

THE STATE OF NEW YORK
NYS CENTRAL PINE BARRENS COMMISSION

In the Matter of

Island Water Park
Compatible Growth Area Hardship Waiver Application

Location: The project site is located on the south
side of New York State Route 25 (Middle Country Road),
2,376 east of Wading River-Manorville Road,
Calverton, Town of Riverhead

Suffolk County Tax Map Number
600-135-1-7.34

Suffolk County Water Authority

Operations Center
2045 Route 112
Coram, New York 11727

Wednesday
November 16, 2011

The above-entitled matter came on for
hearing at 3:07 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 CRAMER, ASLA
CRAMER CONSULTING GROUP

P.O. Box 5535
Miller Place, New York 11764



ESQUIRE
an Alexander Gallo Company

AR-TI Recording

Telephone: 212.349.9692
Facsimile: 212.557.2152

One Penn Plaza
Suite 4715
New York, NY 10119

I N D E X

PINE BARRENS

EXHIBITS	DESCRIPTION	PAGE
A	Draft Staff Report	4
B	2011 Suffolk County Tax Map	4
C	Application and Hardship petition	4
D	Page 2 of the EAF Part I	4
E	Grading Plan Cramer Consulting Group	4
F	Site Area Plan Cramer Consulting Group	4
G	Layout Plan Cramer Consulting Group	4
H	NYSDEC New Mining Permit	4
I	Prior Approved Plan on 1994 Aerial Photograph	4
J	Proposed Plan on 2010 Aerial Photograph	4
K	Proposed Clearing on 2010 Aerial Photograph	4
L	Photographs of the site submitted by the applicant	4
M	NYSDEC SEQRA Negative Declaration	4

APPLICANT'S

EXHIBITS

DESCRIPTION

PAGE

1 Environmental Benefits document 13

2 Cable Systems Obstacles documents 13

3 Letters, 12/22/2000, 12/21/2000 14

4 Letter, 4/8/11 18

with attached map of EPCAL

non-clearing limits



ESQUIRE
an Alexander Gallo Company

AR-TI Recording

Telephone: 212.349.9692
Facsimile: 212.557.2152

One Penn Plaza
Suite 4715
New York, NY 10119

1 P R O C E E D I N G S

2 (Pine Barrens Exhibits A - M were
3 pre-marked for identification.)

4 CHAIRMAN SCULLY: I would like to call
5 the public hearing to order. I apologize for the
6 delay.

7 I'll read from the public notice and I'll
8 provide it to you so you can just enter it into the
9 record.

10 Pursuant to New York State Environmental
11 Conservation Law Article 57-0121(9), notice is hereby
12 given that the Central Pine Barrens Joint Planning and
13 Policy Commission will hold a public hearing on
14 November 16, 2011 on a matter of the application for a
15 Compatible Growth Area Hardship Exemption.

16 Name of Project: Island Water Park CGA
17 Hardship Waiver Application.

18 Applicant/Owner: Eric Scott.

19 Applicant Representative: Thomas Cramer
20 c/o Cramer Consulting Group.

21 Project Site Location: South side of NYS
22 Route 25. (Middle Country Road), 2,376 feet east of
23 Wading River-Manorville Road, Calverton, Town of
24 Riverhead.

25 Project Description is as follows:

1 The applicant requests a Compatible Growth
2 Area Hardship Waiver to clear an additional 1,700
3 square feet of natural vegetation or 0.09 percent of
4 the 41.9 acre project site, which is currently 87.8
5 percent cleared. The project site is in the Planned
6 Recreation Park Zoning District where the clearing
7 standard is 65 percent. The project includes the
8 development of an 11 acre unlined lake to tow water
9 skiers and wakeboarders. Other water activities
10 include non-motorized uses such as car-top boating,
11 canoes, kayaking, sailing, swimming and SCUBA diving.
12 In addition, a 52,000 square foot facility is proposed
13 for uses including office, restaurant/snack bar,
14 fitness center/spa, warehouse/maintenance facility,
15 parking for 94 vehicles, an on site sanitary system and
16 areas to be restored with native vegetation.

17 Project Site Suffolk County Tax Map
18 Number: 600-135-1-7.34.

19 The hearing will be held at 3:00 p.m. on
20 November 16, 2011.

21 I ask the commissioners to put their names
22 on the record.

23 MR. LESKO: Mark Lesko, Commissioner.

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

25 MS. LANSDALE: Sarah Lansdale



ESQUIRE
an Alexander Gallo Company

AR-TI Recording

Telephone: 212.349.9692
Facsimile: 212.557.2152

One Penn Plaza
Suite 4715
New York, NY 10119

1 representing Steve Levy, Suffolk County.

2 MR. WALTER: Sean Walter, Riverhead.

3 CHAIRMAN SCULLY: Peter Scully,
4 representing the Governor of the State of New York.

5 We will now hear from staff.

6 Julie?

7 MS. HARGRAVE: You should all have in
8 front of you the staff exhibits for the hearing. I'll
9 just go through them. They are A through M.

10 A is the Draft Staff Report.

11 B is the current Suffolk County Tax Map
12 for the parcel.

13 C is the Application and the Hardship
14 petition.

15 D is the EAF Part I containing the
16 Description of the Action.

17 E is the Grading Plan prepared by Cramer
18 Consulting Group.

19 F is the Site Plan prepared by Cramer.

20 G is the Layout Plan prepared by Cramer.

21 H is the DEC Mining Permit from 2003.

22 I is the Prior Approved Plan on 1994
23 Aerial that was prepared by the applicant.

24 J is the Proposed Plan on the 2010 Aerial
25 prepared by the applicant.

1 K is the Proposed Clearing on the 2010
2 Aerial prepared by the applicant.

3 And L is the photographs submitted by the
4 applicant.

5 And M is the DEC Negative Declaration that
6 was issued on November 10, 2011.

7 The notice pretty much explains the
8 activities that are proposed. Again, the site is 41.9
9 acres. It's in Calverton in the planned location in
10 the Park Zoning District. This parcel was created
11 approximately around 2001 when the Town of Riverhead
12 subdivided the property. In 2003 the parcel was
13 approved from the Town of Riverhead.

14 The site again is a proposed waterski park
15 with the use of an electric cable tow system on an 11
16 acre unlined groundwater-fed lake approximately 32 foot
17 deep. And the activities again are kayaking, canoeing
18 and other water activities. A 52,000 approximately,
19 square foot building is proposed with a spa and
20 restaurant, meeting rooms and other facilities.

21 The applicant proposed to clear
22 approximately 1,700 square feet of existing vegetation
23 and remove some additional material to complete the
24 lake. And in 2003 the Town of Riverhead and DEC
25 granted approvals for the project, and at that time it

1 was two lined lakes for motorized boats. The motorized
2 boats are no longer part of the proposal. And the
3 project site is currently approximately 88 percent
4 clear and approximately 5 acres of the site will remain
5 natural. Combined with an additional 20 acres of
6 vegetation, the site will be approximately 59 percent
7 vegetated at the end of the project.

8 And, again, the Exhibit C contains the
9 applicant's hardship petition and their review of the
10 use variance criteria under the Town Law Section 267-b,
11 and the DEC issued a negative declaration for the
12 project.

13 The applicant is here to present.

14 CHAIRMAN SCULLY: Questions for Julie?

15 If not, the representative of the
16 applicant.

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 at
25 offices at 54 North Country Road, Miller Place.



ESQUIRE
an Alexander Gallo Company

AR-TI Recording

Telephone: 212.349.9692
Facsimile: 212.557.2152

One Penn Plaza
Suite 4715
New York, NY 10119

1 As was pointed out by staff, this is an
2 approximately 42 acre parcel. It has been previously
3 cleared. It's located in the EPCAL property. It has
4 quite a bit of history. The site was originally an
5 open field, and my client bought it. Originally my
6 client was looking at another site and it was suggested
7 that this site be used. And there was various
8 documentation. If the board has -- well, the
9 Commission has my submission. A lot of this is already
10 in there. There was also at the time a submission by
11 the Town of Riverhead and it was a determination from
12 the attorneys -- I believe it was the attorneys for the
13 Commission at that time who were -- James Rigano from
14 the firm of McMillan, Rather, Bennett & Rigano, and at
15 that time they said that this project would not be
16 under the Pine Barrens review in accordance with the
17 plan as was considered development within the EPCAL
18 center in Section 9.2.

19 At that time both the Town of Riverhead
20 and the New York State DEC issued permits for the
21 construction of a lined park, water park. It was two
22 lakes approximately -- I think it's 46 percent of the
23 site contain these two lakes. They were parallel, and
24 there were going to be power boats, and they were going
25 to be lined with clay.



1 During the construction of that site --
2 most of the site was proposed to be cleared at that
3 time. The restoration at that time was, for the most
4 part, was just seeded with grass in the area. As
5 construction began and excavation began, ground water
6 rose on the site. Apparently at the time when the
7 initial design was done ground water was at a low
8 point, and since that time it started to raise, so the
9 excavation started to flood. There was a decision made
10 to seek an amendment to the permit to eliminate the
11 lined ponds, but still use boats in it. Subsequent
12 design changes also included a motorcross track.
13 Because of these two -- because both the motorcross
14 track and putting boats within a lined -- an unlined
15 lake, there was a great deal of concern. There was a
16 positive declaration issued at the time by the New York
17 State DEC, a state agency, and there was also
18 litigation with regard to the project.

19 The litigation was finally finalized and
20 it was at that point approximately that I came on
21 board. There were several meetings held with the Town
22 of Riverhead with the New York State DEC, and we
23 redesigned the project to really take a look at what
24 was cleared already and preserve the existing areas
25 that were natural on the site in the design.



ESQUIRE
an Alexander Gallo Company

AR-TI Recording

Telephone: 212.349.9692
Facsimile: 212.557.2152

One Penn Plaza
Suite 4715
New York, NY 10119

1 Also, major consideration was the
2 elimination of any boats on the site. What's being
3 proposed now is a cable system that's been developed
4 over in Europe. I believe a German firm originally
5 started it. And it's a series of cable networks that
6 would be constructed on the site and they will be
7 electrically powered, and supposedly they only use --
8 each only uses the equivalent electricity of doing two
9 loads of laundry a day, so extremely low energy use and
10 there will be no fuels, fossil fuels on the site and
11 potential of degradation of the ground water in those
12 cases.

13 I know in the past we generally get
14 questions like why do you need a lake for water skiing
15 when we're totally surrounded by water. I know some of
16 you are water skiers, and a level flat surface is all
17 important in water skiing. I used to ski and even --
18 you know, it's very, very, very -- not very often that
19 you have conditions that are perfect in the natural
20 conditions. So these lakes are the best thing. This
21 was even figured optimum because it was already
22 cleared. There were trees immediately adjacent to it
23 that would further protect it.

24 I do have some information if anybody in
25 the Commission is interested as far as some of the

1 brochures, the environmental benefits of such a lake.
2 I think it's interesting to see. Of course they put
3 the best spin on it. And if anybody would like to see
4 one of the wake board project, give you an idea of some
5 of the -- they put obstacles in the lake as part of the
6 skiing.

7 I think at the time, there was a --

8 MR. LESKO: Mr. Cramer, would you like to
9 mark that and include it in the record as an exhibit?

10 MR. CRAMER: You can. They're not really
11 germane to the case. They're not in my original
12 packet.

13 MR. LESKO: Why don't we?

14 MR. MILAZZO: Numbers 1 and 2. We'll get
15 copies.

16 (Applicant's Exhibits 1 and 2 were so
17 marked for identification.)

18 MR. CRAMER: Okay. If you're going to
19 mark things into exhibits, I don't believe this was
20 originally in the package, but this is the letter
21 from -- the original letter on December 21, 2000 from
22 the law firm then representing the Commission and the
23 supervisor to the attorney for Island Water Park
24 stating that we would not have to come before the
25 board.



ESQUIRE
an Alexander Gallo Company

AR-TI Recording

Telephone: 212.349.9692
Facsimile: 212.557.2152

One Penn Plaza
Suite 4715
New York, NY 10119

1 MR. MILAZZO: That will be Applicant's
2 number 3.

3 (Applicant's Exhibit 3 so marked
4 for identification.)

5 MR. CRAMER: I should point out that it's
6 our position that we shouldn't have to come for a
7 hardship before the Commission. However, in order to
8 move this project along in a timely manner, we've
9 chosen this route to try to get things moving, get
10 things dead center.

11 What started originally was the New York
12 State DEC prior to their issuance of a mining permit
13 sought an opinion from the Pine Barnes Commission
14 whether the project conformed to the standards.

15 And there's some other issues that we have
16 that I'll mention later as far as our position that we
17 do not feel it necessary to come, but we are choosing
18 this route anyway to --

19 CHAIRMAN SCULLY: Can you focus on the
20 nature of the relief sought in the narrow?

21 MR. CRAMER: Certainly.

22 Again, the project is a substantial change
23 from what was originally proposed, as was pointed out
24 by the staff. What we're looking at now is
25 approximately 59 percent of the site will be either

1 natural or re-vegetated. 12 percent of the site
2 remains as far as in natural state that wasn't cleared
3 on the original mining applications, mining and lake
4 applications. Those areas would be preserved with the
5 exception of a small island of natural vegetation.

6 And if you look in -- I believe the staff
7 has it as a -- where is the staff's comments?
8 Here it is. This is a reduced size from what we had,
9 but in their Exhibit J you can see the site as it
10 presently exists, the amount of clearing that has taken
11 place. It's a little bit clear. I do have larger ones
12 that I can hand out for the Commission which will
13 probably be easier to see. These are the same ones
14 that were in my application. I don't know if I have
15 enough for everybody.

16 (Handing.)

17 You can see superimposed on top of this
18 aerial photo is the outline of the lake and the
19 building and the proposed parking as it's been designed
20 now.

21 The circled area down in the southern
22 portion is the area of natural vegetation that will be
23 removed and that is -- there's a close-up of it on the
24 second page. That area, it's -- and John Pavacic and I
25 were out to the site. We visited it. Essentially



ESQUIRE
an Alexander Gallo Company

AR-TI Recording

Telephone: 212.349.9692
Facsimile: 212.557.2152

One Penn Plaza
Suite 4715
New York, NY 10119

1 within that area it consists of three pitched pines,
2 one crabapple, one Bradford pear, with a number other
3 small shrubs, including barberry in the understory,
4 Virginia creeper and things like that.

5 The entire site has been cleared in the
6 past. I have also provided in the package -- I think
7 Exhibit I shows what the site looked like in 1994. The
8 site was cleared. I remember as a boy scout going out
9 and camping on this particular piece of property and it
10 was totally open. It was previously disturbed. It was
11 disturbed after the mining. What we're looking for is
12 the relief of just clearing this small parcel of land.

13 All the other conditions -- all the other
14 standards are met within the -- and I've provided
15 discussions for each one of them, as I see the staff
16 did also. The only one that is questionable is the
17 clearing limit standards. Again, the New York State
18 DEC questioned this because the site plan that they had
19 in front of them showed a clearing that was only --
20 there was only 12 percent of the site natural existing,
21 and we were providing an additional clearing on the
22 site. That was because of permits that essentially
23 they had issued before, as well as the Town of South
24 Hampton.

25 CHAIRMAN SCULLY: Riverhead.

1 MR. CRAMER: Town of Riverhead.

2 The other issue is that we are within the
3 no clearing -- we're outside the no clearing limits of
4 the Town of Riverhead that they have established as
5 part of their town code. And there is a -- I don't
6 know whether the staff has provided a copy of that map
7 in the package.

8 MS. HARGRAVE: It's not in there. It's
9 in the application.

10 MR. CRAMER: Yes. It's in the
11 application. I also have a -- and I put this in as an
12 exhibit. It's in my application, but it's another
13 exhibit, 4.

14 What I'm handing out to you is a letter
15 from the Town of Riverhead attorneys stating that we
16 are in conformance with all the essential Pine Barrens
17 standards because we are within their -- we are outside
18 of the no clearing limits map that has been adopted by
19 the town.

20 If you're also interested, there's
21 sections of the code. I have copies of that for the
22 code, and we also complied with that.

23 But I will give you this, which is the
24 letter from the town attorney, as well as the map
25 adopted by the Town of Riverhead that shows our site



ESQUIRE
an Alexander Gallo Company

AR-TI Recording

Telephone: 212.349.9692
Facsimile: 212.557.2152

One Penn Plaza
Suite 4715
New York, NY 10119

1 outside of the no clearing limits.

2 MS. OSTROWSKI: That's dated what?

3 MR. MILAZZO: April 8, 2011.

4 (Applicant's Exhibit 4 so marked
5 for identification.)

6 MR. CRAMER: Just this April that we can
7 see that.

8 A month later is when the DEC -- we
9 provided this to the DEC, hoping that that would
10 address their concerns. However, the DEC still sent
11 over a letter to the Pine Barrens Commission asking for
12 their opinion, and we never received an answer for it.
13 There was much discussion, and it was felt after that
14 point that this hardship would be the best way to
15 proceed with it, putting together a hardship
16 application.

17 So, again, it's our position that we don't
18 necessarily have to be here, but to move it through the
19 process, we want to play it out.

20 MS. PRUSINOWSKI: Non-clearing limits
21 means you cannot clear, not that there are no limits?

22 MR. WALTER: When Mr. Cramer is done, I
23 can elaborate on what the --

24 MR. CRAMER: Well, I can do that. What
25 we've essentially done --

1 MR. LESKO: Can I ask a question before
2 we get to that?

3 The hardship application along with
4 making -- there's four tests that apply, and along
5 with making a lack of a reasonable return and along
6 with it will not alter essential character of the
7 neighborhood and the hardship has not been
8 self-created, isn't the core hardship the same, that
9 this is a unique hardship -- essentially it's a de
10 minimus, insubstantial piece of vegetation that's
11 non-contiguous, that consists of essentially --

12 MR. CRAMER: That's correct. There's
13 four tests, and I'll just --

14 CHAIRMAN SCULLY: I just want to caution
15 you that the Chair and Supervisor Lesko's concern that
16 we're having a rather broad conversation, one that
17 seems to continue to unfold about matters which, in my
18 opinion, are not pertinent to the application.

19 While the letter regarding the town map is
20 of interest to us, the map has never been before the
21 Commission and is of no real relevance to your
22 application.

23 MR. CRAMER: I beg to differ, Mr.
24 Chairman, because I think it does have influence
25 because it's our feeling that we don't necessarily have

1 to be here, however --

2 CHAIRMAN SCULLY: Instead of the half a
3 dozen times, but here you are, you don't need to say it
4 again.

5 MR. WALTER: I'm going to go on record as
6 a commissioner and say it absolutely has 100 percent
7 relevance.

8 CHAIRMAN SCULLY: Thank you.

9 MR. WALTER: And now I'm going to explain
10 why since you opened the door.

11 You see this here piece of property is
12 one piece of property and it's not necessarily been
13 subdivided. And what we did is we set aside, rightly
14 or wrongly, 35 percent of the land in conformance with
15 our code and the Pine Barrens Act. And it was the
16 position of the town that if we set aside the 35
17 percent of the land, that the remaining parcels that
18 were sold didn't have clearing standards on them
19 because we set aside this land. That's how the town
20 did it and they adopted it by local law. It was
21 done -- Mr. Cardinali (ph.) probably did that in 2006
22 or 7, and that's been the town's position pretty much
23 straight through.

24 CHAIRMAN SCULLY: Thank you.

25 MR. LESKO: The point is we have a

1 decision to make. We can make it on a very narrow
2 basis. Are you asking us to make this kind of almost
3 like a -- we call it a legal term, sua sponte, meaning
4 that we have no jurisdiction over this matter? I mean,
5 that's a whole different kettle of fish.

6 MR. MILAZZO: He's admitted to the
7 Commission's jurisdiction by submitting the application
8 and appearing for the hearing. I think that they're
9 not asking for a jurisdictional determination. They're
10 asking for a hardship based on the --

11 CHAIRMAN SCULLY: Let's rock and roll.

12 MR. CRAMER: We're not asking for a
13 jurisdiction determination. That is certainly much
14 more complicated and I feel will take much longer.

15 As you pointed out, there's the four tests
16 that have to be addressed under this hardship. The
17 applicant -- perhaps the most important is that the
18 applicant not realize a reasonable return, provided a
19 lack of return is substantially demonstrated competent
20 financial evidence.

21 What we have here is a piece of property
22 that in all essence cannot be developed, cannot be done
23 without additional clearing on the site. He is a
24 waterski park developer. This is why the property was
25 bought. Any project that comes into the site would



1 face the same type of problem, because the site is, you
2 know, overcleared. It is no longer -- 35 percent of it
3 is no longer natural. It can never be no longer
4 natural, if it even was. So it is absolutely worthless
5 to my client as far as whether -- you know, in
6 developing this.

7 It's a substantial impact, financial
8 impact on him if this is not approved. We have
9 designed the project so as the absolute minimum
10 disturbance of natural vegetation on the site. The
11 only portion is an extremely small wooded area that
12 doesn't include -- it only -- really three major
13 natural vegetation. The other vegetation on the site
14 is not native to the area and has colonized in on it.

15 The alleged hardship relating to the
16 property is unique. This is an extremely -- there are
17 no other properties like this in the Pine Barrens as
18 far as that have been cleared for this reason that had
19 previous approvals granted by the town and the state to
20 do the work. That work was being undertaken in
21 accordance with the approved plans.

22 And because of circumstances unbeknownst
23 to the owner, conditions changed which forced the
24 change of the plan. He has modified the plan several
25 times.

1 This plan that we have before us is, in my
2 opinion, extremely sensitive to the environment, to the
3 site and will provide a better development, ultimate
4 development from an environmental standpoint than what
5 was originally proposed.

6 The alleged hardship, it's not out of
7 character with the area. I mean, there is no -- the
8 site, the entire site will at some time be developed.
9 That was the intent of it. That's why it was given to
10 the Town of Riverhead, was to develop it. This is an
11 economic base.

12 The site in the proposed hardship is not
13 considered self-created in that the changes that
14 occurred were natural on it. He had no intention of
15 changing this, of his plans. He would have liked to
16 have done just exactly what it is. Part of what he
17 does is sell high-end waterski boats, and it was part
18 of a proving ground for the boats to demonstrate it.
19 That's no longer an option. It is just going to be a
20 waterski and a natural water park.

21 It is totally consistent with the town
22 zoning. It fits in with it. We have plans now
23 submitted to the town that are going through review.

24 The final -- as part of those plans that
25 have been submitted to the town, a restoration plan

1 will be included in that. I see that staff has made
2 some comments about providing the restoration plan.
3 We're going through a great deal of time and effort
4 with the town. I ask that the board -- that the
5 Commission render a decision on this in a timely
6 fashion. It will affect the economic outcome of it.
7 My client is waiting for loans that are coming through,
8 and the only way those loans will be granted is if the
9 thing is moving ahead and the major consideration is
10 the Commission's position.

11 As I said before, there was also, there
12 was concern -- I see the staff has stated as far as a
13 secret determination, this -- I just received this last
14 week. It is the negative declaration for the project.
15 It came in November 10th. So a negative declaration
16 has been issued on it based on the plan that we have
17 before us. And I would like to --

18 MR. MILAZZO: It's Exhibit M. It's in.

19 MR. CRAMER: If the Commission has any
20 questions, I will be glad to try to --

21 MR. LESKO: I have one question. In your
22 submission, is it true that even with this de minimus
23 clearing, this small amount of clearing, that the
24 revised project doubles -- approximately doubles the
25 amount of woodland that will remain on the site as



ESQUIRE
an Alexander Gallo Company

AR-TI Recording

Telephone: 212.349.9692
Facsimile: 212.557.2152

One Penn Plaza
Suite 4715
New York, NY 10119

1 compared to the original group plan?

2 MR. CRAMER: Yes. I probably didn't make
3 it clear enough in giving my presentation, but yes.
4 The original plan essentially left the restoration they
5 were calling for, which was seeding of the site. We're
6 proposing to go with native vegetation, restore areas
7 and it will be substantially more natural vegetation at
8 the end of the process than what was originally
9 proposed or approved by both the town and the state.

10 MR. WALTER: I have a question for
11 counsel.

12 This letter from McMillan, was that the
13 Pine Barrens Commission's attorney?

14 MR. LESKO: At the time it was.

15 MR. WALTER: You may want to call me
16 naive on this point, but if the Pine Barrens
17 Commission's attorney wrote the applicant a letter that
18 the Town Supervisor forwarded to them as evidence that
19 they're not subject to the Pine Barrens Commission,
20 it's sort of a principal of law that these types of --
21 something that is written by somebody will be construed
22 against them if there's issues with the way it's
23 written. And it seems to me that if -- and I've not
24 seen this letter before so I find this very
25 interesting.

1 MR. LESKO: The town has this letter.

2 MR. WALTER: I understand the town. But
3 that doesn't mean I had the letter.

4 MR. LESKO: Okay.

5 MR. WALTER: So if we wrote this letter
6 to the applicant saying he's not subject to this --
7 and Supervisor Lesko's right, we're not here on an
8 issue of jurisdiction, but if the applicant -- if we as
9 the Commission said he's not subject to it and he
10 bought it and relied on it, that's going to be
11 construed against the Commission. How do you not rely
12 on that as an applicant?

13 MR. LESKO: The letter was written in
14 2000 to the town. I'm not sure why Mr. Rigano wrote
15 the letter. I don't know if it was his project.

16 The other issue is the facts may have
17 changed since then. We have an application before the
18 Commission asking for a hardship approval, and here we
19 are.

20 I also direct your attention to the last
21 line. It says "are not required to be reviewed," which
22 is different than can't be reviewed. And so the letter
23 is something that we talked about a lot and in the
24 context of this case. Calverton was a big issue in the
25 case. It didn't exempt this project, as far as I know,

1 but Mr. Rigano is not here to answer questions on how
2 he wrote it and why he wrote it. I'm not sure it was
3 intended to be a blanket exemption of Calverton, and I
4 don't know the context of why it was written.

5 MR. WALTER: I understand that, but I
6 think the Town Supervisor at the time, he puts context
7 on it by forwarding it to the applicant. And while
8 we're not here on -- we're here on seven-tenths of an
9 acre, is that what we're talking about?

10 MR. CRAMER: Yes.

11 MR. WALTER: We are here on seven-tenths
12 of an acre. So what is the solution on seven-tenths of
13 an acre?

14 MR. CRAMER: We're at one twenty-fifth of
15 acre is what we're here on.

16 MR. LESKO: I would think that the
17 solution is if he's here for hardship, that's the
18 context of today's hearing.

19 MR. CRAMER: Again, not to repeat myself,
20 I don't think we should be here to begin with. We've
21 chosen this route to move it ahead, to move this
22 project ahead. I think we have an extremely good case
23 for it. It's only one twenty-fifth of an acre, what
24 we're talking about.

25 MR. WALTER: This is the path of least

1 resistance is why you're here.

2 MR. CRAMER: This is the past of least
3 resistance, hopefully it is. Again, I felt that we had
4 to put this on the record, and I would have liked to
5 have made this quite short because it is really -- you
6 know, it's 1,700 square feet of space that we're
7 talking about. That's the hardship that we're looking
8 for. You know, it's extremely minute. It's a little
9 tiny piece. Most of it is even natural vegetation.
10 But I feel that we have to put it on the record just to
11 protect my client's interest.

12 CHAIRMAN SCULLY: Questions for Mr.
13 Cramer?

14 There are no questions for Mr. Cramer.
15 Does anybody in the public wish to be
16 heard?

17 MR. LESKO: Let me just ask one question.
18 1,700 square feet is basically like a
19 40-by-40 spot box?

20 MR. CRAMER: 1,700, no.

21 MR. MURPHREE: 1,600 square feet.

22 MR. LESKO: About as big as this room.

23 MR. CRAMER: Yes. One twenty-fifth of an
24 acre, a little tiny spot.

25 MR. LESKO: That's all.

1 CHAIRMAN SCULLY: No member of the public
2 wishes to be heard?

3 Any further questions of the applicant by
4 staff?

5 Any questions for staff?

6 MR. WALTER: What is the normal -- when
7 we receive a hardship application as de minimus as
8 this, what is the normal procedure? I mean, what
9 remedies do we fashion in approving or not approving
10 something like this?

11 MR. LESKO: It would be a resolution,
12 right? We would ask staff to prepare a resolution.

13 MR. WALTER: That would --

14 MR. PAVALIC: We're not looking at the
15 degree of hardship or the degree of relief. The
16 Commission -- basically the pathway of the Commission
17 is the applicant has applied for a hardship waiver, has
18 accepted that fact. The Commission is accepting that
19 fact, I'm assuming. Therefore, we would move ahead to
20 prepare a resolution based on where the Commission
21 wants to be in terms of its decision.

22 MR. WALTER: So that's very
23 straightforward then.

24 MR. LESKO: Can we get that done by the
25 next meeting?

1 CHAIRMAN SCULLY: Other questions for
2 staff or for the applicant?

3 MS. LANSDALE: I have a question.

4 The clearing -- just to revisit that for a
5 second, the original clearing on the site, was that
6 done in conformance with the permit from DEC?

7 MR. CRAMER: The original permit on the
8 site essentially cleared the whole site. If you look
9 in the -- did you include the original approved plans?

10 CHAIRMAN SCULLY: The short answer, yes.

11 MR. CRAMER: Yes.

12 MS. LANSDALE: That's all I needed to
13 know.

14 CHAIRMAN SCULLY: Any other questions for
15 Mr. Cramer?

16 Okay. I guess we'll close the hearing for
17 further deliberation of the Commission.

18 Thank you, Mr. Cramer, for being with us
19 today.

20 MR. CRAMER: Thank you. It was a
21 pleasure, Peter.

22 (Time noted: 3:42 p.m.)
23
24
25

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 November 16, 2011, at
2045 Route 112, Coram, New York, New York, and that
this is an accurate transcription of these proceedings.

IN WITNESS WHEREOF, I have hereunto set my
hand this day of , 2011.

PATRICIA GUARINO



ESQUIRE
an Alexander Gallo Company

AR-TI Recording

Telephone: 212.349.9692
Facsimile: 212.557.2152

One Penn Plaza
Suite 4715
New York, NY 10119