtain from a previous
 7 spill that occurred on the site but
 8 that is closed.

9 Exhibit G is a Study Area Map of
 10 the site, so you can see other land
 11 uses in the area, again to the north is
 12 the Peconic River, and then just north
 13 of that on River Road is the boundary
 14 line of the compatible growth area and
 15 the Core, so, it wraps up and around
 16 Canoe Lake by Old Calverton Links Golf
 17 Course, and comes back down to River
 18 Road. Then, to the south of this site
 19 is a significant area of open space in
 20 the Core Preservation Area, with the
 21 exception of the condominium
 22 development at Calverton Hills and some
 23 single-family residential lots that are
 24 developed along South River Road.

25 MR. ROMAINE: Also known as Mill.

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1	PUBLIC HEARING	1	PUBLIC HEARING
2	MS. HARGRAVE: That's right, and	2	MS. JENS-SMITH: It may be because
3	also on River Road north of Peconic.	3	it enters right onto the expressway.
4	Exhibit H is the Applicant's	4	MR. ROMAINE: I can't fathom why
5	Petition, and we will speak to that.	5	the town would have done that 18 years
6	The applicant has explained in	6	ago, but that is probably the reason,
7	their petition essentially that they	7	that it is close to a major arterial
8	are trying to upgrade, and update, and	8	highway and they don't want people
9	create a better flow of access through	9	buying beer and driving right onto the
10	this site, and that is their reasoning	10	expressway, because once you do that,
11	for this proposed expansion.	11	you can even get back on Edwards Avenue
12	MR. COLLINS: I just have a quick	12	driving south, because it's a divided
13	question on your summary and discussion	13	street at that point, or you get on the
14	of Item 4 of the Staff Report, it talks	14	expressway going west, so.
15	about Covenants and Restrictions that	15	MS. HARGRAVE: We just found that
16	are on there, how were those obtained?	16	the site is 537 feet to the surface
17	Were they private, between the Town of	17	water of the river, so, just so you
18	Brookhaven on a previous approval, and	18	know.
19	how is that relevant to what the	19	MS. GALLAGHER: Any other questions
20	commission is looking at?	20	for Julie before we have the applicant?
21	MS. HARGRAVE: It was just	21	(No responses given.)
22	something that was in the record on the	22	MR. MILAZZO: We have marked as our
23	site about the no sale of chilled	23	commission's exhibit that one report
24	alcoholic beverages, and that was the	24	and it includes Staff A through H, and
25	only covenant.	25	we gave a copy of that to Mr. DeNicola?

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1	PUBLIC HEARING	1
2	MR. COLLINS: Do we know how that	2
3	was obtained, was that obtained through	3
4	some previous site plan approval or was	4
5	that a private covenant between a	5
6	previous seller or something?	6
7	MS. HARGRAVE: The service station	7
8	was converted to a convenience store in	8
9	2000 and a CO was issued then, so, the	9
10	covenants were filed in '99, I think it	10
11	came out of that site plan approval,	11
12	but I have the covenants and I can	12
13	check to see who they were written to,	13
14	I think they were to the Town from the	14
15	owner at that time. There is a new	15
16	owner now, the new owner, we have the	16
17	deed from the new owner who purchased	17
18	this site for \$2.5 million dollars.	18
19	MR. COLLINS: The sale of chilled	19
20	alcohol is not some standard we need to	20
21	take a look at under the hardship?	21
22	MS. HARGRAVE: No, no. It just	22
23	came up in their deed and we always	23
24	look at the deed and covenants or	24
25	easements on the site.	25
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	MS. HARGRAVE: I did.	
	MR. DENICOLA: Good afternoon, let	
	me introduce myself again, Eugene	
	DeNicola, 200 Rail Road Avenue,	
	Sayville, New York 11782, for the	
	applicant.	
	To address the covenants with	
	regard to alcoholic beverages, the Town	
	of Brookhaven used to impose a	
	restriction on the sale of alcoholic	
	beverages, either by singles, or by	
	chilled, or what have you. In two	
	cases against the Town of Brookhaven,	
	that was over turned. The New York	
	State Alcoholic Beverage Control Board	
	has superseding jurisdiction and the	
	Town cannot control the sale of	
	alcoholic beverages.	
	MR. ROMAINE: So, that covenant is	
	null and void?	
	MR. DENICOLA: Yes. We don't have	
	to worry about it. Hess versus the	
	Town of Brookhaven and there was	
	another case that I believe Dave Sloane	

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2 handled, Exxon versus the Town of
 3 Brookhaven, and in both instances the
 4 Town was determined to supersede the
 5 jurisdiction and the restriction was
 6 determined to be null and void.

7 I have submitted a detailed
 8 petition, which is part of the package
 9 that Ms. Hargrave submitted with her
 10 package, perhaps the commission has
 11 read the petition.

12 MS. GALLAGHER: Exhibit H.

13 MR. DENICOLA: I am going to try to
 14 address the issues that pertain to the
 15 environmental conservation law and just
 16 try to emphasize the fact that the
 17 application being made by the applicant
 18 is in fact appropriate and should be
 19 approved by this board.

20 To my left is a site plan that is
 21 proposed by the applicant. The green
 22 would be the area that would be
 23 maintained. There is no natural area
 24 on the site. There is no Pine Barrens
 25 forest, there is no surface water on

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2 site has existed in it's currents
 3 location, shape, and dimensions since
 4 at least 1973. The applicant's
 5 proposal will not change the size,
 6 shape, and dimensions of the subject
 7 parcel, nor expand beyond it's current
 8 size, shape, and dimension. So, this
 9 is the site, we are not going into any
 10 other Pine Barrens forest or any of the
 11 Pine Barrens habitat whatsoever.

12 The subject site use was issued a
 13 Certificate of Occupancy for a
 14 one-story gas filling station in May of
 15 1973. In May of 2000, a Certificate of
 16 Occupancy was issued to convert the
 17 repair bays to a convenience store. In
 18 June of 2014, following Super Storm
 19 Sandy, it received a certificate of
 20 compliance for installation of a
 21 transfer switch for emergency use as a
 22 generator site, so that gasoline could
 23 be sold at this site, should the
 24 electricity go out, as it did after
 25 Super Storm Sandy, which we all are

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2 the site. This is a disturbed site and
 3 has been in the same condition since at
 4 least 1973 when a two bay gas lane
 5 filling station with an office --

6 MR. ROMAINE: I believe it was a
 7 Texaco.

8 MR. DENICOLA: I don't remember the
 9 brand, but I know it was a two bay
 10 repair station that was converted in
 11 2000 to a convenience store, which is a
 12 positive, I don't have to go into the
 13 history of gas lane filling stations
 14 and repair bays, because the repair
 15 bays in gas stations do not exist
 16 anymore. My dad had three, so, I kind
 17 of know the history of what happened to
 18 that.

19 In any event, if I may, the
 20 proposed redevelopment of the site is
 21 merely an updating and modernization of
 22 a 45 year old site that was originally
 23 occupied as an auto repair shop, prior
 24 to conversion to a convenience mart
 25 accessory to the fueling station. The

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2 very familiar with.

3 The conversion to the convenience
 4 mart was a positive factor in the Core
 5 Preservation area, as it eliminated the
 6 need for oils, anti-freeze, waste oil
 7 disposal, brake fluids, and similar
 8 substances in open use for repair and
 9 maintenance of vehicles.

10 The applicant's proposal is simply
 11 a readaptation of uses existing on the
 12 site and which predated the Pine
 13 Barrens Legislation by some 20 years.

14 Any expansion of the structures are
 15 strictly limited to the existing site
 16 and it's substantially the same
 17 location as the existing structures and
 18 improvements.

19 The proposed increase in the size
 20 of the convenience store, the canopy,
 21 and the number of dispensers is to
 22 accommodate the increasing traffic,
 23 which has naturally occurred over the
 24 past 45 years. As the commission may
 25 know, and as I am sure Supervisor

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2 Romaine knows, this type of use does
 3 not generate traffic, it simply picks
 4 up pass by traffic that is already
 5 existing on the roadway. The
 6 redevelopment, as proposed will permit
 7 vehicle operators to more efficiently
 8 access the fuel dispensers, fuel their
 9 vehicles, and exit the site without
 10 cueing or waiting for an open fuel
 11 dispenser.

12 The engineer will discuss an issue
 13 that was raised in the report of why
 14 you are changing the site, an engineer
 15 will discuss that issue with the
 16 commission.

17 The proposed redesign, and
 18 redevelopment of the site, and the
 19 improvements proposed will occur, as I
 20 indicated, on the subject site only,
 21 which again has no Pine Barrens
 22 ecosystem, therefore, there will be no
 23 disturbance of the Pine Barrens forest
 24 or habitat in any respects. There is a
 25 fence along the westerly portion of the

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2 because I know you have to come to us.

3 MR. DENICOLA: Yes, our next step
 4 would be the Town of Brookhaven,
 5 provided the commission approves our
 6 proposal, but yes, we will be requiring
 7 Pine Barrens credits because the store
 8 will be in excess of 1,500 square feet
 9 and anything in excess of 1,500 square
 10 feet requires Pine Barrens. I think
 11 it's one half credit for every 750
 12 square feet in excess of 1,500 square
 13 feet with a maximum of 3,000 square
 14 feet.

15 MR. FRELONG: Quick question.

16 The change of use that was done 18
 17 years ago, did this board or commission
 18 make a determination on that change of
 19 use?

20 MR. DENICOLA: I did not represent
 21 the owner at that time. I do not know.

22 MR. COLLINS: Do we know that,
 23 John?

24 MS. HARGRAVE: No, no.

25 Just so you know, this is the deed

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2 property separating the site from the
 3 Pine Barrens. As indicated, if you go
 4 around the corner, I will call it no
 5 more than 500 feet, is the Peconic
 6 River.

7 MR. ROMAINE: Can I ask a question?

8 MR. DENICOLA: Yes.

9 MR. ROMAINE: The original
 10 convenience store that the Town
 11 approved back in 2000, about 1,500
 12 square feet?

13 MR. DENICOLA: Yes, a little over,
 14 correct.

15 MR. ROMAINE: They are now looking
 16 to expand it to 2,900 and change?

17 MR. DENICOLA: 2,950 square feet,
 18 and this site is open 24 hours a day,
 19 seven days a week.

20 MR. ROMAINE: I got that. The only
 21 question I had is, are you going to be
 22 burning Pine Barrens credits if this is
 23 approved?

24 MR. DENICOLA: I think we have to.

25 MR. ROMAINE: I want to get ahead,

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2 and it talks about the special
 3 exception that the Town granted, but
 4 no, we don't have anything in the file.
 5 I can check, but we don't have that
 6 decision or there was no decision.

7 MR. ROMAINE: They didn't change
 8 the foot print?

9 MS. HARGRAVE: No, no. It was just
 10 a conversion, but still, it didn't come
 11 to a decision.

12 MS. JENS-SMITH: It started out as
 13 two gas bays or four gas bays?

14 MR. DENICOLA: Are you talking
 15 about the bays or the pumps?

16 MS. JENS-SMITH: The pumps.

17 MR. DENICOLA: Four dispensers.

18 MS. JENS-SMITH: That's what it
 19 always was back in '73?

20 MR. DENICOLA: That's, to the best
 21 of my knowledge, that is what it always
 22 was. It was four dispensers and a two
 23 bay station.

24 MS. JENS-SMITH: I thought you had
 25 said two bay station.

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MR. DENICOLA: No. The bays where they repaired cars was an office and two bays.

MR. COLLINS: Did that change in use require determination from this board whether that was development or not?

MR. MILAZZO: Did they change it under town codes, as change of use?

MS. HARGRAVE: It was a special exception.

MR. MILAZZO: We would have to research it.

MR. DENICOLA: Well, it was approved by the Town of Brookhaven and a certificate of occupancy was issued.

So, I indicated that there would be no disturbance of the Pine Barrens forest or the Pine Barrens habitat by this project. As I indicated, the subject site has no surface water and the proposed improvements will have no adverse effect or impact on the Pine Barrens habitat or forest, whatsoever.

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to its location. Although in the Core area, its location in the intersection of two heavily traveled roadways, as I mentioned the intersection of County Route 24, also known as Edwards Avenue, and the north service road of the Long Island Expressway, as I indicated, which is also the entrance to the westbound lanes of the expressway, also known as Interstate 495. Each roadway carries thousands of vehicles per day, so this is really not a pristine area that we are speaking about, in terms of the site and the road system upon which it fronts. The uses have operated on the site for 45 years with no adverse affect or impact to the Pine Barrens. The proposed improvements will be consistent, not only with the current, but long-term integrity of the Pine Barrens ecosystem.

MR. COLLINS: Just one correction on your last statement, the gas station use existed for 45 years, but the

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The proposed redevelopment is limited to the site and, as such, will not cause or encourage any development beyond the subject site, as proposed by the site plan. This is a site that is singular and alone, if you will, at the intersection of two major roadways, County Road 24 and the service road of the Long Island Expressway, Interstate 495, which is also the access, the service road is the access, a ramp if you will, to the westbound lanes of the expressway, and both of those roads carry thousands of cars per day. If you spend some time there, there are tractor trailers, trucks, vehicles, traffic is constant. Within the site, the redevelopment will occur in an orderly efficient manner. The proposal is compact on the site.

Now, obsolescence of the existing structure should be considered by the commission, to permit the applicant to redevelop the site, which is unique, as

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convenience store use did not.

MR. DENICOLA: My apologies.
You're right.

The gasoline filling station has been there for 45 years from 1973 to 2000. They did repairs in the site, which is for 27 years, and for the last 18 years it has been a convenience store.

Thank you, sir.

The site is located at the entrance service road to the Long Island Expressway and it serves a public need and benefit, it provides gasoline and food at that access point.

Now, it is a site in a rural area with no other gasoline filling station for a substantial distance in all directions. I rode yesterday, I drove north, south, east, and west. I am certainly not as familiar with the area as the supervisor is, but the first gas station that I was able to find, going up Edwards Avenue, would be at Rou-

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 2 just east slightly east of Edwards
 3 Avenue --

4 MR. ROMAINE: They built that multi
 5 one.

6 MR. DENICOLA: -- is a Bolla gas
 7 station with, I don't know how many --

8 MR. ROMAINE: Edwards Avenue going
 9 south, it's the circle. The Riverhead
 10 circle, the Southampton/Riverhead
 11 circle.

12 MR. DENICOLA: That's toward
 13 Riverhead, but up toward Route 25, and
 14 then the other way there is a Hess
 15 station.

16 MR. ROMAINE: Plus there is one
 17 going west on the expressway, you would
 18 have to get off at 70 and there is a
 19 Mobil gas station there on the south
 20 side.

21 MR. DENICOLA: Yes, so, there is
 22 really not that much in the area for
 23 the residents, and there are residences
 24 in the area. I know I went along River
 25 Road --

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 2 provide gasoline for the health and
 3 safety of the public at this critical
 4 and unique location, and I think we
 5 have to admit that it is at a critical
 6 and unique location on two highly and
 7 heavily traveled roads.

8 The addition of a new underground
 9 fuel storage tank, the applicant is
 10 proposing, right now there is 28,000
 11 gallons of fuel available and I think
 12 we are proposing another 10.

13 Is that correct?

14 MS. GALLAGHER: Is this both
 15 gasoline and diesel?

16 MS. JENS-SMITH: It says multiple.

17 MS. HARGRAVE: I'm sorry, I think
 18 existing is 28,000 and you are adding
 19 another 10.

20 MR. MILAZZO: So, 38,000?

21 MR. PAPASIAN: It would be 38,000
 22 total.

23 The Suffolk County Department of
 24 Health allows up to 40,000. You need a
 25 variance over 40,000.

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2 MR. ROMAINE: Calverton Hills has
 3 250 plus condos there.

4 MR. DENICOLA: And, this is a
 5 public benefit, to have this station at
 6 this location, without having any
 7 adverse affect on the Pine Barrens.

8 MR. MILAZZO: Are you proposing,
 9 are you seeking relief under the
 10 hardship standard for a compelling
 11 public need, when you say public
 12 benefit several times?

13 MR. DENICOLA: Yes, this is part of
 14 a compelling public need, because there
 15 is no other service like it for a
 16 substantial distance in all directions,
 17 and it is at the entrance to the
 18 service road, and there is a transfer
 19 station in the event that we have
 20 another serious storm event. It has
 21 been fitted with a transfer switch for
 22 emergency use of a generator. That was
 23 done, as I indicated, in 2014, so, in
 24 the event of another serious storm
 25 event, this location will be able to

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2 MR. DENICOLA: Now, the increase in
 3 fuel storage capacity will, one, ensure
 4 supplies of fuel. Two, reduce gasoline
 5 tank and truck deliveries to the site.
 6 The underground fuel storage tanks will
 7 meet all requirements of the Suffolk
 8 County Department of Health for storage
 9 of gasoline. The underground fuel
 10 storage tanks are double wall fiber
 11 glass. In between the inner wall, and
 12 the engineer may address this in more
 13 detail, and the outer wall, there is a
 14 sensor, which monitors any leak that
 15 may occur from the inner wall. The
 16 sensor immediately signals an alarm to
 17 which there is an immediate response.
 18 All piping under ground is double wall
 19 as well. All underground fuel storage
 20 tanks are strictly monitored to avoid
 21 any underground water contamination.
 22 To the best of my knowledge, there has
 23 been no known failure of a double wall
 24 fiberglass underground fuel storage
 25 tank in Suffolk County.

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2 MS. GALLAGHER: Well, not that had
 3 it's system working correctly, just to
 4 be very clear.

5 MR. DENICOLA: We are talking about
 6 the tank itself failing. I am unaware
 7 of any that has occurred, and I have
 8 represented several gasoline companies.
 9 That is why I said to the best of my
 10 knowledge, and as much as the fuel
 11 storage tanks are under ground there is
 12 no danger of fire, since there is no
 13 oxygen, and the fuel tanks are securely
 14 sealed.

15 With regard to the dispenser pumps,
 16 they are located under the canopy, in
 17 which the fire suppression system is
 18 located. In the event of a fire at the
 19 dispenser pumps, sodium bicarbonate
 20 will be sprayed on all dispensers and
 21 the dispenser pumps are automatically
 22 shut down. There will be no increase
 23 in the danger of fire if the waiver is
 24 well requested by this commission. The
 25 waiver granted in the instant case will

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2 sure. I drove all the way up Edwards,
 3 there is nothing. I drove all the way
 4 south passed the condominiums, there is
 5 nothing. I drove on River Road or Mill
 6 Road, there is nothing. I drove on
 7 Mill Road, there is nothing. I drove
 8 the other way up to the, it used to be
 9 a motel, it's in Riverhead, it's not in
 10 Brookhaven, so, yes it's a very large
 11 area, miles.

12 The applicant's request is the
 13 minimum relief necessary for a modern
 14 facility to accommodate the demand to
 15 properly serve the public and it's need
 16 for fuel and food availability, just in
 17 summary.

18 Then, I am going to have my
 19 engineer speak to why we are
 20 redesigning the site for it's ingress,
 21 egress, etc. The site is unique in
 22 that it's located at the intersection
 23 of two heavily traveled roadways, Route
 24 24 and Interstate 25. The granting of
 25 the waiver will not be detrimental to

1 PUBLIC HEARING

2 not be inconsistent with the purposes
 3 and intent of the Environmental
 4 Conservation Law.

5 Even though we are preserving the
 6 Pine Barrens, this is at the
 7 intersection of two major roadways,
 8 entering an interstate highway and has
 9 been in existence for 45 years, it is
 10 not affecting the Pine Barrens at all
 11 and yet is serving the people in this
 12 area where this is no similar service
 13 and I dare say that there will be no
 14 other gas stations permitted in this
 15 area in the distant future.

16 MR. MILAZZO: I'm sorry, Mr.
 17 DeNicola, when you say area, we spend a
 18 lot of time talking about 537 --

19 MR. DENICOLA: No, we are talking a
 20 lot more than 500, Mr. Milazzo.

21 MR. MILAZZO: So, what is area in
 22 your statement?

23 Does that include the gas station
 24 on Edwards and 25, is that in the area?

25 MR. DENICOLA: Up to that, sure,

1 PUBLIC HEARING

2 other properties in the area. This is
 3 the only site that is being developed,
 4 and nothing else can be affected.

5 There will be absolutely no adverse
 6 effect or impact to the Pine Barrens
 7 forest or habitat. There will be no
 8 disturbance of expansion into the Pine
 9 Barrens forest, nor any impairment of
 10 the resources of the Core Preservation
 11 area. The site has no Pine Barrens
 12 growth, habitat, or service water. To
 13 grant the permit is in the public
 14 interest for gasoline supply
 15 availability and food in a rural
 16 location of the entrance to Interstate
 17 495. The new structures will meet new
 18 building codes, which I think will be
 19 an important factor and a new sanitary
 20 system will benefit the ecology as
 21 well. The applicant is obviously going
 22 to install a new sanitary system to
 23 meet current Suffolk County Department
 24 of Health requirements.

25 The site is open 24 hours a day,

PUBLIC HEARING
seven days a week. Now, most of the stations in the area close at 10:00. The Bolla station I was referring to earlier closes at 10:00.

Now, I was told that there is a ferry that comes to Orient from Connecticut and it comes after 10:00 at night, and there is absolutely no service station open from Orient to this site. My client tells me that when people are going wherever they are going, they come in to the site to use the bathroom, to buy food, to fill up their cars with gasoline, so, it is a critical use at a critical location and I thank the commission for their attention.

I just would like to ask Mr. Papasian here to give your name, address, and profession.

(Whereupon Mr. Papasian was sworn in.)

MR. PAPASIAN: Here is my card
(handing).

PUBLIC HEARING
ADA requirements. A lot of things it's also about, which Mr. DeNicola indicated, is that we don't want to have delivery trucks coming all of the time. That is the reason mainly for the building getting bigger.

Now, the location of the building, why are we moving the building? If you look at the pamphlet, I think you guys have the survey, on the survey it shows the current building and the current islands. They are kind of crunched together right next to each other, kind of in the middle of the site, right about here (indicating).

MS. HARGRAVE: It's in D.

MR. PAPASIAN: And, the issue you have, it's human nature, and if you all get gas, it happens, you park your car at the pump and you go inside, and the problem with the current layout is that it happens all the time. We have four cars parked at those pumps, there is no through lane, and it backs everything

PUBLIC HEARING
Hello, everyone. My name is Kevin
Papasian and I am a Professional
Engineer with B. Thayer and Associates.

Leading off with what we were discussing, the one big question is why are we rebuilding this site the way we are, and we are making the building a little bigger inside, and the one thing about a gas station is that we don't have the ability to go up. We can't have a second story. It's the only retail where our point of sale is outside. It's the only retail out there that has the point of sale being outside. That being said, we have to do something to modernize the facility. Dealing the Town of Brookhaven in the past, we have experience with, we know that Brookhaven's big thing is 3,000 square feet and you don't ever want to go beyond that, and this site we don't really want to go much bigger than that anyway. So, that's why we are making the building bigger, we also will meet

PUBLIC HEARING

up, especially going on the North Road, all the breweries opening up, all the tastings, they are everywhere. It's now not just fall, it's all year round. So, especially peek hour in the afternoon, this new layout will make it so cars can park here in the travel through lane, so we won't have that cueing issue, and that is why we have it set up like it is, because we have parking in front, so people can use the parking spaces, as opposed to not using the parking spaces. Currently, right now, how the site is set up, parking that is there is not really beneficial to the people. The building is here, pumps are here, parking is all the way back here. People are not going to go backwards into the one-way road. That is the reason why we have to re-design the layout. It really makes sense this way and it works. If you see most newer gas stations, they are set up where the pumps are there and there is

11 We are going to maintain the
12 existing curb cuts the way they are.
13 As Mr. Romaine mentioned, it is a
14 divided highway on Edwards Avenue, and
15 this is obviously one-way, so the big
16 concern of traffic is people making
17 left turns, but we don't have that
18 problem here, there is no left turn to
19 be had, so we don't have that problem.

We will also upgrade the sanitary system to Suffolk County Health Department requirements, put in a grease trap and antiseptic tank. Right now it's just a regular cesspool, which is probably about however old the site

1 PUBLIC HEARING
2 is, 50 years old, so has to be
3 upgraded.

4 The tanks, and there is a question
5 about that, the existing tanks are
6 double wall fiberglass. They meet
7 Suffolk County Department of Health
8 standards and they will be maintained
9 where they are. We are adding one
10 additional tank and that would be a
11 10,000 gallon tank. It will be
12 situated in the same general area as
13 the current tanks that will remain.

When we do redo this facility, the intent will be to upgrade, not only the existing tanks, the tanks will remain, the current tank, but we will upgrade all of the equipment on it, the piping on it. One of the things Suffolk County does, you can look into it yourself, Suffolk County has one of the strictest tank law in the country. Not only does it have to be double wall fiberglass tanks, but there will be double wall fiberglass piping, there

PUBLIC HEARING
will be monitoring on each dispenser, on each pipe, and into each interstitial space in the tank, which are the two layers of fiberglass. It means that if anything changes in any way or form, the whole system shuts down, so, that is what we would be putting here. We have it now and we will have it in the future up to the latest standards. We are up to date to I think probably the most current standards, so we still meet the current standards, but it's like getting a new car, standards are new. All of that stuff will be upgraded and new.

With regard to location, the one thing that is key, if anyone gets gas, no body gets up and gets gas, you do it as a convenience. This is the next station going eastbound on the LIE, on the LIE going eastbound is the one just built, the Bolla on the LIE. There is no other gas station where you get off the road and it's right on the corner

PUBLIC HEARING
there. This is the only gas station
for about 20 miles until the next one
going eastbound, that you would run
into when you get off the LIE --
westbound, excuse me.

There is 20 miles roughly. It could be 16 miles, 24 miles. I don't know, but it is basically Exit 64 to this exit until you see the next gas station going westbound on the LIE, so, there is a need regarding that.

There have been other approvals, for a Hess at Sills Road, they never built it, and it never will be built, the permits expired on Sills Road on the northeast corner. I don't know what the status is of that right now, but I know it is --

MR. ROMAINE: Not going forward.
MR. PAPASIAN: I don't know.
Permits expired, so, they would have to
go back to the Town of Brookhaven and
get all new approvals, so, I mean this
site does have a need and I think

1 PUBLIC HEARING

2 Mr. DeNicola mentioned about the other
 3 locations, which are all pretty far
 4 away, so there is a need for it.
 5 Traffic is increasing, as we know, and
 6 it is everywhere. Right or wrong?

7 So, this right here will improve
 8 definitely the ergonomics of the site,
 9 how it flows, which will also modernize
 10 the whole facility with a better
 11 esthetic look to it.

12 We have this, a building look that
 13 Town of Brookhaven has approved in the
 14 past, with a nice rooftop on it, and
 15 when it's all said and done, it will
 16 look like this (indicating).

17 MS. JENS-SMITH: There is no
 18 seating going in the convenience store,
 19 correct?

20 MR. PAPASIAN: There is no seating
 21 and no food preparation. That is
 22 required by the Town of Brookhaven, you
 23 can't do that.

24 The Town of Brookhaven requirements
 25 for special permit for a gas station is

1 PUBLIC HEARING

2 for compelling public need, pursuant to
 3 the law?

4 MR. DENICOLA: I have read the
 5 ordinance, as best as you can comply
 6 with that ordinance, which is virtually
 7 impossible to comply with.

8 MR. FRELONG: One more line of
 9 though then, the existing tanks, I am
 10 interested in the underground
 11 infrastructure.

12 The existing underground tanks on
 13 site, they were put in in '73?

14 MR. PAPASIAN: No.

15 The tanks were put in, I don't know
 16 the exact year, I probably have the
 17 registration that will say it, but I
 18 assume they were put in around the year
 19 2000.

20 MR. FRELONG: So, the condition of
 21 the tanks?

22 MR. PAPASIAN: Well, the tanks are
 23 required to be tank tested every year.
 24 It would be to Suffolk County
 25 Department of Health standards. It

1 PUBLIC HEARING

2 probably Zone J5, so, it is in the
 3 correct zoning for a gas station and
 4 convenience store.

5 Overall, this site would definitely
 6 be an improvement upon what is there
 7 now.

8 Any questions or concerns?

9 MR. FRELONG: I have a question.

10 Just for the record, you are
 11 familiar, Mr. DeNicola, with ECL570121?

12 MR. DENICOLA: Well, somewhat, yes.

13 MR. FRELONG: And, for the record,
 14 I did see it in your petition, but for
 15 the record, you are applying for this
 16 hardship under compelling public need?

17 MR. DENICOLA: Well, I think there
 18 is a compelling public need for this
 19 station, because there is no other
 20 provision for gasoline within a
 21 substantial area, and it is at a very
 22 unique location, as I indicated, at 24
 23 and the LIE entrance.

24 MR. FRELONG: Just for the record,
 25 you are familiar with the requirements

1 PUBLIC HEARING

2 meets it every time.

3 Tanks usually have, and Suffolk
 4 County does not enforce it, but Nassau
 5 County requires that tanks stay within
 6 the warranty of the tanks. Tanks come
 7 with a 30 year old warranty and those
 8 tanks are still within that warranty.

9 MR. FRELONG: Steel tanks?

10 MR. PAPASIAN: Yes, double wall
 11 fiberglass.

12 MR. FRELONG: You are not being
 13 compelled by the Health Department to
 14 replace your tanks?

15 MR. PAPASIAN: No. As long as they
 16 keep passing the tightness tests and
 17 requirements of the county, they are in
 18 compliance.

19 MR. FRELONG: The sanitary system,
 20 you will be upgrading the sanitary
 21 system on the site?

22 MR. PAPASIAN: On the site, we will
 23 be putting in the typical Suffolk
 24 County Health Department requirements
 25 for a commercial facility. No matter

1 PUBLIC HEARING

2 how you look at it, we will be putting
 3 in basically a thousand gallon
 4 antiseptic, thousand gallon grease
 5 trap, and then putting in a --

6 MR. FRELONG: Have you had any
 7 conversations with the Health
 8 Department?

9 MR. PAPASIAN: Not on this site
 10 yet, but I have done hundreds of them.

11 MR. FRELONG: Are you familiar with
 12 the trend with the Health Department in
 13 Counties to upgrade sanitary systems to
 14 more modern systems?

15 MR. PAPASIAN: Yes. Well, this
 16 will be modernized.

17 MR. FRELONG: And, you are not
 18 being compelled by the Health
 19 Department to do anything --

20 MR. PAPASIAN: Right now, by
 21 itself, no.

22 MR. FRELONG: Okay. Thank you.

23 MR. COLLINS: Just to follow-up on
 24 that, Health Department, have they or
 25 you considered an IA system, an

1 PUBLIC HEARING

2 didn't have approved system for
 3 commercial use.

4 MR. COLLINS: Absolutely. I sit on
 5 the subcommittee.

6 MR. PAPASIAN: I will follow-up on
 7 that.

8 When we get to that bridge, we will
 9 discuss with the Town what the best
 10 mode of action is to put in a system
 11 that meets their requirements and also
 12 fulfills the needs of the store's
 13 requirements.

14 Right now, how the code works, we
 15 are putting in a system that let's say
 16 a McDonald's would be putting in, and
 17 the flow is never going to get to that,
 18 but we put it in anyway because that is
 19 what is required. It needs to meet the
 20 minimum. The minimum grease trap is a
 21 thousand. The minimum antiseptic tank
 22 is a thousand gallons. The flow of
 23 this is nowhere near that, but that is
 24 what we put in currently on basically
 25 all gasoline convenience stores.

1 PUBLIC HEARING

2 Alternative Innovated System?

3 MR. PAPASIAN: Right now, we have
 4 not.

5 The process of how we do this is, I
 6 am going to go through your board, then
 7 we go to Brookhaven, and we have
 8 discussions with the County at that
 9 point, so, because we know it's going
 10 to become an Exxon, and our client is
 11 not Exxon, so we need to make sure we
 12 do it step by step.

13 MS. GALLAGHER: There is also no
 14 approved commercial systems.

15 MR. ROMAINE: I don't believe the
 16 Health Department has requirements for
 17 new construction in residential or
 18 commercial.

19 MS. GALLAGHER: Well, they would
 20 encourage us.

21 MR. ROMAINE: Encourage or require
 22 are two different requirements.

23 MS. GALLAGHER: Do they have an
 24 approved commercial system because the
 25 last conversations we had, they still

1 PUBLIC HEARING

2 MS. GALLAGHER: Well, you don't
 3 have food preparation or sit down, so.

4 MR. PAPASIAN: It's all, bathroom's
 5 use are minimal.

6 MR. MCCORMICK: Question, can you
 7 elaborate on your rational concerning
 8 why you cannot put a second story
 9 convenience area in that building?

10 MR. PAPASIAN: How many convenience
 11 stores will have a second story?
 12 Should you put an elevator in, the ADA,
 13 it's just not realistic for a
 14 convenience store.

15 If you go into a retail, like an
 16 Old Navy or something, it's a big
 17 building, it has elevators, it's a
 18 total different entity.

19 The amount of time people spend in
 20 this building is less than four
 21 minutes, they go in, get out. They are
 22 getting their coffee, their kit kat,
 23 they are, leaving. It's not about
 24 going into different levels and stuff.
 25 It's not meant to be that way, so it

PUBLIC HEARING

Think about it, you go get your gas, if you can't get into the site quick, you don't go there. Except for this site, there are not gas stations everywhere. We are in a unique spot where there is not much out there, but a second story would not make sense. Especially considering the existing building is so old, if you are familiar with these types of buildings, especially that there were originally bay stations, there are no foundations. There is basically nothing on them. I have done a lot of these and I know when a lot of applicants try rebuilding these bay stations into convenience stores, they think that they are saving money by using the existing structure and then they realize they have to basically rip the entire structure out and put new footings everywhere, so, it's really not feasible from a structural standpoint or from an actual

PUBLIC HEARING
MR. PAPASIAN: There are, but they are not the traffic flow, that is not westbound.

MR. ROMAINE: The Mobil and 711.
MR. PAPASIAN: Yes, but they are

not --

MR. ROMAINE: He mentioned westbound. If you go westbound on the expressway, you don't hit another gas station until Route 112. That is the new Mobil Bolla station that they just built.

MR. PAPASIAN: If you are coming from the City, a lot of people go to the wineries and stuff, they do that, from way out west, Nassau County, they usually are driving on the LIE to get gas, they are looking for a sign or something they can see from the exit ramp where they can get off and right back on, it isn't until you get to Route 112. If they know about going 111 South another mile, yeah, you will always find something off the beaten

PUBLIC HEARING
retail standpoint, and that is the
reason why you don't put up a second
story.

MR. MCCORMIICK: Are you saying it's not a question of being physically possible, you are saying it's not practical?

MR. PAPASIAN: It's not practical, but in this case it's not physically either because the existing building is an old bay station. It's a cinder block building. The codes it was built by were met at the time.

MR. MCCORMIICK: Are you representing it could not handle a load bearing aspect of a second story?

MR. PAPASIAN: Not with -- for the amount of money that it would cost you to do that, it would not be cost effective.

MR. MCCORMICK: For the accuracy of the record, are you aware that there are two gas stations at Exit 70 westbound, just south of the bridge?

PUBLIC HEARING
path, but we are not talking about ease and the traffic flow where you are going.

MR. AMPER: Are we taking testimony from the public?

MS. GALLAGHER: It is a public hearing.

(Whereupon Mr. Amper was sworn in.)

MR. AMPER: My name is Richard Amper. I am Executive Director of the Long Island Pine Barrens Society located at 547 East Main Street in Riverhead.

I just heard 45 minutes of the best reason in the world to expand this and to accommodate people who need gas in that location, and it just sounds like a wonderful thing, but Mr. Frelong has sort of narrowed this down, and I hope we will hear from Ms. Hargrave or Counsel on this, but this is a Pine Barrens act. There is a special law that is supposed to protect this and there are rules and regulations that

1 PUBLIC HEARING
 2 govern what constitutes the
 3 qualifications for hardship, they have
 4 public health, restoring preservation,
 5 it's enumerated and laid out in 102110
 6 and 10B and they say, and this is what
 7 I have not heard anything in the whole
 8 presentation, so, how does this conform
 9 of the compelling public need
 10 requirement?

11 I don't care whether it's a
 12 wonderful store or a great gas station,
 13 it made the mistake of being in the
 14 Core Preservation Area and this is how
 15 we deal with Core Preservation
 16 hardships, so, I hope before there is a
 17 final decision on this, and in the
 18 future I think staff should say this
 19 does or doesn't conform to this, or the
 20 argument is that this is important to
 21 public health and safety, or whatever
 22 it is, but that was missing. We had a
 23 great long discussion about whether it
 24 was a good project in the right place
 25 at the right time, but if it does not

1 PUBLIC HEARING
 2 middle of the winter and I needed
 3 aspirin for my son. His temperature
 4 was 106 degrees, and I went to, I was
 5 staying at a nice place, winter rates,
 6 it was beautiful. I had to drive
 7 10-miles to a gas station to get what I
 8 needed in the snow. That is a
 9 compelling public need, if I have ever
 10 seen one.

11 I realize their expansion is a
 12 question of why expand. Now, if you
 13 look at the Pine Barrens act, it's
 14 supposed to preserve the Core of the
 15 Pine Barrens. Well, it's preserved,
 16 that property is there. I don't see
 17 any reason why somebody can't take
 18 something and make a better product for
 19 the community. That is a public
 20 compelling need.

21 If you look at your other
 22 decisions, JC&JC Land, they have a sand
 23 mine in the middle of the Core -- what
 24 is the name of it, Mr. Milazzo?

25 MS. GALLAGHER: Westhampton

1 PUBLIC HEARING
 2 meet the law's requirement for
 3 compelling public need, they can't have
 4 it. It's sad, and there will be too
 5 fewer gas pumps in the area, and all
 6 kinds of bad things would happen, but
 7 it would be worse if we granted a
 8 compelling public need that doesn't
 9 meet the requirements of the law.

10 MS. GALLAGHER: Do you want to be
 11 sworn in Mr. Egan?

12 MR. EGAN: Yes, I do.

13 (Whereupon Mr. Egan was sworn in.)

14 MR. EGAN: My name is James Egan.
 15 I have two homes, one is 77 Hollow Road
 16 in Stony Brook, and 114 Willis Avenue
 17 in Port Jefferson.

18 I have never met the applicant. I
 19 don't know him. I have never been to
 20 the gas station.

21 I had an issue, I was vacationing.

22 MR. MILAZZO: You speak fast. She
 23 is writing down what you're saying.
 24 That's all. Just go slow for her.

25 MR. EGAN: I was vacationing in the

1 PUBLIC HEARING
 2 Properties.

3 MR. EGAN: That went to the second
 4 department, and they did it under
 5 hardship, and they excavated to three
 6 feet of our ground water, and there
 7 would be no impact on the environment,
 8 and they had an existing use, and they
 9 were allowed to expand it to the three
 10 feet of our ground water, and you are
 11 going to tell me that every crane,
 12 every bulldozer they operate is not
 13 going to drop one drop of oil? There
 14 is nothing to protect the environment.

15 The second department said that
 16 that was not a self created hardship.
 17 They have an existing system, an
 18 existing building, they are looking to
 19 improve it. They are looking to give
 20 the community what the community wants,
 21 otherwise, they would be out of
 22 business.

23 The law is to protect the birds,
 24 the trees, the ground water, clearing,
 25 this man is not clearing anything.

1 PUBLIC HEARING

2 This man is feeding his family and
 3 taking care of the community that keeps
 4 coming to him, because he is paying his
 5 taxes, his insurance, he wants to make
 6 a better product.

7 Mr. Amper, you are going too far.
 8 Okay.

9 MR. AMPER: Not I, the State of New
 10 York.

11 MR. EGAN: Another one, if you look
 12 at the three hardships you gave Edward
 13 Tuccio (phonetic). He is in the middle
 14 of the Core, in the middle of the Pitch
 15 Pine, you gave him three hardships, not
 16 one, under compelling public need for
 17 mini-storage. Your issue was the tanks
 18 underground. Was he going to store
 19 anything that is noxious that is going
 20 to leak into the environment, and he
 21 said no, and he lived up to that, and
 22 he showed engineering, and they are
 23 doing the same thing. They didn't ask
 24 me to talk. I am afraid I am hurting
 25 their application because you people

1 PUBLIC HEARING

2 do, but here is the thing, you ignore
 3 precedent. It's not going to set a
 4 precedent, you ignore them, and you
 5 have these fickle judges in the State
 6 Supreme Court. I am dying to get to
 7 Federal Court. It's nothing personal.

8 MR. MILAZZO: I don't think it is.

9 MR. EGAN: The Federal Court judges
 10 offer life. These State Supreme
 11 Judges, number one, Judge Rouse
 12 (phonetic) made a decision against me,
 13 he is a highway superintendent, he does
 14 not know the law.

15 Best of luck to you, you deserve
 16 your application. Have a good day.

17 MR. DENICOLA: Thank you, sir.

18 MS. GALLAGHER: Would anybody else
 19 like to make any public comments?

20 MR. DENICOLA: If I may?

21 With regard to the standards, I
 22 believe, now I did not read my petition
 23 into the record, I assume it's a part
 24 of the record, and I assume the
 25 commission has read it. My petition

1 PUBLIC HEARING

2 never invite me to Christmas. I didn't
 3 get an invitation this year or last
 4 year.

5 Thank you very much.

6 MS. GALLAGHER: Christmas? We have
 7 cake, cookies, and coffee.

8 MR. EGAN: You did offer me a
 9 cookie. You have always been very
 10 nice.

11 I agree with the application. The
 12 law is written to protect the
 13 environment. I don't see these people
 14 hurting the environment.

15 That lady back there smiled to me
 16 and said, hey, we are going to need
 17 Pine Barren credits, we would be happy
 18 to talk to you.

19 They are doing exactly what you
 20 want, they are using Pine Barren
 21 credits, they are building a product,
 22 they are giving the public what they
 23 need.

24 Mr. Milazzo, you care so much about
 25 the integrity of the law, I know you

1 PUBLIC HEARING

2 covers a great deal of ground more than
 3 my comments.

4 MS. GALLAGHER: It's included in
 5 the record, as an exhibit.

6 MR. DENICOLA: The granting of the
 7 permit by this commission will not be
 8 materially detrimental to other
 9 property or improvements in the area in
 10 which the subject property is located.
 11 It will not increase the danger of
 12 fire, endanger public safety, or result
 13 in substantial impairment of resources
 14 of the Core Preservation Area. It will
 15 not.

16 The waiver will not be inconsistent
 17 with the purposes, objectives, or the
 18 general spirit intent of this article,
 19 meaning, the Environmental Conservation
 20 Law.

21 This service station has been there
 22 for 45 years. It is being updated,
 23 improved to the current codes and to
 24 meet the current demands of the
 25 increase in population and traffic.

1 PUBLIC HEARING

2 Stand at that corner and tell me
 3 that you would not know that you are in
 4 the Core Preservation Area of the Pine
 5 Barrens, that much I can assure
 6 Mr. Amper.

7 The waiver is the minimum relief
 8 necessary to relieve the extraordinary
 9 hardship. You need something to serve
 10 the public. You have to have a service
 11 station. That was a station with the
 12 pumps in front, if you recall, the bay
 13 station and the pumps in front, it is
 14 no longer designed for that purpose.
 15 The traffic has increased 100 fold
 16 since 1973 and maybe more, maybe a
 17 thousand fold.

18 I believe those are your
 19 standards --

20 MR. MILAZZO: Mr. DeNicola, you
 21 read the Section C part of the
 22 hardship, so, there is Section A, "the
 23 property has no beneficial use, if it's
 24 used for it's present purpose, and it's
 25 lack of beneficial use results from A,

1 PUBLIC HEARING

2 little bunny rabbit running around.

3 Thank you very much.

4 MS. GALLAGHER: Mr. Amper, you have
 5 additional comments to make?

6 MR. AMPER: This is the Core
 7 Preservation Area of the Pine Barrens
 8 Act. It's a little more than 50,000
 9 acres, and it's land that was never
 10 intended to be developed at all.

11 MR. DENICOLA: But, people are
 12 there.

13 MR. AMPER: I like people as much
 14 as the next guy. I am merely saying
 15 that the people, the people of the
 16 State of New York, set aside a
 17 particular area where these rules don't
 18 apply, because of the need to protect
 19 the Pine Barrens and the land beneath
 20 them, so, we established very specific
 21 rules to say in order to break the rule
 22 that says no building in the Pine
 23 Barrens, you need to show certain
 24 things that constitute compelling
 25 public need, and the law says exactly

1 PUBLIC HEARING

2 B, and C or 1, 2, and 3."

3 So, that is also part of the
 4 criteria, and I think what you were
 5 hearing from Mr. Frelong is, did you
 6 address those as well?

7 Like you said, it is in your
 8 petition. I am just making sure you
 9 have everything on the record that you
 10 want and you are addressing the
 11 commission.

12 I am just a traffic cop, telling
 13 people to slow down.

14 MR. DENICOLA: I addressed it in my
 15 petition and I am hoping the commission
 16 has --

17 MR. MILAZZO: They have it.

18 MR. DENICOLA: -- and I am saying
 19 this respectfully, common sense for
 20 what we are asking.

21 We are not adversely affecting the
 22 Pine Barrens, no matter what Mr. Amper
 23 says. I understand he would like to
 24 lock us in on a technicality to stop
 25 anything, except a tree growing and a

1 PUBLIC HEARING

2 what that is, and I am sorry for you,
 3 individually, or for your project, but
 4 it does not conform to that which
 5 allows this commission to grant
 6 permission for development in the Core.
 7 We don't develop in the Core.

8 We got close to 3 million people
 9 and an enormous body of land and it is
 10 just 50 acres that we don't build on
 11 and, unless you can show, according to
 12 that law, that this meets the
 13 requirement for an exception, and it's
 14 okay for a gas station and convenience
 15 store where nothing was intended to be
 16 built, they can't, not that they wont,
 17 that they can't approve it, and
 18 shouldn't.

19 MR. EGAN: I would like to respond.
 20 I have previously been sworn in.
 21 The applicant is not applying for Pine
 22 Barren credits. That is Mr. Milazzo
 23 stating that you have a extraordinary
 24 hardship. The only application you
 25 have before the Pine Barrens is an

1 PUBLIC HEARING
 2 extraordinary hardship. There are no
 3 other applications, so, everybody has
 4 to jump through a hoop where there is
 5 kind of a definition.

6 If this man's gas station were to
 7 burn to the ground, as houses have
 8 burned to the ground, or been torn down
 9 in the Core, if you had a thousand
 10 square foot house, on Shultz Street
 11 alone (phonetic), right across from the
 12 Greek church, it is literally on a
 13 tigered salamander breeding ground, the
 14 house was torn down, it was 1,200
 15 square feet, under non-development
 16 piece, they had a previous home there,
 17 they now have a 5,000 square foot home,
 18 that is non-development, under
 19 extraordinary hardship.

20 This man is improving an existing
 21 service, which there is a demand. He
 22 can show cars, volume, not 100 an hour,
 23 200 an hour, therefore, he needs
 24 increased deliveries of fuel.

25 If you are increasing your delivery

1 PUBLIC HEARING
 2 and if you want to talk about how the
 3 Core was designed, Mr. Amper, it was
 4 with you and Mr. Breslin who sat down
 5 because Mr. Breslin won in court
 6 initially, and do you know how you
 7 decided on what was going to be in the
 8 Core and what was going to be in the
 9 compatible growth, was based on mutual
 10 agreement, not that one area was
 11 anymore significant or sensitive than
 12 the other. So, the people in the
 13 compatible growth got all of their
 14 rights if the met zoning. This man
 15 needs zoning. He is in the Core, so he
 16 has to jump through a hoop, which he
 17 has, which has no real definition, and
 18 he is in no way detrimental to this
 19 Core.

20 MR. FRELONG: I think Mr. Egan
 21 should direct his comments to the
 22 commission.

23 MR. MILAZZO: Traffic cop.

24 MR. EGAN: This man has met his
 25 extraordinary hardship. He is asking

1 PUBLIC HEARING
 2 of fuel, you have a big tanker coming
 3 up and down the highway. I would
 4 rather see that tanker once a month
 5 because he is filling tanks, instead of
 6 twice a month, that protects the
 7 public.

8 As far as no beneficial use, that
 9 is ridiculous, that is for a hardship
 10 when you have raw land and you say you
 11 want to build a house, I bought it, I
 12 inherited it, it has no beneficial use
 13 because you can't make tomatoes on it,
 14 you can't have chickens on it. If I
 15 can't build a single-family home, which
 16 you have allowed on Howells Road, that
 17 was the argument, okay, he had no
 18 beneficial use and he was selling it to
 19 a contract vendee.

20 This man wants to take a use, wants
 21 to expand an existing use, that existed
 22 and has not a certificate of
 23 non-conforming use, he has a CO, which
 24 meets zoning. All he is doing, he was
 25 in the Core before the Core existed,

1 PUBLIC HEARING
 2 to expand existing use.
 3 MS. JENS-SMITH: Can I ask, what
 4 year did the applicant buy the
 5 property?

6 MR. DENICOLA: Several years ago.
 7 It's in the petition. I don't have it
 8 in front of me.

9 He paid \$2.5 million dollars for
 10 it.

11 MS. JENS-SMITH: He bought it after
 12 it was in the Core Preservation?

13 MR. MILAZZO: Post-Pine Barrens
 14 Act.

15 MR. DENICOLA: Yes, he knew it was
 16 a Core Preservation Area. We are not
 17 denying that.

18 What our position is, is that we do
 19 serve a very important public service.
 20 If you don't have a gas station and
 21 it's 2:00 in the morning, and you have
 22 to get somewhere, this is a very
 23 critical use. Try running out of gas
 24 in this area, it's a rural area,
 25 forgive me if you live there, there is

1 PUBLIC HEARING
 2 nothing here.

3 MS. JENS-SMITH: I do live there,
 4 and you do make arrangements for that,
 5 because you know the hours of things,
 6 and that is part of the beauty of
 7 living there.

8 MR. MILAZZO: One at a time.

9 MR. DENICOLA: When you have an
 10 emergency or if you are driving, do you
 11 ever forget to put gas in your car?

12 MS. JENS-SMITH: When you live in a
 13 rural area, you prepare.

14 MR. ROMAINE: I think we have made
 15 a complete record, so.

16 MR. DENICOLA: Thank you.

17 I believe the applicant has
 18 established, I don't want to say a
 19 right, but his conditions for a grant
 20 by this commission.

21 This is, to me, this is not a hard
 22 case to understand, based on the
 23 situation of the site. It is not
 24 hurting this Pine Barrens in any shape,
 25 manner, or form, and it is serving a

1 PUBLIC HEARING
 2 stations on the North Road coming back,
 3 there are none that are open at 10:00,
 4 even on Route 25.

5 You live out east, east of
 6 Riverhead, there is nothing open that
 7 late at night.

8 MS. JENS-SMITH: There is.
 9 Valero.

10 MR. PAPASIAN: Okay, so, one, but
 11 most people wont come this way because
 12 if you know you can't get off the LIE
 13 to get here.

14 MR. ROMAINE: The ferry route is
 15 they are taking the North Road from the
 16 ferry and then shooting down to the
 17 Expressway.

18 MR. MILAZZO: Is there a feasible
 19 alternative for a person to get fuel
 20 coming off the ferry?

21 MS. JENS-SMITH: Yes.

22 MR. PAPASIAN: What do you mean?

23 MR. MILAZZO: If they are coming
 24 off the ferry.

25 MR. PAPASIAN: That late at night,

1 PUBLIC HEARING

2 serious public purpose. You are
 3 reducing tanker truck deliveries,
 4 reducing box trucks, and the way it's
 5 laid out, you have cars that can move
 6 in and out much more easily, no cues,
 7 no back ups, and this station is
 8 designed for current vehicle
 9 maneuvering.

10 I don't want to take up anymore of
 11 your time. Thank you so much for your
 12 time.

13 MR. ROMAINE: Thank you for
 14 presenting your case.

15 MS. GALLAGHER: Are there any
 16 questions for the applicants or his
 17 representatives?

18 MS. JENS-SMITH: I would like to
 19 note, you know, they keep stating that
 20 there are no other gas stations open at
 21 all, but I believe there are.

22 MR. PAPASIAN: If you take the
 23 North Road, which most people do from
 24 the ferry, because it takes 25 minutes
 25 with the lights, there are no gas

1 PUBLIC HEARING

2 they would have to know. If they are
 3 from the area, like Laura mentioned,
 4 you know where to go, but we are not
 5 talking about that. We are talking
 6 about the North Fork, people coming
 7 from Nassau County, the City, late at
 8 night, going to the wineries or the
 9 breweries, or Greenport, they don't
 10 know anything. They just know they are
 11 on a road looking for a gas station.

12 MR. COLLINS: I just wanted to
 13 point out, and it should be addressed,
 14 and I am not sure prior to this
 15 hearing, is about the change of the use
 16 that happened in 2000, and if so, that
 17 did need some determination and
 18 probably should be included as part of
 19 this record, and as part of the
 20 application.

21 MR. ROMAINE: It's hard to go back
 22 and try to undo what should have been
 23 done then legally.

24 MR. COLLINS: But, just from
 25 getting an approval from one

1 PUBLIC HEARING
 2 municipality regulatory agency, does
 3 not eliminate the need to get whatever
 4 necessary approvals that are from
 5 another agency.

6 MR. ROMAINE: I don't disagree, but
 7 I am sure there is a statute of
 8 limitations somewhere.

9 MR. COLLINS: I would disagree with
 10 that.

11 MR. MILAZZO: I would suggest you
 12 close the hearing today and then have
 13 them address it.

14 MR. GALLAGHER: Keep the record
 15 open.

16 MR. MILAZZO: The commission may
 17 need a showing on the hardship that
 18 would have been required to change the
 19 use in post-Pine Barrens Act.

20 MR. DENICOLA: I don't know if I
 21 would consent to that, Mr. Milazzo,
 22 quite frankly, because 18 years have
 23 gone by and there is a waiver
 24 provision, there are latches, and other
 25 things that I would not have my client

1 PUBLIC HEARING
 2 MR. EGAN: One more thing.
 3 MS. GALLAGHER: Mr. Egan, just to
 4 remind you, address the commission, not
 5 Mr. Amper.

6 MR. EGAN: I have documentation I
 7 would like to submit that Mr. Breslin's
 8 property, which is on, right next to --
 9 what is that -- American Physiology
 10 Society --

11 MR. ROMAINE: William Floyd
 12 Parkway.

13 MR. EGAN: They made a deal. Mr.
 14 Breslin made a deal, the developers
 15 made a deal, and they sold the public
 16 out. He got his 2,000 acres. I would
 17 like to submit that into this record,
 18 and every one else in the Core, matter
 19 of fact, he got A1 zoning for his
 20 property for A5 and this commission
 21 created documentation that said it
 22 wasn't. I would like to submit that to
 23 this record.

24 This commission selectively chooses
 25 who gets approved and who does not get

1 PUBLIC HEARING
 2 re-apply on that.

3 MR. MILAZZO: So, that is your
 4 position and it is on the record.

5 MR. DENICOLA: Thank you. That's
 6 correct.

7 MR. ROMAINE: Should we make a
 8 motion to close the public hearing?

9 MR. GALLAGHER: Let me just, are
 10 there any other, I see there may be
 11 additional public comments and I don't
 12 want to cut off public comments at a
 13 public hearing.

14 MR. AMPER: Just for the record,
 15 since we all promised to speak the
 16 truth, Mr. Breslin had nothing,
 17 whatsoever, to do with the design of
 18 the Pine Barrens Core Area map and
 19 disagreed with it's final result.

20 There was no conspiracy with the
 21 developers to do favors for friends.
 22 It was done by a scientist, an
 23 environmentalist, and approved by the
 24 New York State Legislature, and I would
 25 like to keep playing by the rules.

1 PUBLIC HEARING
 2 approved, based on who you know. I
 3 don't know anyone.

4 It's untrue. Mr. Breslin was, and
 5 I have all the newspaper articles, Mr.
 6 Breslin said let's sit down and make a
 7 deal, and Mr. Amper was part of it.

8 It's untrue, Mr. Amper.

9 Thank you very much.

10 MR. ROMAINE: I will resubmit my
 11 motion to close this public hearing.

12 MR. GALLAGHER: And, to keep this
 13 record open for 30 days.

14 MR. FRELONG: Second.

15 MR. MILAZZO: When is the decision
 16 deadline, Julie?

17 MS. HARGRAVE: February 22nd.

18 MS. GALLAGHER: Keep it open until
 19 January 22nd.

20 MR. MILAZZO: Yes, but, also Mr.
 21 DeNicola, when this application was
 22 received, the commission's February
 23 meeting would have been within the 120
 24 days, and then the commission moved the
 25 February meeting because of a holiday,

<p style="text-align: center;">A</p> <p>ability 35:11 able 9:6 25:24 27:25 absolutely 33:5 34:9 48:4 abstentions 80:8 access 10:9 18:8 23:11,12 25:16 accessory 15:25 accommodate 17:22 32:14 53:17 accuracy 51:22 accurate 80:15 81:7 acquired 79:9 acre 3:21 acres 64:9 65:10 76:16 act 53:23 56:13 64:8 69:14 74:19 action 48:10 activity 3:19 actual 50:25 ADA 36:2 49:12 adding 28:18 39:9 addition 28:8 additional 9:4 39:10 64:5 75:11 address 13:8 14:14 29:12 34:21 63:6 74:13 76:4 addressed 63:14 73:13 addressing 63:10 admit 28:5 adverse 22:24 24:17 27:7 33:5 adversely 63:21 aerial 8:6 affect 24:18 27:7 afraid 58:24 afternoon 13:3 37:7 agency 74:2,5 ago 12:6 20:17 69:6 agree 59:11 agreement 68:10 ahead 19:25</p>	<p>alarm 29:16 alcohol 11:20 alcoholic 10:24 13:9,11,16,19 ALEXA 81:4,15 allowed 57:9 67:16 79:17 allows 28:24 65:5 alternative 47:2 72:19 American 76:9 amount 49:19 51:19 Amper 1:18 53:5,9 53:10,11 58:7,9 62:6 63:22 64:4,6 64:13 68:3 75:14 76:5 77:7,8 Andrew 1:14 antiseptic 38:23 46:4 48:21 anti-freeze 17:6 anybody 60:18 anymore 15:16 68:11 71:10 anyway 35:24 48:18 apologies 25:3 applicant 3:16 8:3 10:6 12:20 13:7 14:17,21 23:24 28:9 33:21 55:18 65:21 69:4 70:17 applicants 50:17 71:16 applicant's 10:4 16:4 17:10 32:12 application 1:3 2:15 14:17 58:25 59:11 60:16 65:24 73:20 77:21 79:3 applications 66:3 apply 64:18 65:21 applying 43:15 appropriate 14:18 approval 10:18 11:4,11 73:25 approvals 41:13,24</p>	<p>74:4 approve 65:17 approved 14:19 19:11,23 22:16 42:13 47:14,24 48:2 75:23 76:25 77:2 approves 20:5 area 2:11,14 3:10 3:12,14,15 4:6,7 4:23 5:3,4,25 6:3 9:9,11,14,19,20 14:22,23 17:5 24:3,13 25:17,22 26:22,24 31:12,15 31:17,21,24 32:11 33:2,11 34:3 39:12 43:21 49:9 54:14 55:5 61:9 61:14 62:4 64:7 64:17 68:10 69:16 69:24,24 70:13 73:3 75:18 79:5,5 argument 54:20 67:17 arrangements 70:4 arterial 12:7 article 1:5 2:4 61:18 articles 77:5 aside 64:16 asking 63:20 68:25 aspect 51:17 aspirin 56:3 Associates 35:4 assume 44:18 60:23 60:24 assure 62:5 attention 34:18 audio 80:13 auto 15:23 automatically 30:21 availability 32:16 33:15 available 28:11 Avenue 1:8 2:25 7:21 12:11 13:5 24:6 25:25 26:3,8</p>	<p>38:14 55:16 avoid 29:20 aware 7:12 51:23 ayes 80:5 A1 76:19 A5 76:20</p> <p style="text-align: center;">B</p> <p>B 8:5 35:4 63:2 back 9:17 12:11 19:11 21:19 37:19 41:23 52:22 59:15 71:7 72:2 73:21 backs 36:25 backwards 37:20 bad 55:6 Barren 59:17,20 65:22 Barrens 1:1 2:6,8 14:24 16:10,11 17:13 18:21,23 19:3,22 20:7,10 22:19,20,25 24:18 24:22 27:7 31:6 31:10 33:6,9,11 53:12,23 56:13,15 62:5 63:22 64:7 64:19,23 65:25 69:13 70:24 74:19 75:18 78:24,25 79:7,10,17 based 68:9 70:22 77:2 basically 41:9 46:3 48:24 50:15,22 bathroom 34:14 bathroom's 49:4 bay 5:4 15:4,9 21:23,25 50:14,18 51:12 62:12 bays 15:14,15 16:17 21:13,13,15 22:2,4 bearing 51:17 beaten 52:25 beautiful 56:6 beauty 70:6 beer 12:9 beginning 78:17</p>
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