

THE STATE OF NEW YORK  
NYS CENTRAL PINE BARRENS COMMISSION

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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

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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.



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

2 CENTRAL PINE BARRENS JOINT PLANNING AND POLICY  
3 COMMISSION:4 PETER SCULLY, Chairman  
5 MARK LESKO, Member

6 ANNA E. THRONE-HOLST, Member

7 SEAN M. WALTER, Member

8 BRENDA PRUSINOWSKI, Representative of Town of  
Brookhaven Supervisor

9 SARAH LANSDALE, Representative of Suffolk County

10 JOHN PAVACIC, CPBC Director

11 JOHN MILAZZO, Pine Barrens Commission Attorney

12 JULIE HARGRAVE, Environmental Planner

13 JOHN MURPHREE

14 CAROL OSTROWSKI

15 THOMAS CRAMER, ASLA  
16 CRAMER CONSULTING GROUP17 P.O. Box 5535  
18 Miller Place, New York 1176419 ESQUIRE  
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21 Telephone: 212.349.9692  
22 Facsimile: 212.557.215223 One Penn Plaza  
24 Suite 4715  
25 New York, NY 10119

1

## 2                   I N D E X

3                   PINE BARRENS

4

## EXHIBITS

## DESCRIPTION

## PAGE

5

6

A       Draft Staff Report

4

7

8

B       2011 Suffolk County Tax Map

4

9

10

C       Application and Hardship petition

4

11

12

D       Page 2 of the EAF Part I

4

13

14

E       Grading Plan Cramer Consulting Group

4

15

16

F       Site Area Plan Cramer Consulting Group

4

17

18

G       Layout Plan Cramer Consulting Group

4

19

20

H       NYSDEC New Mining Permit

4

I       Prior Approved Plan on 1994 Aerial

Photograph

4

21

J       Proposed Plan on 2010 Aerial Photograph

4

22

K       Proposed Clearing on 2010 Aerial

4

Photograph

23

24

L       Photographs of the site submitted by

the applicant

4

25

M       NYSDEC SEQRA Negative Declaration

4

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## 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 with attached map of EPCAL non-clearing limits	18

## PROCEDINGS

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

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

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

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

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

Applicant/Owner: Eric Scott.

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

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

Project Description is as follows:



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



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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.



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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



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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.



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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.



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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.



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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



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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.



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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.

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.

Again, the project is a substantial change from what was originally proposed, as was pointed out by the staff. What we're looking at now is 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



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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.



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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



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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 --



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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



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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



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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



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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.



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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



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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



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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.



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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,



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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



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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.



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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?



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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



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## C E R T I F I C A T I O N

4

5 I, PATRICIA GUARINO, a Shorthand Reporter  
6 and Notary Public, within and for the State of New  
7 York, do hereby certify that I reported the proceedings  
8 in the within-entitled matter, on November 16, 2011, at  
9 2045 Route 112, Coram, New York, New York, and that  
10 this is an accurate transcription of these proceedings.

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

\_\_\_\_\_  
PATRICIA GUARINO



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