

1 THE STATE OF NEW YORK: COUNTY OF SUFFOLK

2 PINE BARRENS COMMISSION

3 -----X

4 In the Matter of the Application of

5  
6 JoAnne Mangogna

7 Michaelangelo's Restaurant

8  
9  
10 -----X

11 Town Hall

12 Riverhead, New York

13  
14 February 19, 2003

15 3:10 P.M.

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17  
18  
19  
20 Taken by: Donna L. Spratt

21 Court Reporter

22 COPY

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

ROBERT J. GAFFNEY, Chairman

Suffolk County Executive

BY: George Proios, Acting Chairman

RAY E. COWEN, P.E., Member

DEC Regional Director

Representing GEORGE PATAKI

JOHN J. LA VALLE, Member

Supervisor, Town of Brookhaven

BY: BRENDA A. PRUSINOWSKI

JEAN COMPITELLO

PATRICK HEANEY, Member

Supervisor, Town of Southampton

BY: JEFFERSON MURPHREE

ROBERT KOZAKIEWICZ, Member

Supervisor Town of Riverhead

BY: JOEY MAC LELLAN

Ed Randolph, Staff to Commission

MC MILLAN, RATHER, BENNETT & RIGANO

Attorneys for Commission

BY: JAMES P. Rigano, Esq.

## 1     A P P E A R A N C E S:

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3             George Proios, Acting Chairman

4             Brenda Prusinowski

5             Jean Compitello

6             Ray Cowen

7             Bill Spitz

8             Joey MacLellan

9             Jeff Murphree

10            James Rigano, Esq.

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1 MR. PROIOS: I will call this  
2 public hearing to order. My name is  
3 George Proios. I'm acting Chairman of  
4 the Commission, acting on behalf of  
5 Robert J. Gaffney, Suffolk County  
6 Executive who is the Chairman of the  
7 Commission. I'll let the other members  
8 of the Commission introduce themselves  
9 and who they represent.

10 MS. COMPITELLO: Jean Compatello,  
11 representing Supervisor John J. LaValle,  
12 Brookhaven Town.

13 MS. PRUSINOWSKI: Brenda  
14 Prusinowski, representing Brookhaven  
15 Town Supervisor, John J. LaValle.

16 MR. COWEN: Ray Cowen,  
17 representing Governor Pataki.

18 MR. MACLELLAN: Joey MacLellan  
19 representing Supervisor Robert  
20 Kozakiewicz, Riverhead Town.

21 MR. MURPHREE: Jeff Murphree,  
22 representing Patrick Heaney, Supervisor,  
23 Town of Southampton.

24 MR. RIGANO: James Rigano, special  
25 counsel for the Commission.

1 MS. JAKOBSEN: Judy Jakobsen, Pine  
2 Barrens staff.

3 MR. PROIOS: For the record, I'll  
4 read the public notice pertaining to  
5 this hearing.

6 Pursuant to Environmental  
7 Conservation Law Article 57-0121,  
8 paragraph 10, notice is hereby given  
9 that three public hearings will be held  
10 by the Central Pine Barrens Joint  
11 Planning and Policy Commission on  
12 February 19, 2003. The first hearing,  
13 the applicant's name is JoAnne Mangogna  
14 M-A-N-G-O-G-N-A, for Michaelangelo's  
15 Restaurant located on the northeast  
16 corner of Port Jefferson Westhampton  
17 road, CR 111, and Chapman Boulevard in  
18 Manorville in the Town of Brookhaven.

19 The project entails a request for  
20 a Core Preservation Area hardship permit  
21 to construct a 2,707 square foot masonry  
22 addition with cellar, to an existing one  
23 story 6,534 square foot building,  
24 presently used as a restaurant and  
25 catering hall, a 264 square foot walk-in

1 cooler and 12 parking stalls, on a 1.6  
2 acre site zoned J-2 business. The  
3 permit application also seeks approval  
4 of existing site and building  
5 alterations done without Commission  
6 approval. This is a continuation of the  
7 hearing held on December 11, 2002.

8 It is located on Suffolk County  
9 tax map 200-462-2-12.2. I'll ask the  
10 staff if they want to introduce  
11 information into the record pertaining  
12 to this.

13 MS. JAKOBSEN: I have a number of  
14 exhibits I would like to admit into the  
15 record. The first exhibit is the  
16 exhibit cover sheet that outlines the  
17 exhibits I'm submitting.

18 (Cover sheet was marked as Exhibit  
19 1 in evidence; 2-19-03, D.S.).

20 The second exhibit is the site  
21 plan entitled proposed addition to  
22 Michaelangelo's Restaurant prepared by  
23 JFT Architect International, P.C., dated  
24 10-9-02. The areas outlined in the blue  
25 indicate differences from the 1998 site

1 plan -- that part of the 1998  
2 stipulation agreement between  
3 Michaelangelo's and the Suffolk Pine  
4 Barrens Commission.

5 (Site plan 10-9-02 was marked as  
6 Exhibit 2 in evidence; 2-19-03, D.S.).

7 Exhibit three is the -- before  
8 exhibit three, exhibit two, that's this  
9 white site plan. The third exhibit is  
10 the site plan entitled proposed  
11 alterations to existing restaurant at  
12 northwest corner of East Manor Road, CR  
13 111 and Chapman Boulevard, Manorville  
14 New York, for Michaelangelo's Italian  
15 Restaurant and Pizzeria, I think, dated  
16 4-6-98 with a revised date of 8-13-98  
17 prepared by Brian Fisher, Architect,  
18 drawing number C-1 part of the 1998  
19 stipulation agreement with the  
20 Commission.

21 (Site plan 8-13-98 was marked as  
22 Exhibit 3 in evidence; 2-19-03, D.S.).

23 Exhibit four A and B are digital  
24 photos taken at the site on December 4,  
25 2002 using an Olympus Model B550 and

1 processed with Olympus CAMEDIA master  
2 version 2.5 software and a Cannon 8000  
3 color printer.

4 (Photos were marked as Exhibit 4 A  
5 and B in evidence; 2-19-03, D.S.).

6 Exhibit five is a 1998 stipulation  
7 agreement between the Suffolk Pine  
8 Barrens Commission and the  
9 Michaelangelo's Restaurant.

10 (Stipulation was marked as Exhibit  
11 5 in evidence; 2-19-03, D.S.).

12 Exhibit six is a notice of  
13 violation issued by the Central Pine  
14 Barrens Commission to Michaelangelo's  
15 Restaurant dated September 25, 2001.

16 (Violation was marked as Exhibit 6  
17 in evidence; 2-19-03, D.S.)

18 Exhibit seven is a stipulation  
19 agreement between the Town of Brookhaven  
20 and Michaelangelo's Restaurant dated  
21 September 11, 2002.

22 (Stipulation was marked as Exhibit  
23 7 in evidence; 2-19-03, D.S.)

24 Exhibit eight is a staff record  
25 prepared 12-9-02 by Suffolk Pine Barrens



1 Commission staff with attached  
2 chronology of events for the site and  
3 August 9, 2001 site visit report noting  
4 discrepancies with site plan dated March  
5 5, 2001 with approved 1998 site plan and  
6 existing conditions.

7 (Staff report was marked as  
8 Exhibit 8 in evidence; 2-19-03, D.S.)

9 MS. JAKOBSEN: I have a couple of  
10 items on the staff report that I wanted  
11 to highlight. Currently the Commission  
12 is looking at this as an unlisted action  
13 under SEQRA. We performed an  
14 uncoordinated review.

15 The property was purchased by the  
16 current owner in 1999 as per the owner's  
17 signed affidavit. As stated before,  
18 there is an attached chronology of  
19 events to this site. There was a prior  
20 hardship granted in 1998 involving a  
21 6,075 square foot addition to the rear  
22 of the building and a 2,078 square foot  
23 addition for solarium. The prior  
24 hardship granted in 1998 included a  
25 stipulation to revegetate the eastern

1           portion of the site and involved the  
2           payment of a \$2,000 penalty for building  
3           and site clearing without prior  
4           Commission approval.

5           Then in 2000, it was noticed  
6           during a site visit that additional  
7           construction was in progress. A  
8           foundation was noted in the rear of the  
9           building, and a foundation now exists on  
10          the north side of the restaurant.  
11          Previously banked parking areas were  
12          constructed, and the eastern portion of  
13          the site was not revegetated as per the  
14          1998 stipulation agreement. Then on  
15          October 10, 2001, a notice of violation  
16          was issued by the Commission counsel.

17          On September 11, 2002 a  
18          stipulation was signed between the owner  
19          and the Town of Brookhaven to re-submit  
20          the site plan, obtain a Core Hardship  
21          permit from the Commission and  
22          revegetate the property as per the 1998  
23          stipulation if they are unable to get  
24          the Core Hardship permit and it involved  
25          a \$4,500 penalty payment.

1                   This would be a second hardship  
2                   granted on this property that twice  
3                   violated the Pine Barrens Act. The  
4                   granting of the hardship would include  
5                   prior alterations to the site not  
6                   previously approved by the Commission  
7                   that essentially included the fountain  
8                   on the north side of the building,  
9                   changes to the entrances, a paved area  
10                  near the solarium was supposed to be  
11                  landscaped, banked parking that has now  
12                  been constructed and in addition, the  
13                  landscaping in general is not native.  
14                  There are cement walls along County Road  
15                  111 and Chapman Boulevard.

16                 The grassy area in the northern  
17                 part of the property has not been  
18                 revegetated as specified in the 1998  
19                 stipulation agreement, and their new  
20                 proposal on their site plan extends the  
21                 proposed paved walkway and circular area  
22                 into this, the portion of the property  
23                 that was supposed to be revegetated, and  
24                 the additional parking would also be  
25                 encroaching into that area that was

1                   supposed to be revegetated.

2                   That is all I have.

3                   MR. PROIOS: Thank you.

4                   MR. COWEN: Judy, just to clarify  
5 something in your staff report on the  
6 chronology, on August 5, 1998, on that  
7 line, that was the date on which the  
8 Commission approved the first hardship  
9 permit for the restaurant?

10                  MS. JAKOBSEN: I would have to  
11 double check. The decision was made on  
12 that date. It is not clear. I  
13 apologize.

14                  MR. COWEN: If you would do that  
15 then, and perhaps you could dig out of  
16 the file the actual approval that was  
17 issued.

18                  MS. JAKOBSEN: I have the file  
19 with me so I could check.

20                  MR. COWEN: I'm curious how the  
21 approval was worded.

22                  MR. PROIOS: Any other questions?  
23 Is the applicant here or their  
24 representative?

25                  Mr. Tanenbaum?

1 MR. TANENBAUM: Good afternoon. My  
2 name is Evan Tanenbaum. I'm associated  
3 with the firm of Tsunis, Gasparis and  
4 Dragotta. I represent the applicant,  
5 Michaelangelo's Restaurant and Pizzeria  
6 Inc.

7 The property is owned by JoAnne  
8 Mangogna who submitted an affidavit as  
9 part of the application. I appreciate  
10 the opportunity to present the  
11 application. I think on behalf of the  
12 applicant it is essential to thank the  
13 Commission for its patience, given the  
14 long history that this applicant has had  
15 with multiple contacts with the  
16 Commission, mostly negative  
17 unfortunately, and we're going to  
18 attempt to address all of those contacts  
19 and address the need for the current  
20 hardship application.

21 I just want to reiterate that we  
22 are here to seek an additional 2,707  
23 square foot addition, a 265 square foot  
24 walk-in cooler to the northeast portion  
25 of the current building, 12 parking

1 spots and an addition of two dry wells.  
2 If I might just reiterate the  
3 significant portions of the timetable  
4 that the applicant has had control of  
5 the property and contact with the  
6 Commission.

7 In December of 1997,  
8 Michaelangelo's was purchased by Miss  
9 Mangogna, and she entered into a lease  
10 for the property. In July of 1998  
11 Michaelangelo's submitted its first  
12 hardship application for the  
13 construction of an addition and also  
14 parking areas. At that time,  
15 Michaelangelo's acknowledged that the  
16 partial construction was done without  
17 the Commission approval.

18 On August 5th of 1998, the  
19 Commission approved the hardship  
20 application of Michaelangelo's and  
21 satisfied the violation with the payment  
22 of \$2,000 and the obligation of  
23 Michaelangelo's to restore the  
24 vegetation in the rear of the site which  
25 is the eastern portion of the property.

1 To date, that restoration has not  
2 occurred.

3 In January of 1999, JoAnne  
4 Mangogna purchased fee interest in the  
5 property.

6 MR. COWEN: Including the real  
7 estate?

8 MR. TANENBAUM: Correct. In  
9 September of 2001, the Pine Barrens  
10 issued a second Pine Barrens violation  
11 alleging that there was clearing done  
12 and that the revegetation to the rear of  
13 the site was never performed. The  
14 stipulation that was entered into in, I  
15 believe it was August of 1998, did not  
16 provide a specific date to complete the  
17 vegetation.

18 I just note that in April of 2002,  
19 the Town commenced an action against  
20 Michaelangelo's for the Pine Barrens  
21 violations. Five months later in  
22 September of 2002, Michaelangelo's  
23 entered into a stipulation with the Town  
24 of Brookhaven for the payment of a  
25 \$4,500 fine and the submission of a site

1 plan within 30 days. That was -- the  
2 fine was paid and the site plan was  
3 submitted within 30 days. The hardship  
4 application was required to be submitted  
5 within 30 days, and that hardship  
6 application was to cover any expansions  
7 that were promised to date and any  
8 expansions that the applicant was  
9 seeking.

10 In addition, within 30 days, the  
11 stipulation required that within 30 days  
12 of the approval of the submitted site  
13 plan, that Michaelangelo's must commence  
14 the revegetation and any improvements it  
15 may be granted relief for and complete  
16 such within eight months. If the  
17 hardship is not granted, Michaelangelo's  
18 will be required to revegetate.

19 At the time of the stipulation, I  
20 represented Michaelangelo's and made an  
21 offer to bond the cost to revegetate in  
22 order to make clear to the Commission  
23 that Michaelangelo's was not attempting  
24 to avoid that requirement, and there  
25 will be testimony describing what the



1 cost of the revegetation will be.

2 The property has been used for a  
3 restaurant for many years prior to the  
4 applicant's acquisition in 1997, the end  
5 of 1997. At the time of the 1998  
6 hardship application, the applicant was  
7 desperate to open and sought relief for  
8 the expansion that was done somewhat  
9 without approval and for additions that  
10 they thought would be adequate in order  
11 to make the restaurant viable.

12 They have now concluded that the  
13 additions that were sought in 1998 were  
14 inadequate to make the restaurant  
15 viable, and there will be testimony to  
16 describe the financial condition of the  
17 operation of the property and, in fact,  
18 the operation of the property has been  
19 one of a loss since they've taken over.  
20 Had they known now what they did in  
21 1998, they would have sought the extra  
22 additions they're seeking today.

23 I would just like to have Jose  
24 Taveras who is with JFT Architect  
25 International, P.C., to describe the

1 current plan to the Commission and  
2 describe briefly the prior expansion in  
3 1998. He will also describe why the  
4 revegetation is not being done  
5 immediately and why we have requested  
6 and been given the opportunity to seek  
7 the relief first, prior to completing  
8 the revegetation.

9 MR. TAVERAS: My name is Jose  
10 Taveras, an architect with JFT Architect  
11 International, P.C.

12 Good afternoon. What I'm trying  
13 to show you -- you have a copy of the  
14 original site plan that was approved by  
15 the Pine Barrens Commission back in  
16 1998. This is the latest plan that we  
17 submitted to the Township and to the  
18 Pine Barrens also showing the proposed  
19 2,707 square foot addition to the  
20 existing 6,434 square foot restaurant  
21 catering facility.

22 We've tried to maintain the  
23 addition to make sure that it meets all  
24 the zoning requirements, which it does,  
25 in terms of parking lot coverage, all

1 the square footage that's required by  
2 code and also to try to keep it back  
3 from the line of the Pine Barrens area  
4 to remain natural. I think we've done  
5 as best we could to do that.

6 The original application which you  
7 know was to make an addition right at  
8 this rear corner of the northeast corner  
9 of the building which has been installed  
10 already. It has been used. Obviously  
11 that didn't affect the area as much as  
12 we are going to now, but it really --  
13 the addition that we're proposing at  
14 this time is not really affecting the  
15 area as much as we think because if you  
16 look at the original site plan, you  
17 could see that the landscaping that was  
18 supposed to be by that area, the  
19 vegetated area, we're not removing  
20 anything from that at all. Even the  
21 parking that's proposed is not affecting  
22 the vegetated area that we had proposed  
23 originally.

24 MR. TANENBAUM: The area that was  
25 expected to be revegetated?

1 MR. TAVERAS: Exactly. The  
2 vegetation of the site at this point  
3 forces us to revegetate it prior to  
4 doing the addition, assuming that we do  
5 get the approval to go ahead and do the  
6 addition. I'm recommending not to do  
7 that at this point because if we do get  
8 the approval, there is going to be so  
9 much work around the site that it will  
10 tear up basically a major portion of the  
11 vegetation that we would be putting up  
12 right now. That is why I recommended  
13 that we leave that until we have an  
14 approval or not to go ahead and do the  
15 addition.

16 Basically the addition is -- this  
17 shows the proposed, the existing  
18 restaurant as it exists with the  
19 proposed addition which is mainly, as  
20 you could see, for catering facilities.  
21 In the existing facility, as you could  
22 see, the catering section, the addition  
23 that was proposed at that time which was  
24 this section here, is the one that  
25 contained the existing bathrooms and bar

1 area that's existing at this point.  
2 That area is the one that's being  
3 expanded, and the expansion we're making  
4 are larger bathrooms, an office for the  
5 catering facility and so forth and  
6 enlarging for the catering.

7 MS. PRUSINOWSKI: Could you please  
8 discuss the number of seats in the  
9 restaurant and catering both before and  
10 after?

11 MR. TAVERAS: The approval -- we  
12 have already a preexisting approval from  
13 the Health Department for 150 restaurant  
14 seats or 220 total seats which includes  
15 catering.

16 MS. PRUSINOWSKI: Do you have an  
17 approval from the Town?

18 MR. TAVERAS: The same since  
19 1998. As you can see, we had that same  
20 approval in the original site plan that  
21 was submitted to you and to the Town of  
22 Brookhaven, so we haven't changed at all  
23 the quantity of seating or the flow in  
24 making the addition. All we've done is  
25 given us more space to work the catering

1 additional necessity for the 12 parking  
2 spaces?

3 MR. TAVERAS: Parking spaces -- as  
4 a matter of fact, we have sufficient  
5 parking spaces for the building. Yes,  
6 the number of seats which we've added  
7 since we added with the new proposal  
8 seating wise from what we had, that  
9 changed so we needed more parking, but  
10 we're still over the requirements that  
11 the Town has in terms of parking  
12 spaces.

13 MR. TANENBAUM: The sanitary sewer  
14 flow is not being exceeded. We're not  
15 up to the limit yet.

16 MR. TAVERAS: We're not changing  
17 the sanitary flow in terms of what we're  
18 proposing right now.

19 MR. COWEN: I have several  
20 questions. I think right now is  
21 probably the best time to ask them.

22 First, I'm confused, Mr.  
23 Tanenbaum. Would you explain once more  
24 exactly what hardship it is you're here  
25 today in front of this Commission for?

1 Is it for something that's proposed or  
2 is it for something that's already been  
3 built on this property?

4 MR. TANENBAUM: It is for the  
5 current situation that the owner  
6 encounters. They are now suffering a  
7 financial loss, and they believe that  
8 the expansion of the restaurant will  
9 make the restaurant viable.

10 MR. COWEN: I don't think that you  
11 answered my question. There has been  
12 construction on the property without  
13 benefit of a hardship permit, yes?

14 MR. TANENBAUM: I believe there  
15 has been some construction on the  
16 property, correct.

17 MR. COWEN: Without benefit of a  
18 hardship permit?

19 MR. TAVERAS: Yes. The cooler has  
20 been added, the foundation for the  
21 cooler has been added without benefit of  
22 the hardship. That was not included in  
23 the original site plan.

24 The addition, this addition has  
25 been constructed but that was on the

1 original application. Whatever we're  
2 showing here as a proposed condition is  
3 exactly that; proposed. It has not been  
4 built at this time.

5 MR. COWEN: You're representing  
6 that the only thing that's been  
7 constructed without authorization so far  
8 is the foundation for the walk-in  
9 cooler?

10 MR. TAVERAS: That's been  
11 constructed. There have been minor  
12 esthetical changes made to the  
13 building. That's basically it.

14 MR. COWEN: This hardship  
15 application that you're addressing to  
16 the Commission today is, in fact, to  
17 include, for one thing, the foundation  
18 and the rest of the construction for the  
19 walk-in cooler, in addition to other  
20 expansion of the facility.

21 MR. TAVERAS: Yes.

22 MR. COWEN: Mr. Tanenbaum, I'm  
23 also confused about ownership and  
24 applicant and whether there is a  
25 difference there, because you referenced



1 the fact that the current owner acquired  
2 the property in 1997 but the applicant

3 --

4 MR. TANENBAUM: Acquired the  
5 restaurant. They purchased the  
6 restaurant, not the building; the  
7 restaurant in December of 1997.

8 MR. COWEN: What did they  
9 purchase; the business name?

10 MR. TANENBAUM: The business and  
11 the lease. They were not a fee simple  
12 owner at the time. Not until 1999.

13 MR. COWEN: So prior to 1997, who  
14 owned fee simple on this property?

15 MR. TANENBAUM: I don't know the  
16 name. Governale.

17 MR. COWEN: How long before that  
18 did Governale own it, prior to 1997 own  
19 in fee simple?

20 MR. TANENBAUM: I'm being told 25  
21 years.

22 MR. COWEN: So in 1997, the  
23 business was sold and the lease was sold  
24 but Governale still owned fee simple on  
25 the real estate.

1 MR. TANENBAUM: Yes.

2 MR. COWEN: In 1999, Governale  
3 sold fee simple on the real estate to  
4 the same person that bought the business  
5 in 1998.

6 MR. TANENBAUM: The current owner  
7 is JoAnne Mangogna, correct. The  
8 operation of the Governale enterprise  
9 was solely as a restaurant, not as a  
10 catering hall. It did not become a  
11 catering facility until it became  
12 Michaelangelo's.

13 MR. COWEN: Which was at what  
14 date?

15 MR. TANENBAUM: In December of  
16 1997, which is when they entered into  
17 the lease. I'm not sure of the exact  
18 day.

19 MS. PRUSINOWSKI: Was it not a bar  
20 and restaurant?

21 MR. TANENBAUM: Maybe a bar as  
22 well, but never a catering facility.

23 MR. COWEN: That is all I have at  
24 this time.

25 MR. PROIOS: Are there any other

1 questions?

2 MS. PRUSINOWSKI: Yes. Since  
3 we're discussing the ownership, what due  
4 diligence was done by the current owner  
5 prior to that purchase, either in 1997  
6 or 1999? Do we have any information on  
7 that?

8 MR. TANENBAUM: In terms of the  
9 operation and income?

10 MS. PRUSINOWSKI: In terms of the  
11 restrictions on this particular  
12 property, given its location in the  
13 Core.

14 MR. TANENBAUM: I don't believe  
15 they did sufficient due diligence.  
16 Otherwise they wouldn't be here. I  
17 think you're absolutely correct. They  
18 didn't do their homework.

19 I can't say that they wouldn't  
20 have purchased the building knowing now  
21 -- maybe they would have made it into  
22 something other than what it is, but  
23 they had no concept for the Pine Barrens  
24 Act when the building was purchased.

25 MS. PRUSINOWSKI: What was the

1 original CO for or the certificates?  
2 Was there a CO issued as a result of the  
3 construction done on this site plan,  
4 which is dated 4-6-98?

5 MR. TAVERAS: The CO with respect  
6 to the proposed addition had not been  
7 acquired. I believe it is still in the  
8 process of getting acquired now because  
9 they were still items that were  
10 outstanding to be taken care of by the  
11 owner which they have at this point, and  
12 I believe either they have it now or  
13 they're in the process of getting the  
14 CO.

15 MS. PRUSINOWSKI: What about a CO  
16 for the original structure?

17 MR. TAVERAS: That I don't have a  
18 copy of, but they should have had one  
19 for a restaurant.

20 MR. TANENBAUM: I don't know the  
21 answer to your question. However, I'll  
22 certainly provide one as soon as  
23 possible, if one is available.

24 MR. PROIOS: Thank you. You had  
25 another presentation?

1 MR. TANENBAUM: Yes. Kathleen  
2 S-C-H-W-A-R-T-I-N-G, financial manager,  
3 Michaelangelo's.

4 MS. SCHWARTING: Good afternoon.  
5 I'm Kathy Schwarting, financial manager  
6 of Michaelangelo's Restaurant. I  
7 maintain the books and records, and I'm  
8 familiar with the books and records of  
9 Michaelangelo's.

10 Since December 1997, the company  
11 has invested approximately \$1.1 million  
12 in the renovations to the property. For  
13 the company's fiscal year ending May 31,  
14 2002, which is the last full year for  
15 which a tax return was filed, there was  
16 a net income of minus \$104,266. This  
17 was based on gross receipts of \$732,683  
18 and expenses of \$329,259 for costs of  
19 the goods sold and \$507,690 of remaining  
20 expenses.

21 This loss does not include the  
22 failure to pay rent of \$4,000 a month  
23 for the past two years. Since May 31,  
24 2002, there has been no change to the  
25 restaurant's operating, and it is still

1 operating at a significant loss.

2 MR. PROIOS: Thank you. Any  
3 questions?

4 MR. COWEN: Mr. Tanenbaum, do you  
5 intend to make some relevance of this  
6 statement to the Article 57 issue of  
7 hardship application?

8 MR. TANENBAUM: The restaurant is  
9 operating at a financial loss and as a  
10 result suffers a hardship. This  
11 operating restaurant and the expansion  
12 that they seek will hopefully restore  
13 the restaurant to some viability. There  
14 is another expert that will address that  
15 issue.

16 MR. COWEN: Would you provide me  
17 with a citation that directly relates  
18 that criteria to the hardship provisions  
19 in Article 57?

20 MR. TANENBAUM: I do not have the  
21 citation.

22 MR. COWEN: You think one exists?

23 MR. TANENBAUM: Hopefully there is  
24 one.

25 MR. PROIOS: Thank you.

1 MR. TANENBAUM: Art Pellegrino.

2 MS. PRUSINOWSKI: While this  
3 gentleman's coming forward, you make a  
4 statement in your present hardship  
5 application that prior to January of  
6 1999, this property consisted of a  
7 dilapidated restaurant and parking  
8 area. Do you have any documentation in  
9 regard to that statement?

10 My memory is not that terrible and  
11 it doesn't strike me that it was  
12 dilapidated. I would like some  
13 quantification of that.

14 MR. TANENBAUM: The only  
15 representation I could make is from  
16 either the applicant or a photograph and  
17 that's not available. This is a  
18 statement that was provided specifically  
19 by the applicant. They have done a  
20 tremendous amount of renovations to this  
21 site. Obviously \$1.1 million must go  
22 somewhere. So the condition of the  
23 restaurant was far different than it is  
24 now.

25 MS. PRUSINOWSKI: You're getting

1 to my point.

2 MR. TANENBAUM: Mr. Pellegrino is  
3 the owner of Windows on the Lake and  
4 Beach Club Estates, both in Lake  
5 Ronkonkoma.

6 MR. PELLEGRINO: I have Anthony's  
7 on Lake Avenue also. I've been doing  
8 that a long time. I've been a caterer  
9 for 12 years now at Windows on the Lake  
10 and recently Beach Club Estates for five  
11 more years. I'm involved in the  
12 renovations and I can make state trying  
13 to make business as profitable by trying  
14 to control costs is one of the biggest  
15 problems and work flow and giving people  
16 what they want to buy.

17 The situation that I find with  
18 Michaelangelo's is that by providing a  
19 space, this is restaurant type seating.  
20 It is not what a caterer, what customers  
21 who want to do catering want to buy.  
22 They want a dance floor, room to move  
23 about.

24 As a caterer, to make it  
25 beneficial, you're trying to make a



1 space that allows you to do as large a  
2 party as possible but take that space  
3 and split it in two and do two smaller  
4 parties if possible, maximize kitchen  
5 help, maximize productivity that you  
6 have, because it is much more important  
7 to try and run spaces, parties for  
8 larger people than for smaller people  
9 because a lot of your expenses all  
10 maintain the same whether it is for a  
11 larger or small party. Whether you're  
12 cooking one or two pans, it's almost the  
13 same cost.

14 What is the situation I find here  
15 the most is that they're relegated to  
16 doing very small parties which can't be  
17 profitable because to do a party in this  
18 area, to try and put in a dance floor,  
19 the removal of the whole area of the  
20 tables, it is not set or designed as a  
21 catering feature. It is designed as a  
22 cafeteria or a place where there is  
23 seats and tables but not an appropriate  
24 catering type of a setting.

25 The relief by putting on the

1 additional square footage here of  
2 creating this area, the room allows for  
3 the addition of a dance floor, the  
4 addition of having room to move the  
5 restrooms from the corridor and service  
6 the rooms through the back and, of  
7 course, taking over here where the  
8 restrooms were and moving them to the  
9 top end so they're serviceable from both  
10 rooms, but this room can now be split  
11 into two different sizes or into an area  
12 where you could run two simultaneous  
13 parties at the same time which can make  
14 the operation profitable by enabling it  
15 to have what people want to buy, and  
16 they want to buy space, they want to buy  
17 dance floor. They want to be able to  
18 feel free to move and not feel  
19 confined.

20 That's my opinion on that.

21 MR. PROIOS: Thank you. Any  
22 questions?

23 MS. PRUSINOWSKI: Do you have any  
24 professional credentials that would  
25 qualify you as an expert in this field?

1 field? I understand that you own  
2 catering facilities. Are you a member  
3 of any particular professional  
4 organizations relative to that?

5 MR. PELLEGRINO: No, I do not.  
6 However, I do have, in addition to that  
7 was prior to me being in the catering  
8 field, I was in the wholesale meat field  
9 and being in that industry, I was in the  
10 restaurants and the back rooms of every  
11 catering hall and every restaurant on  
12 Long Island. I have a lot of friends  
13 and other people and see how their  
14 spaces are laid out and what it takes to  
15 make an operation profitable.

16 MS. PRUSINOWSKI: Thank you.

17 MR. COWEN: Mr. Tanenbaum, I  
18 repeat my earlier question, and I  
19 sincerely hope that at some point you're  
20 going to provide us with some relevance  
21 of the testimony of the prior two  
22 witnesses. I, frankly, don't think you  
23 could, but I certainly hope you'll try.

24 MR. TANENBAUM: Mr. Pellegrino was  
25 describing in his field of expertise

1           that the operation of the business as it  
2           presently exists is not profitable, and  
3           he's offering a reasonable change to  
4           make the business profitable. If, in  
5           fact, the business is not profitable,  
6           there is no beneficial use for this  
7           property. That would warrant the  
8           consideration by the Commission to award  
9           the hardship.

10           If, for example, the location is  
11           not appropriate for any other operation  
12           and only is appropriate for a restaurant  
13           and catering facility and it cannot  
14           operate at a profit, then there is no  
15           alternative. There is clearly a  
16           financial hardship, and there is  
17           satisfaction of at least one of the  
18           requirements for the hardship exemption.

19           MR. COWEN: That's your position  
20           with respect to my earlier question and  
21           this current question?

22           MR. TANENBAUM: Yes.

23           MR. PROIOS: Thank you.

24           MR. TANENBAUM: Charles Voorhis.

25           MR. VOORHIS: I'm with the firm of

1 Nelson, Pope and Voorhis. I'm here on  
2 behalf of the applicant in this matter.  
3 You've heard testimony regarding a  
4 number of points regarding the financial  
5 aspects of this facility. I would just  
6 like to characterize the area and go  
7 through each of the points in the  
8 Conservation Law Article 57 as they  
9 pertain to this application.

10 This is the site in question. It  
11 is the existing Michaelangelo's  
12 Restaurant. You heard the history and  
13 chronology. I would urge each of you,  
14 if you have not done so, to visit the  
15 site. These are photographs from around  
16 the property. This is the north end of  
17 the site, basically looking west across  
18 the back of the property.

19 There is an access road that comes  
20 in. It is the extension of Chapman  
21 Boulevard, to go back to contractors  
22 yards and government property to the  
23 north. There is an existing McDonald's  
24 and a 7-11 and a shopping center which  
25 has since been constructed. This is a

1           1999 aerial photograph. The nursery is  
2           across the street to the south and east  
3           are areas characteristic of Pine Barrens  
4           and other virgin areas exist to the  
5           east.

6           Basically this is the back of the  
7           building, looking directly south at the  
8           area where the addition would be placed.  
9           This is looking toward the south and  
10          west. This photograph illustrates the  
11          residences to the west and the back  
12          corner of the building on that northwest  
13          corner. Here's another shot from north  
14          to south. This is looking from the  
15          restaurant across the street to the  
16          south of the existing shopping center.

17          This photograph depicts a view  
18          southerly along CR 111, which is a  
19          County four lane highway with a median,  
20          and this is the residences to the west  
21          of the site and the Michaelangelo's  
22          Restaurant. I do this just to point out  
23          the character of the area.

24          We did hear the chronology. There  
25          was revegetation that was intended to be

1           done that has not been completed as of  
2           yet. I would submit from an  
3           environmental standpoint that there has  
4           been no irreparable harm to the Pine  
5           Barrens by the fact this has not  
6           occurred at this time. It is my  
7           testimony, and I would like to provide  
8           you today with some photographs we  
9           researched through environmental data  
10          resources, that show that a good  
11          portion, if not the entire property, had  
12          been cleared in the past; in 1980 as  
13          well as 1994.

14                I have two copies that I can leave  
15          you with, and basically for reference,  
16          at that corner of Chapman Boulevard and  
17          CR 111, you could see the diner  
18          restaurant in the 1980 and 1994  
19          photographs. You could also see this  
20          building on the Governale property just  
21          to the north, and you could see a stand  
22          of trees east of that. Both photographs  
23          appear to have been prior taken during  
24          summer months as there is a full canopy  
25          of trees, and both indicate that the

1 strand of vegetation that's still  
2 existing to the east of the Governale  
3 building just to the northwest corner of  
4 the subject site still exists and the  
5 area south of that have been cleared.  
6 It is a small scale but is the best I  
7 could come up with and verifies that a  
8 large portion of the property had been  
9 cleared.

10 The area in question for  
11 revegetation is about 10,000 square  
12 feet. This is what was approved in the  
13 1998 hardship approval. This would be  
14 restored as part of the current  
15 operation. The addition to the  
16 building, the 2,707 square feet in  
17 question today, would not remove any  
18 additional trees.

19 It would not remove any trees that  
20 would have existed prior to the  
21 enactment of the Pine Barrens Act, and  
22 in my mind would provide a benefit in  
23 terms of aesthetics, habitat and  
24 restoration of a portion of the property  
25 that we recognize is in the Core



1           Preservation Area, but I think we have  
2           to continue to recognize that that has  
3           been an on going business that existed  
4           long before the Pine Barrens Act.

5                   Just to go through the points that  
6           Mr. Cowen asked for before, conformity  
7           for a Pine Barrens hardship exemption to  
8           the criteria under ECL 57 21.10, and the  
9           first one is that an applicant should be  
10          deemed to have established the existence  
11          of an extraordinary hardship only if he  
12          demonstrates based on specific facts  
13          that the subject property does not have  
14          any beneficial use or if used for its  
15          present use or developed as authorized  
16          by the provisions of this Article.

17                   I would submit to you that it did  
18          receive a hardship exemption in 1998.  
19          The restaurant was known to have existed  
20          prior to that time. There were County  
21          flow figures that established the  
22          limitations on the use. It was approved  
23          as a restaurant and catering facility.  
24          Since that time, it has been operated as  
25          such and it has been operated at a loss,

1 and you heard testimony from a number of  
2 experts that it can be made viable with  
3 a modest addition that would allow it to  
4 operate more in keeping with what it is  
5 approved, for what the sanitary flow  
6 permits and what would allow the site to  
7 continue in a financially stable  
8 manner.

9 There is also a portion that this  
10 inability to have the beneficial use  
11 results from unique circumstances is  
12 peculiar to the subject property and  
13 there are a number of points under  
14 that. A 1, the circumstances do not  
15 appear to affect other property in the  
16 immediate vicinity. Again, it is  
17 redundant but the unique nature is that  
18 it is a restaurant that existed at the  
19 time of the enactment of the Act, it  
20 historically occupied the site and has  
21 been recognized by this Commission for  
22 that use by virtue of the prior hardship  
23 exemption that was granted. This would  
24 enable it to continue under a more  
25 viable framework or design and layout,

1 and those are completely unique  
2 situations and circumstances.

3 It is unique, in effect, that a  
4 commercially used, commercially zoned  
5 piece of property is in the Core Pine  
6 Barrens area and that the property  
7 through the 1980 and 1994 photographs  
8 did not exhibit Pine Barrens  
9 characteristics or vegetation on the  
10 property.

11 A 2 is that the circumstances  
12 relate to or arise out of the  
13 characteristics of the subject site  
14 rather than the personal situation of  
15 the applicant. You have heard the  
16 chronology, but I would submit that  
17 based on the use recognized in the past,  
18 this is not a personal situation of the  
19 applicant. It is more trying to  
20 continue to maintain a viable use on a  
21 site that has been used commercially for  
22 a long period of time and that this the  
23 circumstances that relate to the design  
24 of the building and the uses that it has  
25 been approved for.

1           A 3, circumstances are not the  
2           result of any action or inaction of the  
3           applicant or owner or predecessors in  
4           title including any contiguous land  
5           which were in common ownership on or  
6           after June 1, 1993. I would, again,  
7           submit that the chronology speaks to  
8           this issue, that this had come before  
9           this Commission after the purchase of  
10          the business and during the time of  
11          ownership of the party that owned it,  
12          prior to the Pine Barrens Act and that  
13          since the time of the prior approval of  
14          the hardship exemption, the conditions  
15          have not changed such that the business  
16          has been able to operate in an viable  
17          way. It is basically trying to operate  
18          under the approval given before and  
19          doing so unsuccessfully.

20               MR. PROIOS: Let me correct you.  
21           The way we generally refer to that  
22           section of the law is that was this or  
23           was this not a self-created hardship and  
24           if the applicant did purchase it after  
25           1993, he purchased it with all of the

1 rules and regulations in place and was  
2 hopefully aware of those, so whether it  
3 is owned by Governale or a new owner, in  
4 either case it is post 1993 when all of  
5 those activities occurred.

6 MR. VOORHIS: I do know the  
7 chronology and I could testify at the  
8 time of 1993 and between then and 1997.  
9 What I'm saying is that this Commission  
10 had all the facts and evidence before it  
11 in 1998 and saw fit to grant a small  
12 addition to the building to allow it to  
13 operate at a County Health Department  
14 flow permitted it to do. I'm, in  
15 effect, building on that. I'm not going  
16 to represent anything other than that  
17 because that's all that I have. But you  
18 did recognize it and it has been a  
19 historical use that did exist prior to  
20 the Act, so the chronology speaks for  
21 itself.

22 Under C i, an application for a  
23 permit in the Core Preservation Area  
24 should be approved only if determined  
25 that the following additional standards

1 are also met. The granting of the  
2 permit will not materially,  
3 detrimentally or be injurious to other  
4 property or improvements in the area in  
5 which the subject property is located,  
6 increase the danger of fire, endanger  
7 public safety or result in substantial  
8 impairment of the resources of the Core  
9 Preservation Area.

10 My purpose in outlining the  
11 history of the site, the historical  
12 aerial photographs and showing the  
13 photographs is that it exists as a  
14 restaurant. The addition in an area  
15 that is cleared and has been cleared  
16 would not have any detrimental or  
17 injurious effect, that it is on an  
18 existing building and that building is  
19 in an area that's characterized by other  
20 uses with some fairly significant  
21 intensity, recognizing that it is in the  
22 Core Preservation Area.

23 As you drive along this part of CR  
24 111, looking from the car, there are a  
25 number of uses. If you pass by this

1 area at night, you'll see rather heavily  
2 lit uses. These are the circumstances  
3 for the area that have existed for a  
4 long period of time.

5 Under C, small i, the waiver will  
6 not be inconsistent with the purposes,  
7 objectives or general spirit and intent  
8 of this article. The hardship  
9 provisions contained in 57 allow us to  
10 come before you. We have to stand on  
11 our own merits. I believe we made a  
12 case that is complete in my mind showing  
13 the beneficial use of the property, the  
14 lack of environmental resources specific  
15 to Pine Barrens vegetation on this site  
16 through history and the preexisting use,  
17 and that that allows us to come before  
18 this Commission for purposes stated and  
19 the hardship outlined in 57, and for  
20 that reason, I don't believe we're  
21 inconsistent with the Article. I  
22 believe that we're consistent with the  
23 relief that's allowable under those  
24 provisions.

25 The last one, C iii, is the waiver

1 is the minimum relief necessary to  
2 relieve the extraordinary hardship which  
3 may include the granting of a  
4 residential development right to other  
5 land in the Compatible Growth Area, that  
6 they be transferred or clustered to  
7 those lands to satisfy the compelling  
8 public need, if this was to be  
9 transferred based on the area of the  
10 property or the fracture of an acre  
11 constituting a credit because this is  
12 J-2 property.

13 This is a business that would like  
14 to continue to operate on the site. We  
15 believe it is the minimum relief that  
16 would allow us to do so for the reasons  
17 outlined by the experts that have  
18 evaluated the layout and design of the  
19 facility, that have testified to the  
20 need for additional room for the  
21 catering type of business that's  
22 proposed to continue on the property but  
23 continue in a more viable way.

24 Flow figures in terms of sanitary  
25 discharge will not change. There are no



1 additional seats proposed. It is  
2 strictly a layout and operational  
3 improvement.

4 That concludes the points in  
5 Article 57 and my testimony.

6 MR. PROIOS: With respect to the  
7 last section of the law, as you know  
8 being before us previously on many other  
9 occasions, we generally only act once on  
10 an applicant because of the fact that it  
11 is the minimum relief necessary. If in  
12 1998 we did issue that minimum relief  
13 and now you're saying, or the applicant  
14 is saying, they want additional relief,  
15 how do we know this is not the minimum  
16 relief and next year or the year after  
17 if it is not working, you'll be here  
18 asking for an additional one?

19 It would start a never ending  
20 spiral if we didn't have an end to what  
21 constitutes minimum relief by doing it  
22 once and allowing for a single  
23 hardship.

24 MR. VOORHIS: I understand that.  
25 I'm not the best one to testify.

1 MR. PELLEGRINO: But that was the  
2 purpose in providing a detailed  
3 depiction of the layout of the facility,  
4 how it doesn't work in its current  
5 configuration, how it will in the way it  
6 is intended in the proposed  
7 configuration.

8 I think that Mr. Tanenbaum before  
9 said that if these owners had known what  
10 they know now, their decisions may have  
11 been made a little differently, but they  
12 did come in to seek to have modest  
13 expansion of the facility in 1998 and it  
14 does not permit them to operate the  
15 business in a successful manner. That  
16 is based on testimony that you heard,  
17 but it is the only answer that I could  
18 offer you.

19 MR. TANENBAUM: This is not a  
20 situation where the owners are  
21 attempting to derive greater profits  
22 from this expansion. They're merely  
23 trying to make a profit. They're not  
24 seeking to build another section of  
25 Disneyland here. This is a minimum

1 relief that they now believe is  
2 necessary. Had they known in 1998 they  
3 would have needed that, they would have  
4 asked for it in 1998 as part of the  
5 first hardship application.

6 MR. VOORHIS: We believe it is the  
7 minimum relief, again, based on a  
8 detailed analysis of the floor plan of  
9 the facility and how it would operate  
10 with input from an expert that would be  
11 able to comment to you more, if you  
12 would like, about why that layout is  
13 necessary.

14 MR. MACLELLAN: To reiterate what  
15 the Chairman said before, in 1998 you  
16 came before this Commission and made a  
17 presentation on what you believe would  
18 be successful at that point. Now,  
19 you're making a second presentation on  
20 what you believe will be successful at  
21 this point. That opens us up for a  
22 third point in two or three years.

23 MR. TANENBAUM: Is the Commission  
24 asking the applicant to covenant not to  
25 seek additional relief?

1 MR. COWEN: No.

2 MR. TANENBAUM: Would the  
3 Commission ever ask that of an  
4 applicant? I'm not sure it would be  
5 appropriate.

6 MR. COWEN: We're a long ways from  
7 that point. Since you have raised this  
8 issue of economic viability, and while I  
9 certainly don't agree with that premise,  
10 I assume that in that formula that was  
11 used to derive economic viability, debt  
12 service plays a role.

13 MR. TANENBAUM: Correct.

14 MR. COWEN: I assume that that  
15 debt service is derived in the 1997 and  
16 1999 purchases; is that correct?

17 MR. TANENBAUM: Correct.

18 MR. COWEN: So a certain price was  
19 paid to the former owner of this  
20 property and that was, I assume, and  
21 arms' length transaction in both cases.

22 MR. TANENBAUM: In 1997 it  
23 absolutely was and in the purchase of  
24 the restaurant and in 1999, correct,  
25 when the fee simple was purchased.

1 MR. COWEN: I'm very curious to  
2 understand how debt service was entered  
3 into on two occasions and an arms'  
4 length transaction, how that cannot be  
5 translated to a self-created hardship.  
6 I'm missing something here. What am I  
7 missing?

8 MR. TANENBAUM: I believe that had  
9 the applicant, to repeat, known what  
10 they know now, they would not have  
11 purchased the property in the way that  
12 they've developed it today. They may  
13 not have sunk a million dollars into the  
14 property.

15 MR. COWEN: You're fully aware  
16 that was enacted in 1993.

17 MR. TANENBAUM: Correct. Again,  
18 we're at the exact same circumstances  
19 that we were in 1998 when the hardship  
20 exemption was granted. If it was  
21 self-inflicted in 1998, it is  
22 self-inflicted today. If it was  
23 appropriate in 1998, it is no different  
24 today.

25 MR. COWEN: As a matter of fact --

1 we're going to check the record -- I  
2 don't believe a hardship permit was  
3 granted in 1998. I believe a legal  
4 settlement was arrived at which is not  
5 characterized as a hardship exemption,  
6 but we're going to check the record on  
7 that for ourselves.

8 MS. PRUSINOWSKI: As I understand  
9 it, whatever fiduciary arrangements  
10 resulted in this expansion were  
11 accomplished based on what security on  
12 the part of the lending institution?  
13 What did the CO read? What security did  
14 any bank have that this expansion was  
15 going to be permitted?

16 MR. TANENBAUM: It is a privately  
17 held mortgage, not a commercial  
18 mortgage.

19 MS. PRUSINOWSKI: Okay.

20 MR. COWEN: With respect to your  
21 1999 aerial photograph, Mr. Voorhis, to  
22 your knowledge since the date of that  
23 photograph, was there clearing of Core  
24 Area vegetation that occurred to the  
25 west of the subject property for the

1 purpose of providing parking for the  
2 subject property?

3 MR. VOORHIS: I believe so. Is  
4 this the area you're referring to?

5 MR. COWEN: No. Behind the  
6 building, and then to the west.

7 MR. VOORHIS: To my knowledge,  
8 there has not been. I can't say that I  
9 have specific knowledge completely  
10 through that time, but looking at the  
11 historical aerial photographs, the area  
12 around the building had been cleared,  
13 and that's all I can testify to.

14 MR. COWEN: What do you think a  
15 current aerial photograph would show on  
16 that parcel? What looks different today  
17 than it did in 1999? What are some of  
18 the features that have been added since  
19 then?

20 MR. VOORHIS: I heard the  
21 reference to the staff report and the  
22 items that were included in that.

23 MR. COWEN: You agree with that  
24 report?

25 MR. VOORHIS: I have no basis to

1 disagree. I've observed many of those  
2 improvements myself. They were referred  
3 to as aesthetic features. Many were  
4 landscape in nature, but there have been  
5 other improvements, yes.

6 MR. COWEN: Would it be safe to  
7 say, or is it your testimony, Mr.  
8 Tanenbaum, that had the applicant in  
9 either 1997 or 1999 made a different  
10 business decision as to purchase price  
11 for various parts of this business and,  
12 in fact, offered less money, that this,  
13 in fact, might be a viable operation  
14 today?

15 MR. TANENBAUM: I think that is a  
16 possibility. I can't say definitively,  
17 but that's certainly a possibility, yes.

18 MR. COWEN: Again, I'm troubled as  
19 to how that's not a self-created  
20 hardship. We all make bad business  
21 decisions. I've made several myself  
22 which I regret many years later. Simply  
23 a bad business decision --

24 MR. TANENBAUM: I think we're  
25 talking about a restaurant that's been



1 transitioned into something other than  
2 what it has been operating as for 25  
3 years. You're correct, and the  
4 applicant has made consciously the  
5 decisions she's made and has expended  
6 monies and brought herself to this point  
7 in somewhat a desperation asking the  
8 Commission for relief.

9 This is an expensive process for  
10 the applicant. Had they known they  
11 could have avoided this expense both in  
12 the first and the second hardship  
13 application, I'm sure they would have.

14 MS. PRUSINOWSKI: There are other  
15 operations called Michaelangelo's within  
16 a few miles of this particular location,  
17 are there not?

18 MR. TANENBAUM: Another catering  
19 facility?

20 MS. PRUSINOWSKI: Other operations  
21 called Michaelangelo's.

22 MR. TANENBAUM: Not that I'm aware  
23 of.

24 MR. MACLELLAN: One in Wading  
25 River. There is another one in Mastic

1 or Moriches.

2 MR. TANENBAUM: Totally unrelated  
3 to this applicant.

4 MR. MACLELLAN: They can't operate  
5 under the same name if they're  
6 unrelated.

7 MR. TANENBAUM: They're not  
8 related parties. If there is another  
9 Michaelangelo's operating, JoAnne  
10 Mangagno does not have an interest in  
11 it. This is the only restaurant she has  
12 an interest in.

13 MS. PRUSINOWSKI: That's  
14 interesting. In your testimony  
15 previously, Mr. Tanenbaum, you stated  
16 that there are presently 220 seats in  
17 this facility.

18 MR. TAVERAS: No. Existing  
19 seating. What I was stating was that  
20 the Health Department and the Town has  
21 approved a total of a --

22 MS. PRUSINOWSKI: I thought you  
23 said 75 restaurant seats, five bar seats  
24 and 140. That's 220.

25 MR. TAVERAS: Now the existing

1 facility, the way it operates, yes, they  
2 do have that same amount of seats right  
3 now. We haven't increased it.

4 MS. PRUSINOWSKI: Could someone  
5 explain to me why the only approved site  
6 plan has 190 seats?

7 MR. TAVERAS: The original site  
8 plan, the way it was submitted showed  
9 less seating, but the approval for the  
10 220 seats was still there.

11 MS. PRUSINOWSKI: Where? I don't  
12 care about the Health Department. I'm  
13 asking about the land use.

14 MR. TAVERAS: At the time the  
15 Health Department approved, the same  
16 approval was in effect at the time which  
17 the Township also had approved.

18 MS. PRUSINOWSKI: It is my  
19 understanding that the site plan that  
20 was put into evidence shows 190 seats  
21 and that the parking is based on that.

22 MR. TAVERAS: You're correct about  
23 that.

24 MS. PRUSINOWSKI: So this  
25 statement in the Core Area Hardship

1 application, and I quote, the project  
2 will not create any additional dining or  
3 catering seating but rather modernize  
4 and expand the usable space of the  
5 restaurant is, in fact, not true because  
6 those seats have already been added.

7 MR. TAVERAS: The only application  
8 that you have that showed 190 seats,  
9 that was the case at the time, yes.  
10 What we're saying is that the original  
11 approval from the Health Department did  
12 approve us for a total of 220, and we're  
13 not going beyond that with the proposed  
14 addition. We are showing more seating.

15 MS. PRUSINOWSKI: You've got more  
16 seating than 190 right now.

17 MR. TAVERAS: Yes. We are showing  
18 more seating than the original site plan  
19 was approved for, yes. With the  
20 Township.

21 MR. COWEN: That seating exists  
22 today?

23 MR. TAVERAS: The seating? It  
24 doesn't exist today, no. We're adding  
25 the seating in the proposal.

1 MR. COWEN: I'm not sure Brenda  
2 has an answer to her question.

3 MS. PRUSINOWSKI: None of my  
4 questions have been answered today,  
5 Ray.

6 MR. COWEN: Judy, I have a  
7 question. In 1998, the stipulation from  
8 1998, did that recognize a catering  
9 facility in any way because in your  
10 chronology, it says in June of 1998 that  
11 Mr. Sanderman requested a determination  
12 on a solarium, an addition to the rear  
13 of a restaurant. I'm wondering if any  
14 historical documentation references a  
15 catering facility.

16 MS. JAKOBSEN: I would double  
17 check that, but to the best of my  
18 knowledge, I don't think so. At that  
19 time, they were looking at the addition  
20 to the rear of the building and the  
21 solarium.

22 MR. COWEN: Gentlemen, I'm not  
23 sure who wants to answer this. I'm  
24 going to follow up on her question.

25 Apparently the site plan that we

1           have in front of us which has been  
2           historically approved by the Town shows  
3           a certain number of seats in the  
4           restaurant, 190. What I want to clarify  
5           is today out there, if I were to go  
6           there, how many seats would I see in  
7           that restaurant?

8           MR. TAVERAS: You should see --  
9           you're going to have 75 restaurant type  
10          seats, five bar seats and the remaining  
11          area would be for catering seats.

12          MR. COWEN: How many is that?

13          MR. TAVERAS: About 200, 190 or  
14          199.

15          MS. PRUSINOWSKI: Is somebody out  
16          there taking out 30 seats?

17          MR. TAVERAS: We are adding more  
18          seats in the proposed condition based on  
19          the fact that the flow that they  
20          approved us for allows us to go up to  
21          that quantity.

22          MS. PRUSINOWSKI: But the existing  
23          ground floor plan is 219 seats right  
24          there.

25          MR. TAVERAS: What I'm showing,

1                   yes, but what was approved was for 199  
2                   or 190 seats.

3                   MS. PRUSINOWSKI: I feel wool in  
4                   front of my eyes.

5                   MR. COWEN: To your knowledge, was  
6                   the applicant represented by counsel  
7                   both in 1997 and 1999 during these  
8                   transactions?

9                   MR. TANENBAUM: I don't know the  
10                  answer.

11                  MR. RIGANO: Mr. Tanenbaum, do you  
12                  or one of your witnesses want to offer  
13                  an explanation with regard to the  
14                  failure to implement the revegetation  
15                  plan that was addressed in the 1998  
16                  stipulation?

17                  MR. TANENBAUM: Mr. Taveras can  
18                  describe the fact that the timing of the  
19                  revegetation wouldn't be consistent with  
20                  performing an expansion. There has been  
21                  no testimony -- if that's what you're  
22                  asking about -- as to why there was no  
23                  vegetation done immediately after the  
24                  1998 hardship application. I'll call it  
25                  granting an exemption. I believe that

1 the property owner did not have the  
2 income to provide for the revegetation  
3 at that time.

4 It is something that they have the  
5 income and they're devoting the money to  
6 do immediately if required, but they  
7 don't want to engage in throwing money  
8 away if the expansion were allowed that  
9 they would have to redo. That is the  
10 only hesitation for doing the  
11 revegetation.

12 MR. COWEN: Mr. Tanenbaum, what  
13 was the nature of this restaurant prior  
14 to 1997? Was it a pizza joint? What  
15 did they do there?

16 MR. TANENBAUM: It was a sit down  
17 restaurant, served Italian food. It has  
18 a bar as well.

19 MR. COWEN: The bar was there as  
20 well, so at any time between 1997 and  
21 now, was the nature of the restaurant  
22 changed?

23 MR. TANENBAUM: It included a  
24 catering facility and the distinction of  
25 a catering facility, the run off in



1 essence, sanitary sewer flow.

2 MR. COWEN: Did the owners have a  
3 certificate of occupancy from the Town  
4 of Brookhaven for that change?

5 MR. TANENBAUM: I've never seen  
6 one. I never asked for one.

7 MR. PELLEGRINO: They don't need  
8 one from the Town on that. That's with  
9 -- the approval comes from the Health  
10 Department, and the Health Department  
11 makes its approval based on the number  
12 of gallons you use in an operation per  
13 seat. It is done based upon whether  
14 you're using it as a restaurant or  
15 catering hall which is why when they say  
16 catering seats, you're allowed more  
17 seats to do it for catering than as a  
18 restaurant because as a restaurant,  
19 you're expected to turn these seats on a  
20 daily basis, on an hourly basis.

21 As a catering hall, they know that  
22 you're doing a function, you're booking  
23 a function for four hours or five  
24 hours. They know you're not going to  
25 turn that seat anywhere near that of the

1 restaurant, so the Health Department  
2 allows you a much less smaller flow for  
3 the number of seats that you're using  
4 for catering.

5 That's why based on 220, the  
6 Health Department allowed them to have  
7 220 to the 190 with no change in flow  
8 because the change of use was from  
9 restaurant to catering seating.

10 MR. PROIOS: Any other questions?

11 MR. TANENBAUM: Can I offer for  
12 your consideration the 2000 and 2001 tax  
13 returns from Michaelangelo's as well as  
14 the petition that supported the  
15 applicant?

16 MS. PRUSINOWSKI: Do you have any  
17 such returns for a period of time prior  
18 to these improvements being done?

19 MR. TANENBAUM: Returns?

20 MS. PRUSINOWSKI: You gave us tax  
21 returns; am I correct?

22 MR. TANENBAUM: Tax returns  
23 since. These are for 2000 and 2001.

24 MS. PRUSINOWSKI: Do you have any  
25 going back to a prior period of time,

1 say your client took over operation in  
2 1997.

3 MR. TANENBAUM: I can produce all  
4 those if you would like those  
5 immediately.

6 MR. PROIOS: You want to enter  
7 these as exhibits?

8 MR. TANENBAUM: Yes.

9 (2002 tax return was marked as  
10 Exhibit 9 in evidence; 2-19-03, D.S.)

11 (2001 tax return was marked as  
12 Exhibit 10 in evidence; 2-19-03, D.S.)

13 (Petition in support was marked as  
14 Exhibit 11 in evidence; 2-19-03, D.S.)

15 (Two photos were marked as Exhibit  
16 12 in evidence; 2-19-03, D.S.)

17 (Pictures were marked as Exhibit  
18 13 in evidence; 2-19-03, D.S.)

19 (Site plan was marked as Exhibit  
20 14 in evidence; 2-19-03, D.S.)

21 (Present and proposed diagram was  
22 marked as Exhibit 15 in evidence; 2-19-03, D.S.)

23 (Addition floor plan was marked as  
24 Exhibit 16 in evidence; 2-19-03, D.S.)

25 MR. PROIOS: We'll take any public

1                   comments now.

2                   MR. AMPER:   Richard Amper,  
3                   Executive Director of the Long Island  
4                   Pine Barrens Society.   The Society's  
5                   position is that the Commission is not  
6                   in a position to grant a hardship  
7                   approval for any number of reasons.   In  
8                   the first place, whether by virtue of  
9                   the sale that took place in 1997 or  
10                  1999, those both occurred after 1993,  
11                  and the purchaser knew or needed to  
12                  know, have the opportunity to know what  
13                  the restrictions would be on the  
14                  property.   Therefore, this is a  
15                  self-imposed hardship.

16                  Secondly, looking at the  
17                  chronology only, it would seem that  
18                  whether or not it turns out the  
19                  Commission ever formally granted a  
20                  hardship exemption or whether it was  
21                  part of some stipulation, the applicant  
22                  effectively helped themselves to the  
23                  minimum relief necessary to avoid the  
24                  hardship had you been disposed to  
25                  granting it.   They decided they needed

1 to do something to make the business  
2 viable and they went out and did it.  
3 You're not in a position to grant them  
4 further relief than what they took upon  
5 themselves to which you ultimately  
6 stipulated, eventually.

7 Another troubling portion of the  
8 testimony we heard is about the special  
9 or specific, site specific problems. In  
10 fact, the experts that were brought out  
11 today suggested that this project would  
12 not be viable whether it were not based  
13 upon its location in the Core  
14 Preservation Area of Pine Barrens or  
15 County Road 111, that there is not  
16 enough space to have a party that makes  
17 catering viable, and that would be true  
18 if this were in Ronkonkoma as opposed to  
19 here, so there is nothing unique about  
20 that that would require you to do this  
21 in this specific case because of  
22 something specific to the location to  
23 the nature of the property.

24 The fact that it has been  
25 previously cleared, I can't find

1 anything in the Pine Barrens Act that  
2 says that a piece of property doesn't  
3 enjoy the same protection in the Core if  
4 no one cleared it. There are some  
5 hardship considerations that don't seem  
6 applicable here.

7 We do seem to have continued  
8 confusion about what has been done prior  
9 to their appearance here in terms of use  
10 of this property. Are they, in fact,  
11 operating as a 220 seat facility which  
12 we approved for 190? Have they done  
13 other clearing or construction that this  
14 Commission has not approved?

15 So, not to complicate the hearing,  
16 but I think it is important for the  
17 Commission to deny -- you're required  
18 under law to deny the hardship  
19 application, but I think the Commission  
20 needs now to go further and find out  
21 what additional stuff that we didn't  
22 know about before today is being done,  
23 because it is not clear that even now we  
24 know all of what has been done without  
25 proper approvals.

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MR. PROIOS: Thank you.

Is there anyone else from the audience wishing to address the Commission on this matter?

If not, I'm going to close the public portion of the hearing.

Does the applicant have any other documents to submit?

MR. TANENBAUM: I want to bring to your attention that while I will provide prior years tax returns, the returns do show the loss for the prior, I believe, three years on each of the submitted returns.

MR. PROIOS: Thank you.

(TIME NOTED: 4:30 P.M.)

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3 CERTIFICATION  
4  
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67 I, DONNA L. SPRATT, a Notary  
8 Public in and for the State of New  
9 York, do hereby certify:10 THAT the foregoing is a true and  
11 accurate transcript of my stenographic  
12 notes.13 IN WITNESS WHEREOF, I have  
14 hereunto set my hand this 25th day of  
15 February, 200316  
17  
18   
19 DONNA L. SPRATT  
20  
21  
22  
23  
24  
25

## SS. :

COUNTY OF

[illegible]

Signed: \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2001.

NOTARY PUBLIC