

THE STATE OF NEW YORK
NYS CENTRAL PINE BARRENS COMMISSION

In the Matter of

Kealos Subdivision@Manorville
Compatible Growth Area Hardship Waiver Application

Location: Bruce Drive, Manorville, Town of Brookhaven

Suffolk County Tax Map Number
200-509-7-13.10,13.11

Riverhead Town Hall
200 Howell Avenue
Riverhead, New York 11901

Wednesday, January 18, 2012
3:10 p.m.

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

CENTRAL PINE BARRENS JOINT PLANNING AND POLICY
COMMISSION

PETER SCULLY, Chairman

MARK LESKO, Member

ANNA E. THRONE-HOLST, Member

SEAN M. WALTER, Member

BRENDA PRUSINOWSKI, Representative of Town of
Brookhaven Supervisor

SARAH LANSDALE, Representative of Suffolk County

JOHN PAVACIC, CPBC Director

JOHN MILAZZO, Pine Barrens Commission Attorney

JULIE HARGRAVE, Environmental Planner

JOHN MURPHREE

CAROL OSTROWSKI

THOMAS W. CRAMER, ASLA
CRAMER CONSULTING GROUP
P.O. Box 5535
Miller Place, New York 11764



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Facsimile: 212.557.2152

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I N D E X

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	6/21/2011	
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P R O C E E D I N G S

(Staff Exhibits A-E were pre-marked for identification.)

CHAIRMAN SCULLY: I would like to call the public hearing to order. I'll read from the public notice.

Pursuant to the New York State Environmental Conservation Law Article 57-0121(9) notice is hereby given the Central Pine Barrens Joint Planning and Policy Commission will hold a public hearing on January 18, 2012 on the matter of an application for a Compatible Growth Area (CGA) Hardship Exemption.

Name of the Project: Kealos Subdivision at Manorville CGA Hardship Waiver Application.

Applicant/Owner: Daniel Kealos.

Applicant's Representative: Thomas Cramer c/o Cramer Consulting Group.

Project Site Location: Bruce Drive, Manorville, Town Brookhaven.

Project Site Suffolk County Tax Map #s: 200-509-7-13.10, 13.11.

Project Description is as follows.

A CGA Hardship Waiver is requested to exceed the Vegetation Clearance Limit Standard (35%) and

1 Fertilizer Dependent Vegetation Limit Standard (15%).
2 The proposed development is a two-lot subdivision of an
3 81,340 square foot project site in the A Residence 2
4 Zoning district. Two undersized tax parcels (40,435
5 square feet and 40,905 square feet) were not held in
6 single and separate ownership at the time of the Pine
7 Barrens Act of 1993. The project site contains a
8 2,270 square foot single-family dwelling and accessory
9 structures. Existing clearing encompasses 37,583
10 square feet (46.2%), and 27,712 square feet (34.07%) is
11 landscaped. Additional clearing and construction are
12 proposed to develop a 2,000 square foot dwelling,
13 related appurtenances and a swimming pool.

14 I ask the members of the Commission to put
15 their names on the record.

16 MR. LESKO: Mark Lesko, Town of
17 Brookhaven.

18 MS. THRONE-HOLST: Anna Throne-Holst.

19 CHAIRMAN SCULLY: Peter Scully,
20 representing the governor of the State of New York.

21 MR. WALTER: Sean Walter, Member.

22 MS. LANDSDALE: Sarah Lansdale, Suffolk
23 County.

24 CHAIRMAN SCULLY: We'll hear first from
25 staff.

1 Julie?

2 MS. HARGRAVE: The Commission should have
3 received the staff report for the project. This is,
4 again, Kealos Subdivision Compatible Growth Area
5 Hardship Application.

6 The staff report has exhibits.

7 Exhibit A is 2010 aerial of the project
8 site, 2010 aerial of the surrounding area, and location
9 map.

10 B is the Subdivision Map titled "Pine
11 Barrens Restoration Plan Kealos Land Division" prepared
12 by Cramer Consulting Group dated June 21, 2011.

13 C is photographs of the project site taken
14 by the applicant.

15 D is a map of proximity of the project
16 site to Cranberry Pond, the nearest New York State
17 Department of Environmental Conservation mapped and
18 regulated freshwater wetland.

19 E is the CGA Hardship petition submitted
20 by the applicant.

21 Just to summarize again the project, the
22 project site is 81,340 square feet. It's in the two
23 acre residential zoning district. So it's undersized
24 for the zoning district it's in. The area was up zoned
25 from one acre to two acre in 1989, so that's before the

1 Pine Barrens Act of 1993.

2 The subdivision was originally created in
3 1976, and created these two lots that were 40,000 --
4 approximately 40,000 square feet each, a little over
5 40,000 square feet each. Since then, since the up
6 zoning, the parcels have effectively been merged
7 because they have been under common ownership, at least
8 that is the current situation.

9 So the applicant has applied to the Town
10 to unmerge them or subdivide them, but, again, they're
11 half the size of the lot area that's required in the
12 two zoning district. Because of that, the project is
13 development under the Pine Barrens Act and requires the
14 Commission -- actually it just requires that the
15 project comply with the Pine Barrens Land Use Plan, and
16 this project does not, and the applicant has submitted
17 a hardship because of that. And the Pine Barrens Land
18 Use Plan Standards, that it doesn't comply with the
19 Vegetation Clearing Limits and the Fertilizer
20 Vegetation Limits.

21 The project site is currently over
22 cleared, so any more clearing -- but that clearing
23 pre-exists. And under current conditions they're not
24 required to revegetate, but with this proposal, the
25 applicant proposes to clear 7,835 square feet, 9.6

1 percent of the site. So the total clearing limit would
2 be 56 percent and the standard allows only 35 percent.

3 But the applicant proposes to revegetate
4 21 percent of the parcel, of the project site total.
5 So they would bring the project site up to the standard
6 of 35 percent clearing and the natural area after
7 revegetation would be 65 percent. So that is meeting
8 the standard after revegetation.

9 Again, the applicant submitted a Hardship
10 petition, and the applicant's here to discuss that.
11 I'll just go over the additional summary of items.
12 After the hearing we may need to do more analysis, and
13 we'll receive the hearing transcript and take any
14 questions you have.

15 There was a coordination we did with the
16 Town and the Health Department and the DEC, and the
17 those responses are pending. The project will need
18 some kind of determination from the DEC for the
19 Endangered Threatened Species Act, Article 11, since
20 it's within 1,000 feet of tiger salamander habitat at
21 that time. The State Historic Preservation office
22 response is pending. And if this project were to go
23 ahead, we would need a complete revegetation plan or
24 that is just a suggestion, and if we could get your
25 recommendation when the hearing is over on how to

1 proceed with the application, that would be helpful.

2 Do you have any questions?

3 CHAIRMAN SCULLY: Questions for Julie?

4 I just have couple.

5 The aerial photograph makes it look like
6 these are two existing lots within the existing
7 subdivision, not much different than the lots around.

8 MS. HARGRAVE: That's right.

9 CHAIRMAN SCULLY: But I do notice
10 separate tax map parcels, they're currently merged.
11 And the objective of the pending subdivision
12 application is to restore them as separate lots. Is
13 that fair to say?

14 MS. HARGRAVE: That's correct.

15 The area is really built out under the
16 one-acre zoning in various vegetation that remains on
17 the lots and -- but yes, other lots in the area are
18 really one acre under the old subdivision.

19 CHAIRMAN SCULLY: Other questions for
20 staff?

21 If not, is there somebody here
22 representing the applicant?

23 MR. LESKO: I'm sorry. I do have a
24 question.

25 The revegetation offer, as it were, that

1 doesn't factor into the Hardship analysis, right? I
2 mean, you can't revegetate your way back out of a
3 Hardship requirement?

4 MS. HARGRAVE: Right. They still need a
5 hardship, but you can consider it.

6 MR. LESKO: It's just mitigation.

7 And just to be clear, the idea here, as
8 the Chairman mentioned, is to take -- there's a
9 residence already on the property, right?

10 MS. HARGRAVE: Right.

11 MR. LESKO: So it's basically to
12 resubdivide or subdivide back to A1 and then add a
13 second home.

14 MS. HARGRAVE: That's correct.

15 CHAIRMAN SCULLY: Any questions?

16 If not, Mr. Cramer needs to be sworn.

17 Whereupon,

18 THOMAS CRAMER,
19 after having been first duly sworn, was examined and
20 testified as follows:

21 MR. CRAMER: Good afternoon, members of
22 the Commission.

23 For the record, my name is Thomas Cramer,
24 principal of the firm of Cramer Consulting Group, with
25 offices at 54 North Country Road.

1 As was stated, this is, for lack of a
2 better term, an application for a subdivision. In
3 reality, it's really a variance, seeking a variance
4 from the Town Code that requires the two property
5 owners being the same to utilize the property in the
6 same ownership.

7 So they are two tax lots. They are two
8 maps -- they are two lots on the original filed map of
9 eight Farber homes. And we do have a Suffolk County
10 Department of Health Services permit on the new house.
11 This application was made to the Board of Zoning
12 Appeals originally by another applicant or another
13 consultant on this matter and the board withheld
14 decision until time where a hardship could be obtained
15 from this commission.

16 As stated, the property was previously
17 constructed. The lot 38 was built upon, and
18 approximately 94 percent of that site was cleared, or
19 92 percent. Both lots taken together, it equals
20 approximately 43 percent of the lot was cleared.

21 The entire area of this subdivision is one
22 acre lots. As you can see from the aerial photos, it
23 totally conforms with the character of the area.
24 They're -- within 500 feet there are no other lots that
25 are larger that could be subdivided. In fact, this is



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1 the only piece of property in that development that is
2 not developed, that's not constructed upon. It's a
3 wooded lot. My client bought it in 2005. His
4 intention always was to construct a home on the second
5 parcel. He was unaware of the regulations that would
6 forbid him to do that without getting the necessary
7 variances.

8 We became involved with the project and as
9 part of the proposal, we were including a restoration
10 of the site. The restoration would bring both lots
11 down to -- the clearing on both lots, once it's
12 restored -- to 35 percent, approximately, a little bit
13 less, which means restoration of approximately 17,000
14 square feet of the existing lot. We've restricted the
15 clearing on the new lot so that it maintains this
16 percentage of 35 percent overall.

17 With regard to the turf on the site,
18 whether the entire cleared area that's not paved or
19 buildings is non-native vegetation, my client does not
20 have irrigation. Nor does he fertilize his lawns. So
21 for the most part most of what's growing up there is
22 non-fertilizer dependent. However, for simplicity
23 we're considering the entire area that's left cleared,
24 that's not buildings or paving, as non-native
25 vegetation. This represents right now as approximately

1 -- let's see. We're reducing it by approximately half.
2 At present there's 82,000 square feet of lawn area or
3 non-vegetated. That's being reduced down to
4 approximately half than what's there existing.
5 Clearance before was -- essentially we're reducing it
6 by half than what was previously there as far as the
7 non-fertilizer dependent.

8 Now, the proposed 18.5 percent is shown,
9 which this is equal to approximately 14,600 square
10 feet. When the proposal would bring -- which is about
11 3 percent over the required or 2,400 square feet, but
12 again, it's significantly reduced from the existing
13 conditions that are even there now. So even though
14 we're above the non-vegetated requirement, it's still
15 represents a significant drop from what was there
16 originally. To look at and to consider restoring the
17 whole thing, would have a significant impact on my
18 client, as well as removing a lot of lawn that he does
19 have or a lot of the open space that he has around his
20 house that he's become accustomed to. And there is, as
21 I said about, 17,000 square feet that he is reducing at
22 this time. So we ask for a Hardship on that portion
23 alone.

24 The existing house -- or the proposed
25 house that's being laid out is significantly less than

1 a typical house, but, again, everything is reduced
2 down.

3 I have prepared a detailed submission to
4 the board. Part of it is included in the staff's
5 reports, but I ask that I have my document made part of
6 the record, also. If the Commission has a copy, if
7 not, I have a copy that I can give to staff.

8 (Handing.)

9 In that, as pointed out, there is a
10 economic analysis as far as the hardship itself. There
11 is a financial impact to my client. But besides that,
12 there is other more significant impacts that my client
13 can address later, if you wish.

14 With regard to the tiger salamander issue,
15 the pond located to the east, we are just on the edge
16 of a 1,000 feet radius from that pond. That pond is a
17 tiger salamander habitat. However, in between that
18 site and our site are a number of roads, and the area
19 that surrounds this property is not considered
20 conducive to tiger salamanders. While most of the area
21 to the south, north and east of the pond would be
22 considered ideal habitat for them. And those areas
23 also represent certainly more than 50 percent of the
24 area within 1,000 feet. It's my opinion that tiger
25 salamanders would not occupy this site; therefore,



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1 would not have any impact on them.

2 If there's any questions, I'd be glad to try to answer
3 them for the Commission.

4 MR. LESKO: I have a couple of questions,
5 if I may.

6 I'm a little confused and I might be
7 guessing the terminology wrong, but your client
8 purchased the property in '05; is that correct?

9 MR. CRAMER: That's correct.

10 MR. LESKO: And the property at that
11 point, the two lots are merged; is that right?

12 MR. CRAMER: The lots don't physically
13 merge, but both the Pine Barrens Law and the Town Code
14 says that if you have property that's less than the
15 required square footage for a particular zoning and you
16 own other property adjacent to it, you must utilize
17 that property in combination with the others. It's
18 always called a subdivision, but in reality it's not
19 really a subdivision because the subdivision in the
20 Town is defined as splitting up parcels that are shown
21 on the 1978 tax maps. This existed prior to that.
22 This was legally subdivided into individual lots. So
23 it's really a variance, even though everybody refers to
24 it as a subdivision.

25 MR. LESKO: Did your client reside in the

1 parcel with the home and buy the adjacent lot? Or did
2 your client buy the two-acre property?

3 MR. CRAMER: He bought two deeds, two
4 properties in 2005.

5 MR. LESKO: Okay.

6 MR. CRAMER: So there's a separate deed
7 on each one.

8 MR. LESKO: How many tax bills are there?

9 MR. CRAMER: There's two tax bills.
10 There's two separate deeds, two separate tax bills that
11 come out in relationship. That's how we were able to
12 obtain the Suffolk County Department of Health Services
13 approval on this lot.

14 And if you look in -- I don't know whether
15 you've had this, but here's the Health Department
16 approval on the individual lot. I can give you the
17 exact reference number, but it's included in the back
18 of our report, and it was issued in -- it's expired
19 now, but it still would -- I can't read the number on
20 this one.

21 John, maybe you can on that one.

22 But the Health Department, because it's a
23 separate lot, under the 1981 tax bills, they would
24 issue a permit on it.

25 MR. WALTER: This merged by operation of

1 the Brookhaven statute; is that correct?

2 MR. CRAMER: That's correct.

3 MR. WALTER: So if this was not merged,
4 you wouldn't even be here.

5 MR. CRAMER: No. That's not quite true
6 because it was merged before the Pine Barrens Law, and
7 there's a section of the Pine Barrens Law that does
8 talk about parcels if they're in common ownership prior
9 to the enactment of the law that it's considered
10 development when you separate the two.

11 CHAIRMAN SCULLY: They were merged by
12 virtue of the 1989 up zoning to A2.

13 MR. CRAMER: Right.

14 And whether it should have gone to A2, you
15 know --

16 MR. WALTER: I mean, it did. Now the
17 problem is how does Brookhaven unmerge these?

18 MR. CRAMER: We're before the Board of
19 Zoning Appeals. As I said, before the Board of Zoning
20 Appeals we have essentially 100 percent conformity to
21 the surrounding area, which is what they were looking
22 for.

23 MR. WALTER: If it wasn't merged, if this
24 was just a single and separate tax lot, somebody held
25 it single and separate for all of the years from '76

1 forward, you wouldn't be here.

2 MR. CRAMER: That's right.

3 And the clearing on that second lot could
4 be up to 35 percent. We're not proposing 35 percent
5 because we're blending the two to get the 35 percent.
6 The clearing on that second lot we're proposing about a
7 little over 19 percent clearing on that second lot as
8 it is because the lot with the house on it has been
9 over cleared. If this was a separate lot and they were
10 coming in to build it, we would be able to build clear
11 up to 35 percent on this lot. So we're about 15
12 percent below what could be cleared if this was an
13 individual lot.

14 MS. THRONE-HOLST: Is it going to stay in
15 the same ownership?

16 MR. CRAMER: No. He needs to sell this
17 piece of property. And once I'm through, he would like
18 to address the Commission also as far as from a
19 financial standpoint of what he essentially has to --
20 he has to sell -- develop this property and sell it in
21 order to save his house. Otherwise he's going to lose
22 his house, to be honest.

23 MR. LESKO: It's an economic hardship.

24 MR. CRAMER: That's correct.

25 MR. LESKO: So the economic hardship is

1 -- could you state where --

2 CHAIRMAN SCULLY: I think it would be
3 helpful -- as one of the points, I wanted to hear you
4 speak to that. Isn't the proof that we meet here in
5 order to approve this indicating that the Zoning Board
6 of Appeal would need to see it. Is that not true?

7 MR. CRAMER: That's correct.

8 CHAIRMAN SCULLY: Can you speak a little
9 bit to that on the record?

10 MR. CRAMER: The economic hardship
11 aspects of this particular application begins on page
12 26 of my report, and we go through and we address the
13 physical changes, the physical possibility of
14 developing this site. We've looked at the land
15 valuation of it. It is an economic hardship to my
16 client of approximately 237 -- \$237,000 would result to
17 the hardship that's resulting from it.

18 Under the layout, there was two lots
19 created in this property, as far as the subdivision
20 which was originally done. This is a use variance. No
21 other use could be utilized on this property. We would
22 have to take into account, the one parcel. The three
23 requirements that are necessary is that the site is
24 unique. It is the only undevelopable lot within the
25 area. All other lots in the subdivision in the general

1 area have been developed as single-family homes. No
2 other lots in the neighborhood could use the same
3 argument as found in this particular case. The
4 essential character of the neighborhood would remain
5 unchanged with the construction of new single-family
6 house. And the alleged hardship as a result of
7 Brookhaven Town's rezoning of the property to A1, if
8 the zoning had not changed the applicant could have met
9 all the clearing requirements --

10 CHAIRMAN SCULLY: You mean A2.

11 MR. CRAMER: A2, I apologize, A2 --
12 could have met all the clearing requirements for the
13 zoning category.

14 MS. THRONE-HOLST: Did the owner buy the
15 property before or after the zoning change?

16 MR. CRAMER: He bought it after the
17 zoning change. But, again, you know, most people are
18 unaware of the requirements that various municipalities
19 place on them. He was under the assumption he had two
20 tax bills, he had two deeds, that he had two pieces of
21 property. It wasn't until he tried to develop the
22 other piece of property and sell it that he found out
23 that he couldn't do that.

24 CHAIRMAN SCULLY: Questions for the
25 applicant?

1 Questions for staff?

2 If not, does any member of the public wish
3 to be heard on this?

4 MR. CRAMER: Would you like to hear from
5 the owner?

6 Whereupon,

7 DANIEL KEALOS,
8 after having been first duly sworn, was examined and
9 testified as follows:

10 MR. KEALOS: Like Mr. Cramer said, I had
11 purchased this property with the assumption that I was
12 going to be able to develop the second lot, which was
13 told to me.

14 And in all honesty, this means everything.
15 I mean, this is my last stand to hold on to my house.
16 If this doesn't go through, I'm going to be forced to
17 sell my house and move.

18 I'm not a contractor. I'm not a builder.
19 I'm just a homeowner. I'm just trying to hang on.
20 That's really all I can say.

21 CHAIRMAN SCULLY: Questions for the
22 applicant?

23 Thank you, Mr. Kealos.

24 Whereupon,

25 RICHARD AMPER,

1 after having been first duly sworn, was examined and
2 testified as follows:

3 MR. AMPER: My name is Richard Amper. I'm
4 executive director for the Long Island Pine Barrens
5 Society, 545 East Main Street, Riverhead.

6 Well, let's start with the 2005 purchase
7 and the definitions of a self-created hardship. I
8 guess if you dismissed it on JCJC, we can dismiss it
9 here, too. But at the time we suggested to you that so
10 long as an applicant can come here and say they simply
11 had no knowledge that the law prevented you from making
12 these purchases subsequent to the 1993 passage of the
13 Pine Barrens Act, somehow or other that makes it all
14 right. I would ask that the Commission make no
15 determination and that any grant of an extension be
16 granted by the applicant so that the determination on
17 tiger salamander habitat by the DEC is determined prior
18 to the determination of this body.

19 I may need some clarification from the
20 applicant on this. I'm reading a portion of his
21 submission in which it suggests that a maximum of 15
22 percent would be required, and he said 19 percent, but
23 I'm reading 18.05 percent is proposed.

24 I guess what I'm trying to understand is,
25 is he suggesting that if he only cleared 15 percent of

1 the property, he wouldn't need the hardship? And yet
2 he wants to clear 18 percent of it. I guess Ms.
3 Hargrave pointed out that they want to allow space for
4 the possible addition of a swimming pool and so forth.
5 It's important for us to understand could he meet the
6 clearing requirements if he cleared only 15 percent?
7 Can I get an answer to that? Is that a "yes" or "no"
8 question? Or is it already over cleared as it is?

9 I'm not understanding the contrast between
10 the 15 and the 19.

11 MR. CRAMER: I don't understand what
12 you're saying.

13 MS. HARGRAVE: The 15 percent standard is
14 the fertilizer-dependent vegetation standard. And the
15 applicant proposes to have the site at 18 percent. So
16 that's what the 15 and 18 percent is. The clearing is
17 different. And the project site is currently over
18 cleared, and it's over fertilized, too, I think.

19 MR. AMPER: But would it meet the
20 requirement for non-fertilized if it were 15 percent?

21 MS. HARGRAVE: No.

22 MR. CRAMER: 15 percent is the required
23 non-native vegetation portion. It's not fertilized or

24 --

25 MR. AMPER: Non-native.



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1 MR. CRAMER: Non-native -- required to
2 have 15 percent non-native. But for simplicity,
3 whatever is cleared and not in paving or building, we
4 are considering that it's non-native or turf
5 non-fertilizer.

6 MR. AMPER: So you're proposing 18.05,
7 but if you could meet 15, you'd meet the standard; is
8 that right?

9 MR. CRAMER: That's correct.

10 MR. AMPER: Well, the applicant might
11 want to consider reducing that by 3 percent.

12 And then finally, the economic analysis is
13 just terrific. The value of the development parcel
14 with a Hardship approval is \$275,000 minus \$38,000
15 which represents, as I understand it, is .4 Pine
16 Barrens credits. So the value would be then \$237,000.
17 So the representation being made to this commission is
18 that you would be depriving the applicant of \$237,000
19 worth of value. I would suggest that may cost them a
20 little money to build the house and that you are
21 permitted to grant him only the minimum relief
22 necessary, not the maximum relief sought. That's all.

23 CHAIRMAN SCULLY: Thank you, Mr. Amper.

24 Does anyone else wish to be heard on the
25 application?

1 Other discussion or questions of staff?

2 MR. WALTER: So I'm not sure why we're
3 here again. Are we hear because it merged, or are we
4 here because we have over cleared?

5 MR. MILAZZO: I can try.

6 According to the deeds, his seller bought
7 the parcel, one lot, in 1985, never checkerboarded the
8 parcel.

9 His client bought both parcels from the
10 same seller, put them in the same names. Even though
11 he took two deeds, they never were separate. His
12 seller got them in '85. He acquired them in 2005. The
13 parcels were -- in the intervening time there was an up
14 zoning. If you subdivide a parcel in the Pine Barrens,
15 under the law that's development. If it was single and
16 separate in '85 or when he purchased them, his seller
17 had checkerboarded them, he wouldn't need Commission
18 approval because development of a single and separate
19 lot that existed on the map in June 1, 1993 was
20 non-development. He doesn't have it. So he has a
21 development application before the Commission.

22 MR. WALTER: That's the part I
23 understood.

24 MR. MILAZZO: He doesn't conform because
25 he's over cleared now and he's over fertilized. When

1 he does this subdivision, he will need to clear more
2 and he want to fertilize the same amount. And then he
3 wants to propose mitigation by revegetating and
4 fertilizing less. So the town's EBA said we can't
5 grant this approval to unmerge the parcels, to split
6 them, until you get commission approval. And that's
7 why he's before you today for two reliefs -- one
8 clearing and one fertilizer dependent vegetation.

9 MR. LESKO: Should this issue have come
10 up at the 2005 closing on the property pursuant to the
11 title search? If you're buying a separate lot and have
12 an intent to develop it, wouldn't you ask your attorney
13 or your title company what the zoning is? Isn't that a
14 basic question?

15 MR. CRAMER: Normally you would. But
16 time and again, I've had clients that have run into
17 this problem just because they were never informed
18 about it, even as far as there's covenants on property.
19 Some attorneys are better than other attorneys. Some
20 let them know. Some follow through. Yes, buyer should
21 beware on these things. My client bought it -- he
22 should have -- the attorney probably should have
23 advised him on this. It wouldn't necessarily appear in
24 the title report. He had CO's for the property.

25 MR. LESKO: Did he originally intend to

1 development the property or did he intend --

2 MR. CRAMER: His intent was to buy the
3 property and to eventually do what he's doing now. He
4 was unaware what he would have to go through in order
5 to be able to build it. He was just under the
6 impression that he had two deeds, two tax bills and
7 that he had two pieces of property that he could
8 develop. It's not that -- yes, he should have known.
9 His attorney should have advised him. He didn't find
10 out this until later on.

11 We are not proposing to leave it the way
12 it was. We're trying to bring it back into conformance
13 as far as with the clearing limits, to reestablish the
14 site, bring it back into 35 percent maximum clearing.

15 We are proposing to restore 17,000 square
16 feet of the property. In doing this, we're also
17 reducing down the amount of non-fertilizer or
18 non-native species on the site. We're reducing those
19 also. But because of clearing for the other house,
20 it's not down to quite the 15 percent that's required.
21 We're still about 3 percent above that, and it's about
22 24,000 square feet that still remains, and we're asking
23 for a hardship on that. There might be some areas
24 where we can reduce it down a little bit more, maybe
25 pick up a percent or half a percent, but essentially

1 we're asking for a variance. We could square it off a
2 little bit and maybe pick up another percent if the
3 board so wishes.

4 CHAIRMAN SCULLY: Could we clarify, is it
5 your client's intention to actually develop the
6 property himself or just to sell the lot?

7 MR. CRAMER: Just to sell the lot. As he
8 said, he's not in construction. He's not a builder.
9 He's just looking to sell the lot to get out. It's an
10 existing lot in an existing development. It's the only
11 lot within this entire area.

12 MR. LESKO: He's going to sell it for
13 275, is that the intention?

14 MR. CRAMER: At the time that's what the
15 market was. If he can -- you know, that's what the
16 market bears.

17 CHAIRMAN SCULLY: Did we clarify under
18 oath whether he purchased the two properties for a
19 single price, whether there were a separate price at
20 the time of purchase?

21 MR. MILAZZO: We can submit the deed,
22 which has all the information.

23 MR. CRAMER: Do you understand the
24 question, what he asked?

25 CHAIRMAN SCULLY: At the time of the

1 purchase in 2005, did you pay a single sum for both
2 pieces of property? Did you pay for them individually.

3 MR. KEALOS: No. The end result was one
4 price.

5 CHAIRMAN SCULLY: What was the price?

6 MR. KEALOS: It was 470.

7 CHAIRMAN SCULLY: Other questions for the
8 applicant?

9 Any questions for staff?

10 Any other member of the public wish to be
11 heard?

12 If not I guess we'll close the hearing and
13 hold it for further deliberation for the board.

14 Any guidance for staff as to how they want
15 to proceed?

16 MR. LESKO: I think we should hear from
17 the DEC about the tiger salamander issue. That's a
18 valid point. Other than that, I don't think we have
19 any guidance.

20 MR. PAVACIS: Also for the State Historic
21 Preservation Office, those two information items are
22 outstanding. Also, for a lead agency, we've
23 coordinated with a number of other agencies. I don't
24 think we've heard from the other agencies. But we'll
25 definitely need the input of the Commission in terms of

1 the sense of where the Commission wants to go on this
2 project next meeting in February, because the decision
3 is due by the March meeting, March 21st.

4 MR. LESKO: You know one thing -- I
5 should have done this while the hearing was open.

6 CHAIRMAN SCULLY: Do you want to reopen
7 it? It's still open.

8 MR. LESKO: The crux of your hardship
9 argument is that based on the assumption that
10 properties were \$275,000, I'm assuming you're arguing
11 that if you can't sell it, the only value it has is the
12 equivalent value of the Pine Barrens credit. And so --
13 but I just have a hard time -- if it's undeveloped, I
14 have a hard time seeing that one acre being worth
15 \$275,000. So if you want to put on the record now or
16 maybe supplement in writing -- off of the top of my
17 head, I don't know what one acre of property in
18 Manorville zone residential would be worth. I think
19 it's a lot less than 275. If it's less than 100, then
20 that really kind of undercuts your economic hardship
21 argument. If it's basically a wash in terms of value,
22 then I would like to know if you have any alternative
23 economic argument.

24 MR. CRAMER: That was based on the
25 multiple listings that were found at the time --



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1 MR. LESKO: Listing for the house?

2 MR. CRAMER: No. That's for the vacant
3 lots.

4 MR. LESKO: What was that?

5 MR. CRAMER: As stated, he bought this
6 property for over 4, which included both the house and
7 the property. And that was back in 2005. And also as
8 stated by the applicant --

9 MR. LESKO: So you're saying one acre
10 parcels zoned residential are now in a multiple listing
11 service at 275 a parcel?

12 MR. CRAMER: I don't know right now
13 because this report was --

14 MR. LESKO: Going back to '05?

15 MR. CRAMER: This report was written back
16 in November. Well, that was when the report was
17 completed. The actual analysis was done prior to that.

18 MR. LESKO: Well, what was the date of
19 the multiple listing?

20 MR. CRAMER: I would have to go back and
21 check our records. I don't have that in here. But it
22 was -- at the time of when this document was prepared,
23 that's what the listings were.

24 MR. LESKO: Is that in your report?

25 MR. CRAMER: Yes. It's in the report.

1 MR. LESKO: Is there an example of a
2 listing or something like that?

3 MR. CRAMER: No. Again, that would be in
4 our files. I would have to take a look at that. There
5 is a date, two multiple listing numbers that are in the
6 report -- again, I don't know where they are, but they
7 are within two-and-a-half miles of the subject site
8 that were done, and, again, that's in your document
9 that was provided by staff.

10 But as I said, the real impact to my
11 client would be not even the money, but the loss of his
12 house that he would be forced to sell if he cannot
13 utilize this property.

14 CHAIRMAN SCULLY: Thank you.

15 Other questions for the applicant or
16 staff?

17 Mr. Pavacis, given the outstanding
18 information of items that the Commission needs to get
19 from other levels of government, should we just close
20 the hearing and keep the record open?

21 MR. PAVACIS: Yes. That would be my
22 recommendation.

23 MR. CRAMER: I want to point out that the
24 circles and squares map that was -- it's referred to
25 circles and squares map, from the State Historical

1 Office does not show any pre-historic or historic
2 resources within this site. The nearest one is located
3 to the east of this property and on page 24 of the map,
4 and essentially that's the map -- that's what they
5 refer up at the state. I doubt whether they're going
6 to come back with anything.

7 CHAIRMAN SCULLY: Understood.

8 If there is nothing further, we'll close
9 the hearing and leave the record open as recommended by
10 staff.

11 (Time noted: 3:53 p.m.)
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C E R T I F I C A T I O N

I, PATRICIA GUARINO, a Shorthand Reporter and Notary Public, within and for the State of New York, do hereby certify that I reported the proceedings in the within-entitled matter, on January 18, 2012, at 200 Howell Avenue, Riverhead, New York, and that this is an accurate transcription of these proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this day of , 2012.

PATRICIA GUARINO



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Facsimile: 212.557.2152

One Penn Plaza
Suite 4715
New York, NY 10119