

PUBLIC HEARING  
HENRY DITTMER CORE PRESERVATION

December 16, 2015  
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<p style="text-align: right;">Page 1</p> <p>1 -----x 2 HENRY DITTMER CORE PRESERVATION 3 AREA HARDSHIP WAIVER APPLICATION 4 5 1 INDEPENDENCE HILL, FARMINGVILLE, NEW YORK 11738 6 -----x 7 December 16, 2015 8 3:06 p.m. 9 10 PRESENT: 11 JOHN PAVACIC, Executive Director/Acting as Chairman 12 ED ROMAINE, Member 13 SEAN WALTER, Member 14 DON MCCORMICK, Representative 15 ANNA THRON-HOLST, Member 16 BRENDA PRUSINOWSKI, Representative 17 KYLE COLLINS, Representative 18 MARTY SHEA, Representative 19 ANDY FRELENG, Member 20 CAROL SHOLL, Commission Staff 21 JOHN MILAZZO, Commission Staff 22 JUDY JAKOBSE, Commission Staff 23 JULIE HARGRAVE, Commission Staff 24 LARRY HYNES, Commission Staff 25 ALSO PRESENT: 26 RICHARD AMPER, Long Island Pine Barrens Society 27 RICHARD SCHEYER, Attorney for Henry Dittmer 28 MIKE NOVELETTI, Code Enforcement Officer 29 HENRY DITTMER, Owner/Applicant 30 JAMES EAGAN, Owner/Applicant 31 *****</p>	<p style="text-align: right;">Page 3</p> <p>1 Road 21, south of Rustic Road, Yaphank. 2 The Suffolk County Tax Map Number is: 3 200-529-5, Lot 35 and the project 4 description is: Request for a Core 5 Preservation Area Hardship Permit to 6 develop a 10,000 square foot wooden 7 property, a single-family residence, 8 individual septic system, related 9 infrastructure and accessory structures, 10 and development of Chesterfield Avenue, an 11 unopened paper road. The proposal is a 12 Type II Action pursuant to the State 13 Environmental Quality Review Act. 14 I'll then hand that to the 15 stenographer, and so, I'd just like to ask 16 the members of the commission to identify 17 themselves, please, starting with 18 Supervisor Romaine. 19 MR. ROMAINE: Yes. Brookhaven Town 20 Supervisor, Ed Romaine. 21 MR. PAVACIC: John Pavacic, 22 Executive Director and acting as chair. 23 MR. WALTER: Sean Walter, member. 24 MR. FRELENG: Andy Freleng, 25 representing Town Executive and Sub-County</p>
<p style="text-align: right;">Page 2</p> <p>1 MR. PAVACIC: Folks, I'd like to 2 welcome you to the public hearing portion 3 of our agenda, and for the record, my name 4 is John Pavacic, Executive Director of the 5 Commission. I'm also currently the acting 6 chair. I'm going to read into the record 7 the notice of public hearing. I'll then 8 provide it to the court stenographer. 9 "Pursuant to the New York State 10 Environmental Conservation Law Article 11 57-0121(10) and the Central Pine Barrens 12 Comprehensive Land Use Plan, notice is 13 hereby given that the Central Pine Barrens 14 Joint Planning and Policy Commission will 15 hold a public hearing on Wednesday, 16 December 16th, 2015, on the matter of a 17 Core Preservation Area Extraordinary 18 Hardship Waiver." 19 The name of the project to be heard 20 is the Henry Dittmer Core Preservation Area 21 Hardship Waiver Application. The 22 owner/applicant is Henry Dittmer/James 23 Eagan and Richard Scheyer. The project 24 site location is the East side of Yaphank 25 Middle Island Road, also known as County</p>	<p style="text-align: right;">Page 4</p> <p>1 Executive, Steven Malone. 2 MR. PAVACIC: We have our rep from 3 Southampton. 4 MR. COLLINS: Kyle Collins, Town 5 Planning and Developmentalist 6 Administrator, Town of Southampton, 7 representing Supervisor, Thron-Holst. 8 MR. PAVACIC: At this point, I'd 9 like to ask Ms. Julie Hargrave to please 10 come forward and just speak about the 11 application first and then we'll hear from 12 the applicant. 13 MS. HARGRAVE: Thank you and good 14 afternoon. You each should have a copy of 15 the staff report and exhibits before you 16 and the applicant has a copy as well. I'm 17 just going to briefly go through it and 18 then the applicants here to present in the 19 public hearing. The Staff Exhibits include 20 A through F: 21 A is aerial of the project site and 22 also of the surrounding area, showing about 23 a half a mile radius with the core and 24 compatible group area down below. 25 B is the property survey that was</p>

<p>Page 5</p> <p>1 submitted with the application showing the 2 property is approximately 153 feet off of 3 East Yaphank &amp; Middle Island Road, County 4 Road 21 and on an undeveloped, unopened 5 road on Rustic Avenue.</p> <p>6 C is the photographs of the private 7 site taken by the staff. It includes an 8 additional set of photographs taken on -- 9 so it includes November 12th, 2015 10 photographs and also December 10th, 2015. 11 The first day we were out there, it was 12 raining and the pictures didn't come out 13 very well. So you can see some views north 14 and south of the site and also the existing 15 drawing that runs on County Road 21. This 16 project site is behind that property in the 17 woods, and again, on an undeveloped road, 18 so you can't really see it except for 19 looking at the woods.</p> <p>20 D is some of the historical 21 accounts of endangered and threatened 22 species that were listed on this date, 23 DEC's website, and also a map of the area 24 of the project site and you can see a large 25 wetland area across the street on the west</p>	<p>Page 7</p> <p>1 a street approximately 4,290 square feet of 2 clearing to develop that road. This is 3 considered development under the Pine 4 Barrens Act according to the definition in 5 the act.</p> <p>6 The site, we don't know exactly if 7 the site contains any endangered species. 8 The applicant didn't provide that 9 information and we haven't received a 10 response from the Natural Heritage Program 11 on that.</p> <p>12 There appear to be no wetlands 13 shown on the survey. Not sure also about 14 whether they actually are, if the surveyor 15 looked for wetlands or if there are in fact 16 none. It's not in the wild we see a river 17 area.</p> <p>18 We're waiting for a copy of a 19 response -- I'm sorry. We received the 20 response from the State for Preservation 21 Office that no cultural resources would be 22 impacted from the project, and County Road 23 21 is identified in the Pine Barrens Plan 24 as a scene of resource, so that's listed in 25 the staff report.</p>
<p>Page 6</p> <p>1 side of 21.</p> <p>2 And F is a copy of the Tax Map, so 3 you can see the location of the property 4 and its placement among many protected 5 lands owned by the County, Suffolk County, 6 and nature preserved properties to the 7 north of the site and south and west across 8 the road, and to the south is a large 9 101-acre parcel owned by the County as 10 well.</p> <p>11 And G is a copy of the Pine Barrens 12 Credit Clearinghouse letter that the 13 applicant received when they applied for a 14 Letter of Interpretation to carry out from 15 2010 and they received an outpatient of .1 16 credit.</p> <p>17 And H is a copy of the applicant's 18 letters that relate to this proposal and 19 their petition addressing the hardship 20 criteria in the Pine Barrens Lot. So just 21 to go through the staff report a little 22 bit, this is, again, the 10,000 square foot 23 parcel on an undeveloped road. It's in the 24 5-acre residential zone district. It's 25 wooded and it would require development of</p>	<p>Page 8</p> <p>1 Just to go over the composition of 2 the area where the project site is located, 3 again, it's in the Core Preservation Area 4 and there appears to be approximately seven 5 houses developed in this span of County 6 Road 21 where the site is located and one 7 commercial property.</p> <p>8 Once you go north or south of the 9 core, you can see in the aerial, there are 10 other developed properties in the 11 compatible growth area. Those predated the 12 Pine Barrens Act, developed course, and the 13 subdivision development on Rustic Road 14 north of the site, and also south, just off 15 the map, there's a subdivision as well that 16 creates the Act.</p> <p>17 There are no roads in this -- in 18 the swamp of the core where the project 19 site is. There are no -- There are houses 20 in front on 21, but there are no roads 21 going east or west.</p> <p>22 There are approximately 35 parcels 23 in the core that are protected through 24 conservation provisions that are in the 25 vicinity of this project site through the</p>

<p style="text-align: right;">Page 9</p> <p>1 credit program, and so, again, the owner 2 received a Letter of Interpretation for one 3 .1 Pine Barrens Credit and that was never 4 appealed by the applicant. It says it's 5 Type II under SEQRA. The Health Department 6 Approval would be pending, that application 7 has not been made, and the applicant would 8 need permits from the Town of Brookhaven 9 for building permits at least.</p> <p>10 The questions we have on page 6, 11 just to have the applicant address the 12 hardship criteria, whether they ever plan 13 to appeal their credit allocation if 14 they've attempted to sell the property to 15 the County, since there is significant 16 County holdings in that area, and perhaps 17 it could be picked up by the County, if 18 there were interested -- both parties. The 19 feasibility of developing Chesterfield 20 Avenue and obtaining that curb cut on the 21 County Road 21, whether there are any 22 wetlands.</p> <p>23 The opposite side of Chesterfield 24 Avenue, if you look at the Tax Map, is a 25 County Nature Preserve Land, so it's not --</p>	<p style="text-align: right;">Page 11</p> <p>1 MS. HARGRAVE: I believe A-5. 2 MR. ROMAINE: Which is five-acre 3 residential, so on the basis that they 4 don't meet the zoning, even should a 5 hardship be granted, they'd have to take 6 other steps at the Town, and for the Town 7 to allow development on 100 x 100 parcel in 8 an area that was zoned 5-acre -- I think 9 the best word I can use is problematic, and 10 lastly, to develop this parcel, would they 11 not have to apply for a permit to the Town 12 of Brookhaven to open this paper street and 13 pave it?</p> <p>14 MS. HARGRAVE: Yes. 15 MR. ROMAINE: Have they submitted 16 an application to do such, since part of 17 this paper street, the adjoining property, 18 I believe is owned by the County and 19 there's a residential unit immediately to 20 the west of this property on the north side 21 of Chesterfield that may also have to 22 concur on the highway law for this to be 23 opened; is that not correct?</p> <p>24 MR. MILAZZO: That's our 25 understanding.</p>
<p style="text-align: right;">Page 10</p> <p>1 I'm not sure if the parties would agree to 2 opening that road -- both parties, and not 3 sure if the proper project needs any 4 variances as well. That's everything.</p> <p>5 MR. PAVACIC: Any questions for 6 Ms. Hargrave?</p> <p>7 MR. ROMAINE: I just have a few 8 quick questions. You mentioned there were 9 seven residential areas and one commercial. 10 Were they all built prior to the Pine 11 Barrens Act?</p> <p>12 MS. HARGRAVE: I believe so. I 13 believe so. I have an aerial from 1994.</p> <p>14 MR. ROMAINE: Obviously, I'm asking 15 a question because I used to represent that 16 area in the legislation in the 80's and all 17 those structures were there when I 18 represented, including the telephone 19 company, so I'm very familiar with this 20 area and I believe they were all there 21 prior to the Pine Barrens Act. So nothing 22 has been developed along this way since the 23 Pine Barrens.</p> <p>24 The town zoning on the property is 25 listed as what?</p>	<p style="text-align: right;">Page 12</p> <p>1 MR. WALTER: I don't think they 2 have to concur.</p> <p>3 MR. MILAZZO: That's a legal 4 question. We should let the applicant 5 address that issue.</p> <p>6 MR. ROMAINE: Right. I'm raising 7 that question because I want to know if 8 they have done the research on what the 9 requirements are, what the requirements are 10 for a road opening permit and a road 11 construction permit, and maybe the 12 applicant can address that because, quite 13 frankly, if the road can't be open or if 14 there's impediments for doing so or if 15 there's a standard that they can't meet, 16 all this application is moot.</p> <p>17 MR. WALTER: It's unfortunate for 18 us because I'd like to see the zone board 19 of appeals weigh in on this proposal.</p> <p>20 MR. ROMAINE: We have an excellent 21 chairman in the zoning board of appeals.</p> <p>22 MR. FRELENG: There appears to be 23 separate lots -- they appear. I just want 24 to confirm that's single and separate; one 25 south and one east of the subject property.</p>

<p>Page 13</p> <p>1 MS. HARGRAVE: South?</p> <p>2 MR. FRELENG: I'm sorry, east and</p> <p>3 west.</p> <p>4 MS. HARGRAVE: Lot 36 is another</p> <p>5 application by this applicant, Dittmer,</p> <p>6 that will be on your agenda next week.</p> <p>7 That is a 4,000 square foot lot. I believe</p> <p>8 it's one separate and single lot near that</p> <p>9 material to show that. Lot 34, it's not</p> <p>10 developed -- I'm not sure -- and --</p> <p>11 MS. PRUSINOWSKI: Julie, do you</p> <p>12 have the single and separate search? If 35</p> <p>13 and 36 are not single and separate, then</p> <p>14 this is premature.</p> <p>15 MS. HARGRAVE: I had that question,</p> <p>16 if they're the same owner, how can they be</p> <p>17 single and separate? But I think they have</p> <p>18 been kept in different names.</p> <p>19 MR. ROMAINE: Could I ask a</p> <p>20 question to my other colleague from</p> <p>21 Brookhaven? Single and separate has to be</p> <p>22 held single and separate from what time</p> <p>23 forward?</p> <p>24 MS. PRUSINOWSKI: That depends on</p> <p>25 the date of the upgoing of the property.</p>	<p>Page 15</p> <p>1 MR. SCHEYER: Mr. Chairman, members</p> <p>2 of the board, I just received a pamphlet</p> <p>3 from the secretary, so I never checked to</p> <p>4 read it, but here is one from me, which</p> <p>5 will make this much quicker.</p> <p>6 I want to answer first one of the</p> <p>7 questions from the supervisor. This is a</p> <p>8 single and separate lot. This one is</p> <p>9 bought in 1971 and has been single and</p> <p>10 separate ever since long before the Pine</p> <p>11 Barrens existed.</p> <p>12 MR. ROMAINE: That isn't the</p> <p>13 standard for single and separate, as you</p> <p>14 know, Counselor.</p> <p>15 MR. SCHEYER: I know, but I'm</p> <p>16 giving you the date. It's never been</p> <p>17 attached to any other, never been</p> <p>18 subdivided from any other, and in this</p> <p>19 pamphlet, which I'm going to give you --</p> <p>20 it's very short -- the single and separate</p> <p>21 search is attached.</p> <p>22 MR. MILAZZO: Is this the same as</p> <p>23 you submitted earlier?</p> <p>24 MR. SCHEYER: No.</p> <p>25 MR. MILAZZO: Okay. I'd love to</p>
<p>Page 14</p> <p>1 Its got to go back to when these were</p> <p>2 conforming lots typically.</p> <p>3 MR. ROMAINE: And you can give the</p> <p>4 planning department --</p> <p>5 MS. PRUSINOWSKI: Our planning</p> <p>6 department can give that date, yes.</p> <p>7 MR. ROMAINE: It will be helpful if</p> <p>8 you can provide it because this is another</p> <p>9 application coming in. The planning</p> <p>10 department should say that they have to be</p> <p>11 held single and separate from this date</p> <p>12 forward, and I assume there's a chain of</p> <p>13 title search that will be done to confirm</p> <p>14 that.</p> <p>15 MS. PRUSINOWSKI: Yes.</p> <p>16 MR. ROMAINE: Just curious.</p> <p>17 MS. PRUSINOWSKI: For the</p> <p>18 applicant.</p> <p>19 MR. ROMAINE: All County Clerk</p> <p>20 coming out of me.</p> <p>21 MR. PAVACIC: Are there any other</p> <p>22 questions from the Commission for Ms.</p> <p>23 Hargrave?</p> <p>24 At this time, I'd like to hear from</p> <p>25 the applicant, please.</p>	<p>Page 16</p> <p>1 get a copy of that.</p> <p>2 MR. SCHEYER: I gave him six or</p> <p>3 seven.</p> <p>4 I'll make it very brief because I</p> <p>5 have one witness. Mr. Dittmer is the owner</p> <p>6 of this property. It belonged to his</p> <p>7 father before him in Manorville, as you</p> <p>8 know, it's in the core. It is single and</p> <p>9 separately owned. There's a copy of the</p> <p>10 search in here. It was purchased in 1970.</p> <p>11 The reports have been submitted to</p> <p>12 the Pine Barrens. They never said it</p> <p>13 wasn't single and separate, but it's</p> <p>14 attached here to Exhibit A to these papers.</p> <p>15 Property is currently zoned A-5, but was</p> <p>16 not zoned A-5 in 1970. The aerial</p> <p>17 photograph they have, and so do we, it's</p> <p>18 Exhibit C of this book, and the title</p> <p>19 report fully shows that it was bought. As</p> <p>20 people from Brookhaven would know, if the</p> <p>21 lot is more than 60 feet wide, held in</p> <p>22 single and separate ownership and you owned</p> <p>23 it, it was not in the Pine Barrens, you</p> <p>24 could build on it as a matter of right</p> <p>25 under the Brookhaven code today.</p>

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1 MR. ROMAIN: Depending on when  
2 single and separate went into effect.  
3 MR. SCHEYER: Yes.  
4 MR. ROMAIN: For some lots, it was  
5 1937, for other lots it was 1958. It's all  
6 when zoning was in acted in effectuated  
7 within the town.  
8 MR. SCHEYER: When this was born in  
9 1970, it was zoned D residential at the  
10 time, and as subsequently --  
11 MR. ROMAIN: Zoning and single and  
12 separate are two different matters.  
13 MR. SCHEYER: I understand. I'm  
14 just explaining the history.  
15 Boarded in 1970, it was a D zoning  
16 at the time. It's been held the same way  
17 unsubdivided from any other since, so the  
18 search is in here.  
19 MR. WALTER: You said  
20 D-Residential. I'm sorry to interrupt, but  
21 what was the minimum lot size for D  
22 residential?  
23 MR. SCHEYER: Oh, much smaller than  
24 this. D residential, I think it was  
25 multifamily, the D residential.

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1 MS. PRUSINOWSKI: It was, yes, but  
2 I don't recall the single family lot size  
3 at this point.  
4 MR. ROMAIN: Could we have a  
5 report from the planning department  
6 regarding subsequent lots from this from  
7 which the applicant bring forwards the  
8 hardship so that people other than the town  
9 of Brookhaven who are members of this  
10 commission would know what each of the  
11 single and separate applies and the zoning,  
12 which is a separate issue, and when the  
13 rezonings were done, et cetera.  
14 MR. SCHEYER: I believe there were  
15 several rezonings since then.  
16 MR. ROMAIN: Yes.  
17 MR. SCHEYER: The current proposal  
18 is developed as court arranged as a  
19 100 x 100 foot parcel. As you've seen on  
20 the survey, it's Exhibit B here, the survey  
21 attached. It's on a paper street. We  
22 would have to improve 100 feet of the  
23 street to get to the house. I do know it  
24 is required for a road opening. This is  
25 the lot of a filed map. The road is on a

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1 filed map. I've gone through this law  
2 before, we could do it if you want again,  
3 but a road on a filed map, you have the  
4 right to open it. That's not development.  
5 You've had a lot of cases on that.  
6 MR. MILAZZO: Which cases are on  
7 that?  
8 MR. SCHEYER: What?  
9 MR. MILAZZO: Which cases are on  
10 that?  
11 MR. SCHEYER: I have some attached.  
12 MR. MILAZZO: That the road opening  
13 is not developed?  
14 MR. SCHEYER: Oh, no. I can supply  
15 that if you want.  
16 MR. MILAZZO: I would like them.  
17 MR. SCHEYER: Pilanski versus the  
18 town of Brookhaven is one of the clearest  
19 cases. If it's on the map -- a file map,  
20 you have the right to open it as a road if  
21 you own property on it. I'll give you the  
22 cases. I have a whole brief on it. We've  
23 argued this in the Supreme Court.  
24 MR. MILAZZO: My question was: You  
25 indicated that the Commission said opening

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1 the road is not a development. Which case  
2 is that?  
3 MR. SCHEYER: I will give you the  
4 cases.  
5 MR. MILAZZO: Okay.  
6 MR. SCHEYER: The problem which  
7 arises out of the characteristics of the  
8 property -- I'm going through the code --  
9 is not a personal hardship of the  
10 applicant. It's not a result of any action  
11 or inaction by the applicant who did not  
12 transfer any contiguous land and common  
13 ownership after 1993 when the Pine Barrens  
14 came into effect. There is no owned  
15 contiguous land since 1971.  
16 In addition to Provision C, this  
17 would not materially be detrimental or  
18 injurious to other property or improvements  
19 in the area. I have a witness to come in  
20 on that. The area will clearly indicate  
21 there are only four or five homes nearby  
22 and the secretary indicated that and it's  
23 all on --  
24 MR. MILAZZO: She's not a  
25 secretary. I'm sorry.

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<p>1 MR. SCHEYER: Excuse me?</p> <p>2 MR. MILAZZO: She's an</p> <p>3 environmental analyst.</p> <p>4 MR. SCHEYER: I'm sorry for using</p> <p>5 the wrong title.</p> <p>6 MR. MILAZZO: It's okay.</p> <p>7 MR. SCHEYER: In the case, there</p> <p>8 are four or five homes nearby on our side</p> <p>9 of the street and four or five more across</p> <p>10 the street, which could very well be</p> <p>11 classified under these cases as significant</p> <p>12 development by standard setup by this board</p> <p>13 and other cases which I'm going to relate</p> <p>14 and are attached.</p> <p>15 This would not increase the danger</p> <p>16 of fire or public safety or impairment of</p> <p>17 any resources of the area. There's no</p> <p>18 wetlands here. The waiver is the minimum</p> <p>19 release necessary because the property in</p> <p>20 its present status under the code can't be</p> <p>21 used. History wise, they applied for the</p> <p>22 clearing, as indicated, five years ago. A</p> <p>23 copy of the decision is also included in</p> <p>24 Exhibit D. Their interpretation was</p> <p>25 offered to Mr. Dittmer's 1/10 of a Pine</p>	<p>1 vacant wooded property on a paper street,</p> <p>2 which happened to abut nature trails and</p> <p>3 preserves. It was further indicated that</p> <p>4 there was going to be physical disturbance</p> <p>5 of the land, an increase of the use of the</p> <p>6 area and involved new destruction.</p> <p>7 They were given permission to clear</p> <p>8 the site within the core to build a</p> <p>9 single-family home, which they would</p> <p>10 classify as development, but was determined</p> <p>11 to have a hardship. The parcel had only</p> <p>12 two houses near it within a 500-foot radius</p> <p>13 and was vacant in the entire surrounding</p> <p>14 area. The case is attached.</p> <p>15 Two, second case: Evan Goldstein,</p> <p>16 Hot Water Street, Manorville, Town of</p> <p>17 Brookhaven. That parcel was surrounded by</p> <p>18 County property on three sides and existed</p> <p>19 prior to Pine Barrens Core Roadfront</p> <p>20 Exemption List. Commission determined that</p> <p>21 the application met all requirements for</p> <p>22 Extraordinary Hardship under Section</p> <p>23 57-0121 (10(a) and (c)), exactly what the</p> <p>24 applicant here is requesting under the same</p> <p>25 section. The only condition was that they</p>
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<p>1 Barrens Credit, which he rejected. The</p> <p>2 Pines Barrens Commission has in the past</p> <p>3 approved numerous Core Area Permits for</p> <p>4 building in the immediate area in examples,</p> <p>5 which I'm just going to mention some.</p> <p>6 Every one that I mention will be in your</p> <p>7 book under "cases."</p> <p>8 The case of Harold Marshall: North</p> <p>9 of East Bartlett Road, South of Schneider</p> <p>10 Lane, in Middle Island. Application for</p> <p>11 Core Preservation Area Hardship for a</p> <p>12 single-family home. The applicant is</p> <p>13 zoning A-5 Residential as here. That</p> <p>14 applicant has 3.9 acres of vacant wooden</p> <p>15 property on a paper street, no road.</p> <p>16 Circumstances identical to those before</p> <p>17 you. Topography was flat. Vegetation was</p> <p>18 mature oak-pitch pine forest.</p> <p>19 This Commission met on October 2nd,</p> <p>20 2002. We have the case number and the case</p> <p>21 here. Commission determined that the</p> <p>22 application met all requirements for</p> <p>23 Extraordinary Hardship and allowed clearing</p> <p>24 for a single-family home and approved the</p> <p>25 Core Hardship Exemption on this piece of</p>	<p>1 could not clear more than 20 percent of the</p> <p>2 total lot area. This was determined on</p> <p>3 September 17th, '97. At that point, it was</p> <p>4 a completely vacant area. No house</p> <p>5 anywhere near it.</p> <p>6 Next case is Anna and Alexander</p> <p>7 Czanecki: The property is located on the</p> <p>8 north side of North Street, west of Wading</p> <p>9 River Road, Manorville. The applicant</p> <p>10 wished to build a house on North Street,</p> <p>11 which was near the Peconic River Wild</p> <p>12 Scenic and Recreational Rivers corridor.</p> <p>13 Single-family home on a lot would</p> <p>14 comply with the Brookhaven Zoning and could</p> <p>15 have been built on this lot because it was</p> <p>16 single and separate. Same as this piece.</p> <p>17 Granted the Extraordinary Hardship under</p> <p>18 Section 57 -- same one -- (a) and (c). The</p> <p>19 same provisions we're asking for here and</p> <p>20 would approve without any conditions as a</p> <p>21 Core Area Hardship Exemption in their</p> <p>22 Meeting of September 26th, 2001. I'm</p> <p>23 almost done.</p> <p>24 The case of the application of</p> <p>25 Katherine Foster Screven: Property is</p>

<p style="text-align: right;">Page 25</p> <p>1 located north side of North Street, west of 2 Center Moriches Road, Manorville. 3 Application for Core Area Hardship to build 4 a single-family home under septic system in 5 an A-5 District, same as we're discussing 6 here. 7 Property was single and separate, 8 totally wooded, bordering a horse farm to 9 the west, and a single-family residence to 10 the east on the south side of North Street 11 with a vacant lot behind it. 12 Contrary to the approvals, they 13 completely cleared the lot, neutering of 14 all trees and the Commission afterwards, 15 based on complaints, that regular meeting 16 approved the Core Hardship Exemption as 17 submitted without conditions. Clearing was 18 done after the application was made and 19 subsequently approved. The applicant built 20 a single-family home with the permission of 21 Pine Barrens and cleared every tree. 22 The application of Dolores Blake, 23 1997 case: Applicant needs variances from 24 the Town of Brookhaven to build. Yet the 25 commission granted a Core Preservation Area</p>	<p style="text-align: right;">Page 27</p> <p>1 Given the size of the parcel, only 2 a 261 square-foot house could have been 3 built. The Board gave them the right to 4 build a full scale house with clearing on 5 the site, which is far more severe than 6 this application. 7 And the Woodstock Company 8 application made in July of '98 on a lot 9 which is 40 x 100, same filed map we're 10 discussing here (two blocks away.) At that 11 time, you could build on a 40 x 100 single 12 and separate in the Town of Brookhaven 13 before they increased it to 60 feet. 14 However, this particular parcel had no road 15 on the map or anywhere else. It required 1 16 280-A Application to build a road or 17 right-of-way. It did not even exist on the 18 map. This lot did not come in for a 19 Hardship Exemption because the 20 Clearinghouse allocated one full Pine 21 Barrens Credit based on the fact they had 22 apparently been approved by the Town on an 23 earlier code. It had no road, no road 24 frontage, and it was grossly substandard to 25 the ordinance and would not have been</p>
<p style="text-align: right;">Page 26</p> <p>1 Hardship, allowed them to subdivide 5 acres 2 into three lots containing less than 2 3 acres each in an A-2 Zone, didn't meet 4 zoning, but it required variance from the 5 Town of Brookhaven. Yet the Extraordinary 6 Hardship was granted by the board under the 7 same provisions we requested here. 8 Then we have the interesting 9 application of Rita Kristiansen on the east 10 end of Forge Road in Calverton: It should 11 be noted, the majority of this property was 12 certified wetland. The applicant asked 13 permission to build a single-family home on 14 .2 of an acre, which is 8,000 square feet. 15 Hardship Request Hearing was held March 16 20th, '96. The Commission found that this 17 small parcel met all of the requirements of 18 the Extraordinary Hardship under (a) and 19 (c), exactly what we're talking about here. 20 Exactly what we're requiring, the lot was 21 smaller; required variances from ZBA to be 22 built. The lot was only 8,700 square feet 23 in an A-10 Zone. Our parcel is an A-5 Zone 24 and was 10,000 feet. There were units in 25 the immediate vicinity, but not close.</p>	<p style="text-align: right;">Page 28</p> <p>1 single and separate at the time the 2 application was made to the Pine Barrens. 3 The applicant didn't go further because he 4 was offered a full credit and he took it. 5 All these cases are listed here 6 under cases fully printed out, the whole 7 case. 8 Conclusion: Mr. Dittmer owned this 9 property since 1970. It was a buildable 10 parcel, again, under D-Residence. The 11 property was subsequently upzoned by the 12 Town in a series of upzoning, which rounds 13 up today at A-5. In 1995, we arguably can 14 argulate it, but it is single and separate 15 and was not in the core. This thing could 16 be built. 17 In 1995, it was placed in the Core 18 of Pine Barrens for all the reasons 19 explained before, this is a paper street. 20 The application wishes to pave 100 feet of 21 it. He rejected the 1/10 of a credit, far 22 less than any similarly situated parcel has 23 received Pine Barrens, including a 40 foot 24 parcel previously mentioned. 25 He wishes to develop the property</p>

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1 now, which is the best use for it under  
2 Sections (a) and (c), all the cases  
3 submitted above under the same provision of  
4 the code approved by this Commission. We  
5 have shown you numerous examples and can  
6 provide more that were not on any Road  
7 Frontage Exemption List that was acceptably  
8 approved, but not when the time map was  
9 created.

10 In cases to hold that if you are on  
11 a paved or paveable road, it would be  
12 considered non-development under decisions  
13 that have been submitted before. I will  
14 get those to you. The roadway is  
15 considered non-development. It is in the  
16 core, complies with the code of the Town of  
17 Brookhaven and is single and separate  
18 parcel in excess of 60 feet. If other  
19 precedents are to be followed, this should  
20 fall within.

21 We're asking the Commission to do  
22 two things: Grant a waiver that has been  
23 done in previous applications of the strict  
24 criteria of the Pine Barrens.

25 Allow us to go to Brookhaven for a

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1 building permit and build a house on this  
2 single and separate lot in an area that is  
3 pretty well developed. As you all know,  
4 when they were developed is not the issue.  
5 It's what's not on ground that counts and  
6 there's houses all around here.

7 I would like at this time, which is  
8 all I have to say, it's all in the book, we  
9 have one other witness, Mr. Noveletti, the  
10 code expert among other things, who will  
11 give you a very quick presentation also and  
12 I'll get together with Mr. Milazzo and give  
13 whatever he needs.

14 MR. MILAZZO: I would just like the  
15 information on your assertion that the  
16 development of a road is not development  
17 under Article 57.

18 MR. SCHEYER: We have a bunch of  
19 cases with it where you found that. I'll  
20 get them to you.

21 MR. MILAZZO: Very well.

22 MR. WALTER: Can I ask Counsel a  
23 question? I'd ask the witness a question,  
24 but you're not putting the witness on that  
25 I'd like to ask questions, so I won't

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1 blind-side you.  
2 If we gave you a full credit, would  
3 this satisfy your client?  
4 MR. SCHEYER: I have to ask him.  
5 He's sitting in the back. I'd have to go  
6 out and ask him. I can't answer that,  
7 but --

8 MR. WALTER: I would have asked  
9 him, but didn't want to blind-side him.  
10 Maybe you can ask him that question.

11 MR. SCHEYER: I will ask him that  
12 question. If you want my suspicion, he  
13 might. The 1/10 of the credit allocation  
14 is ludicrous. As you know, the building  
15 lot is worth far more than \$7,000 or  
16 \$8,000.

17 MR. FRELENG: Before we raise  
18 edification, on what grounds would we issue  
19 you additional credit?

20 MS. PRUSINOWSKI: It was never  
21 appealed.

22 MR. FRELENG: It was never  
23 appealed.

24 MR. SCHEYER: Well, he decided not  
25 to get credits. He wants to build it.

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1 MR. MILAZZO: Did he buy this  
2 parcel?  
3 MR. SCHEYER: He inherited it. His  
4 father bought it in 1970. His father  
5 passed away and he inherited 10 or 15 years  
6 ago. Same people, same -- he took his  
7 father's estate. His father was also  
8 Henry, but it was bought in 1970. Is that  
9 45, 50 years ago? This is not a  
10 subdivision or a speculative thing. He had  
11 it. It has not been merged with anything  
12 else. It's been sitting there at his  
13 property since then and when you formed the  
14 Pine Barrens, this was a building lot.

15 MR. WALTER: This is what I would  
16 call an exercise in esoteric real property  
17 law, that I suspect that if we do go into  
18 executive session and start to talk about  
19 things, certain things are going to fall  
20 into place. If you can ask your client  
21 that, that might be important.

22 MR. SCHEYER: I will. Do you want  
23 me to do it right now?

24 MR. WALTER: The rest of your case  
25 will be fine. You don't even have to



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1 answer it today.  
2 MR. SCHEYER: I will get back to  
3 you on that. Can I call Mr. Noveletti,  
4 because I want to get you out of here.  
5 MR. PAVACIC: Are there any other  
6 questions for Mr. Scheyer?  
7 MR. SCHEYER: I know nothing about  
8 Pine Barrens. I wouldn't know one if I was  
9 holding it.  
10 MR. PAVACIC: Are there any other  
11 questions for Mr. Scheyer from the  
12 Commission?  
13 You have your other witness then,  
14 please.  
15 MR. SCHEYER: Yes, please. Thank  
16 you.  
17 MR. PAVACIC: Are you an attorney,  
18 sir?  
19 MR. NOVELETTI: No, I'm not.  
20 MR. PAVACIC: Can you swear him in?  
21 MIKE NOVELETTI, the witness herein,  
22 having been first duly sworn by a Notary Public of  
23 the State of New York, was examined and testified  
24 as follows:  
25 MR. NOVELETTI: My name is Mike

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1 Noveletti. I live at 8 Stillwaters Lane,  
2 West Hampton Beach, New York. I do  
3 environmental consultant work. I'm a code  
4 enforcement officer in New York State,  
5 building inspector, and I routinely do --  
6 address land issues and evaluations of  
7 properties with development construction  
8 and potential development. I'm going to  
9 explain to you by examples what the impacts  
10 are of this proposed project relative to  
11 four examples that I'll read to you that  
12 have already previously been approved in  
13 this neighborhood as a developed area.  
14 MR. MILAZZO: I'm sorry to  
15 interrupt, sir. Can you just define "in  
16 this neighborhood?" What does that mean?  
17 Is that 5 feet? 10 feet? A mile? 10  
18 miles? One I see is in the Town of  
19 Southampton.  
20 MR. NOVELETTI: We're speaking  
21 about the road.  
22 MR. MILAZZO: How big is your  
23 circle? Your testimony was that, "in this  
24 neighborhood." I just want to know what  
25 does "neighborhood" mean to you.

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1 MR. NOVELETTI: The neighborhood  
2 means the locations and locus of the  
3 properties I'm about to tell you about.  
4 They're along the road and adjacent to the  
5 subject property.  
6 MR. MILAZZO: But my question is  
7 this -- Why don't you give your  
8 presentation and I'll probably ask the same  
9 question at the end.  
10 MR. NOVELETTI: Okay. The parcel  
11 belonging to the -- Mr. Dittmer, the  
12 subject property known as 200-529-5-35 is  
13 in the Core of the Preservation Pine  
14 Barrens. The area in which the parcel is  
15 located is classified by the Pine Barrens  
16 as substantially developed. The  
17 adjacent -- the apartments adjacent to this  
18 property are classified as substantially  
19 developed. Exhibits A, B, and C, A, being  
20 Core Preservation Area Permits, and B known  
21 as Central Pine Barrens Core Preservation  
22 Area existing development patterns and  
23 vacant lots, and C, as a Core Preservation  
24 Area Non-development parcel --  
25 Non-development parcel list, define the

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1 parcels that are approved in substantially  
2 developed areas.  
3 The Yaphank-Middle Island Road is a  
4 substantially developed area. The aerial  
5 photographs shown as 1, 2, and 3 are  
6 examples of cases approved or developed on.  
7 The aerial known as 1 as highlighted in  
8 blue, is on the front road exemptions  
9 list -- of the road front exception list  
10 and was developed on two sides along with  
11 numerous other parcels on the street. The  
12 area known as 2 is the 40 x 100 size lot,  
13 also highlighted in blue, which was the  
14 subject of an application known as the  
15 Woodstock Application. The parcel had  
16 building permits but was never developed.  
17 For this lot, the Pine Barrens issued one  
18 full Pine Barrens Credit.  
19 The four parcels approved for  
20 development by the Pine Barrens possess  
21 many issues which Mr. Dittmer's parcel does  
22 not share. The parcels listed for our  
23 purposes of example are 1, 2, 3, and 4  
24 before as follows:  
25 Example 1: The application of Seth

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1 Morgan with regards to parcels known as lot  
2 200-410-1-7.6 & 10. These parcels are land  
3 locked and 7 acres from the road, required  
4 an easement and more clearing than the  
5 Dittmer lot would require. The application  
6 was approved for development of multiple  
7 single-family houses.  
8 Example number 2: The application  
9 put forth by Janet DuMauro in regards to  
10 this parcel number 200-382-3-13, resides in  
11 wetlands which was required a wetland  
12 permit. Also, the parcel required more  
13 clearing than Mr. Dittmer's lot and was  
14 approved for construction of a  
15 single-family residence.  
16 Item number 3 --  
17 MS. PRUSINOWSKI: Sir, where are  
18 the items that you're referring to?  
19 MR. NOVELETTI: The Tax Map.  
20 MR. MILAZZO: First page.  
21 MS. PRUSINOWSKI: I'm trying to  
22 follow and I'm having a very difficult  
23 time.  
24 MR. MILAZZO: First page.  
25 MS. PRUSINOWSKI: So they're not

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1 maps?  
2 MR. NOVELETTI: No. I'm sorry. I  
3 guess I should have -- Tax Maps is numbers.  
4 We're doing the Tax Map numbers.  
5 Example 3: George Cachimpanis put  
6 in an application for Tax Map number  
7 200-300-3-29 required more clearing to  
8 construct a single-family home than the  
9 subject Dittmer lot.  
10 Example number 4: Theresa Cox put  
11 in an application for Tax Map number lot  
12 900-358-1-9 that required the Zoning Board  
13 approvals in order to build. Mr. Dittmer's  
14 lot does not, at least according to Mr.  
15 Scheyer.  
16 MR. MILAZZO: That seems circular.  
17 MR. NOVELETTI: The final exhibit,  
18 Exhibit D, we would like to present is  
19 regarding a parcel identified as Tax Map  
20 number 200-460-1-6, 6-acre parcel with  
21 building approval as well as clearing  
22 limits. The property is owned -- the  
23 property owner cleared 4 acres, much  
24 exceeding the clearing limits as shown on  
25 the aerial photograph of the property

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1 belonging to Exhibit D. Afterwards, the  
2 Pine Barrens declared the excess clearing  
3 of the parcel to be permissible.  
4 What we're trying to prove by  
5 providing these examples is that Dittmer's  
6 land belongs to an area classified as  
7 significantly developed, based on these  
8 exhibits, and along with other examples  
9 stated in this document and related  
10 documents, also including the core road  
11 front exemption list.  
12 The parcels meet the criteria of  
13 surrounding developed parcels. The  
14 development of this parcel will not effect  
15 or have a material detriment to any of the  
16 surrounding parcels or improvements to the  
17 area in which the subject property is  
18 located. Furthermore, it will not increase  
19 the danger of wildfire or endanger safety,  
20 also it will not cause substantial  
21 impairment to the resources of the core.  
22 Based on the previous approvals of the  
23 parcels Mr. Dittmer's 10,000 -- the subject  
24 property -- 10,000 square-foot lot, 6,000  
25 feet of which will be cleared is not out of

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1 character to the surrounding area or of  
2 greater environmental significance than all  
3 the examples, which are listed.  
4 MS. PRUSINOWSKI: Where are the  
5 exhibits in reference to Exhibit D and then  
6 an aerial known as 1, where are those? Are  
7 they within this book somewhere?  
8 MR. NOVELETTI: Yes, they are. The  
9 aerial photographs open in the highlights.  
10 MS. PRUSINOWSKI: Do you have one  
11 map indicating the proximity of  
12 Mr. Dittmer's parcel to the remainder of  
13 the parcels that you're using as --  
14 MR. NOVELETTI: The first aerial,  
15 D, Dittmer property, is here (indicating).  
16 MS. PRUSINOWSKI: First aerial?  
17 This (indicating)?  
18 MR. NOVELETTI: Yes. This is D.  
19 I'm sorry. The Tax Map number here is  
20 529-5-35 -- 529-5-34, which is the Dittmer  
21 subject property.  
22 MS. PRUSINOWSKI: Yes. I  
23 understand that, but I don't understand how  
24 these other parcels on different tax maps  
25 relate to Mr. Dittmer's parcel in this

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1 instance. Do you have a map that indicates  
2 that?  
3 MR. NOVELETTI: Mr. Scheyer, the  
4 maps showing the relationship to these  
5 examples?  
6 MR. MILAZZO: Do you have that map?  
7 MR. EAGAN: In the -- within your  
8 own report was created -- well, in the  
9 Central Pine Barrens Core, there's a  
10 development identification box where  
11 there's a Tax Map attached to the northern  
12 part --  
13 MR. MILAZZO: I'm sorry, are you  
14 testifying?  
15 MR. NOVELETTI: They're referring  
16 to this section and the company maps.  
17 They're not highlighted.  
18 MS. PRUSINOWSKI: Unclear what the  
19 point you're trying to get across is.  
20 MR. NOVELETTI: The point is that  
21 the intensity of the development of the  
22 proposed Dittmer lot is less intensive than  
23 the approval that has been granted on the  
24 lots we just sited, those four examples, so  
25 that it's customary to the character of or

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1 less than the development intensity.  
2 MS. PRUSINOWSKI: But how does the  
3 subject parcel relate to the other cases  
4 that you're trying to use as being  
5 proximate?  
6 MR. NOVELETTI: They're precedent  
7 through this property being approved for  
8 development.  
9 MS. PRUSINOWSKI: How are they  
10 precedent?  
11 MR. NOVELETTI: Because it's less  
12 than 6,000 square feet of clearing on the  
13 size of the lot, the proximity to the road  
14 and the opening of the road to bring excess  
15 to it.  
16 MS. THRON-HOLST: I think the  
17 question that we're looking for an answer  
18 on is not that they're similar so much that  
19 they are within a reasonable radius,  
20 because I think that was what was being  
21 suggested that this property was in a  
22 similar radius of similar properties that  
23 have been granted.  
24 MR. NOVELETTI: We're trying to say  
25 here that it is within proximity.

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1 MS. THRON-HOLST: But I think  
2 that's what we're having a hard time seeing  
3 from what you have shown us so far.  
4 MR. PAVACIC: Mr. Noveletti, do you  
5 have an overall aerial photograph showing  
6 the locations of the parcel in relation to  
7 the subject parcel?  
8 MR. NOVELETTI: No. I have the  
9 aerial photograph --  
10 MR. PAVACIC: The individual aerial  
11 photographs for each of the parcels you're  
12 claiming as exhibits?  
13 MR. NOVELETTI: No. We referred to  
14 the Tax Map drawings where those properties  
15 were located as those being on the list  
16 that are within the Pine Barrens Core, the  
17 existing development, patterns, and vacant  
18 lots.  
19 MR. MILAZZO: Are they in the  
20 immediate vicinity of the parcel?  
21 MR. NOVELETTI: I don't know. I  
22 have to ask Mr. Scheyer.  
23 MR. MILAZZO: Mr. Scheyer, are  
24 those parcels in the immediate area? Are  
25 they in the immediate vicinity of the

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1 parcel?  
2 MR. SCHEYER: I'm sorry?  
3 MR. MILAZZO: Can you ask him?  
4 MR. SCHEYER: If I may, I want to  
5 answer the question Mr. Walter asked me  
6 earlier if my client would accept one  
7 credit, and the answer to that is yes.  
8 MR. MILAZZO: That wasn't my  
9 question. My question was whether the  
10 parcels are in the immediate vicinity, if  
11 the property that you referenced through  
12 Mr. Noveletti are in the immediate vicinity  
13 of this parcel.  
14 MR. SCHEYER: It's in my booklet  
15 that the aerial, you can see the --  
16 MR. MILAZZO: Is it's a yes or no  
17 question. Is it yes or no?  
18 MR. SCHEYER: I don't know if it's  
19 in his pamphlet, but it's in mine.  
20 MR. NOVELETTI: Do you have his  
21 pamphlet?  
22 MR. MILAZZO: I have his pamphlet,  
23 but those are different properties, aren't  
24 they? Let me back up. Why don't we deal  
25 with Mr. Noveletti's proposal. Mr.

<p style="text-align: right;">Page 45</p> <p>1 Noveletti, there are four parcels. Are 2 these parcels in the immediate vicinity of 3 Mr. Dittmer's lot? 4 MR. NOVELETTI: That I don't know. 5 I have to ask Mr. Scheyer. 6 MR. MILAZZO: When you defined this 7 area, would you agree that seven homes in a 8 3,700 foot linear section of a roadway, 9 seven homes constitutes substantial 10 development? 11 MR. EAGAN: Yes. 12 MR. MILAZZO: That wasn't a 13 question to Mr. Eagan. If Mr. Eagan wants 14 to testify, he can do that. 15 MR. EAGAN: I'd be happy to 16 testify. 17 MR. MILAZZO: Okay. 18 MR. EAGAN: Mr. Noveletti, please 19 step away. Thank you. 20 My names is James Eagan. I'd be 21 happy to testify on his behalf. 22 MR. PAVACIC: You need to be sworn 23 in. 24 MR. EAGAN: I'd be happy to be 25 sworn in.</p>	<p style="text-align: right;">Page 47</p> <p>1 Barrens as a unique entity. There isn't 2 total development and it's not seven 3 houses. It's ten houses on one side, 12 4 houses down the street, three across the 5 street. Mr. Dittmer's property is in the 6 -- at the end of a substantially developed 7 area, but someone has to be at the end of a 8 substantially developed area. Not everyone 9 can be in the middle because the Pine 10 Barrens basically took people's property, 11 and what they're trying to do is not give 12 them compensation, as they've shown, where 13 they're only willing to give Mr. Dittmer 14 1/10 of a credit and the Woodstock 15 company -- 16 MR. WALTER: Mr. Eagan -- 17 MR. MILAZZO: Let him testify. 18 MR. WALTER: Are you a contact 19 vendee? 20 MR. EAGAN: I am an owner with 21 Mr. Dittmer on the parcel. I am not a 22 contract vendee. 23 MR. MILAZZO: Was that disclosed to 24 us? 25 MS. PRUSINOWSKI: Then it's single</p>
<p style="text-align: right;">Page 46</p> <p>1 J A M E S E A G A N, the witness herein, having 2 been first duly sworn by a Notary Public of the 3 State of New York, was examined and testified as 4 follows: 5 MR. MILAZZO: My question again: 6 Would you agree seven homes in a 3,7000 7 linear stretch of a roadway constitutes 8 substantial development? 9 MR. EAGAN: Yes, I would. I would 10 base this on the fact that the Pine Barrens 11 Commission has created three lists: 12 One is the core road for an 13 exemption list, one is the core development 14 and patterns of the development, and one is 15 the permits issued. 16 The Pine Barrens did this because 17 they basically defined what development was 18 and the development that they said was, 19 "This is all that was allowed, so you have 20 to declare this as development based on the 21 fact that there is a parcel number 18 22 within 600 feet of Mr. Dittmer's and it is 23 in an area that they classify the Pine 24 Barrens, a substantially developed area. 25 You have to look at the Pine</p>	<p style="text-align: right;">Page 48</p> <p>1 and separate. 2 MR. MILAZZO: Was that disclosed? 3 MR. EAGAN: I don't know if that 4 had to be disclosed. Mr. Dittmer and I 5 have partners on lots of land. If you 6 would like an owner's affidavit that Mr. 7 Dittmer and I are partners on land, I'd be 8 happy to, and I don't own any contiguous 9 land. 10 MR. MILAZZO: So I would just 11 direct your attention to the application. 12 MR. ROMAINE: Could I ask a 13 question? 14 MR. EAGAN: Sure. 15 MR. ROMAINE: When did you become a 16 part owner in this parcel? 17 MR. EAGAN: Mr. Dittmer and I have 18 an arrangement about -- within the last 19 couple of years. I don't see how that 20 matters, whether I'm -- 21 MR. ROMAINE: Well, I asked that 22 question with one specific -- 23 MS. PRUSINOWSKI: Were you also a 24 partner with number 36? 25 MR. EAGAN: No.</p>

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1 MR. ROMAIN: Arrangement is  
2 different than being a part-owner. If  
3 you're a part-owner, then you should be on  
4 the deed. Are you on the deed of this  
5 property?  
6 MR. EAGAN: No, I am not. Well,  
7 then I am not a part-owner. I have an  
8 arrangement with a friend.  
9 MR. WALTER: Is it written?  
10 MR. EAGAN: No, it's not.  
11 MR. ROMAIN: It's usually a  
12 contract vendee then.  
13 MR. EAGAN: Well, I don't have a  
14 contract. All I'd like to say is what the  
15 definition of "substantially developed" is,  
16 and it's by your own record that  
17 "substantially developed" is based on what  
18 the Pine Barrens defines as an area that  
19 has development in it. That's why they  
20 picked road front parcel and said, This is  
21 a substantially developed area and if  
22 you're on -- in an area where you believe  
23 that you could put a house, it's  
24 "substantially developed."  
25 MS. PRUSINOWSKI: Where does it say

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1 that?  
2 MR. EAGAN: It implies it in the  
3 law.  
4 MR. WALTER: So if we're to issue a  
5 credit to build a road, who gets the  
6 financial benefit of that; you and  
7 Mr. Dittmer or you?  
8 MR. EAGAN: That would be for  
9 Mr. Dittmer to determine.  
10 MR. MILAZZO: Would you consider  
11 this area significantly developed?  
12 MR. EAGAN: The best I can tell,  
13 yes.  
14 MR. MILAZZO: Would you say that  
15 this property is similar to the property  
16 that's surrounding to the east?  
17 MR. EAGAN: The east is -- the  
18 County boarded up all the land.  
19 MR. ROMAIN: That's all woods.  
20 MR. EAGAN: So everybody in that  
21 neighborhood whose got County behind it.  
22 MR. ROMAIN: The development is  
23 north and south on the street of 21.  
24 MR. WALTER: Did you have anything  
25 more to add because I think your attorney

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1 would like you to sit down?  
2 MR. EAGAN: Yeah. He'd like to  
3 choke me.  
4 MR. WALTER: Figuratively, that's  
5 probably realistic.  
6 MR. EAGAN: That's fine. You got  
7 to learn somehow. You know, it's all about  
8 people's property right and it's about  
9 getting people fair value for your money.  
10 MR. WALTER: Mr. Eagan, thank you.  
11 MR. EAGAN: I appreciate it.  
12 MR. ROMAIN: Thank you.  
13 MR. PAVACIC: Any other questions  
14 for the applicant from the Commission at  
15 this point? Any questions from the public?  
16 MR. AMPER: (Indicating.)  
17 MR. PAVACIC: Mr. Amper?  
18 MR. AMPER: This question is --  
19 MR. WALTER: We have to swear him  
20 in.  
21 RICHARD AMPER, the witness herein,  
22 having been first duly sworn by a Notary Public of  
23 the State of New York, was examined and testified  
24 as follows:  
25 MR. AMPER: Have we established

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1 whether or not the applicant attempted to  
2 sell property either to the Town of  
3 Brookhaven or Suffolk County? Has that  
4 come out and I just didn't hear it today?  
5 MR. MILAZZO: We don't have the  
6 ability to answer that. He can answer  
7 that. Mr. Scheyer can answer that.  
8 MR. SCHEYER: It has not. The deed  
9 is in his name. I saw the deed. It's the  
10 name of Henry Dittmer.  
11 MS. PRUSINOWSKI: If I may, the  
12 Town has made overtures to those parcels  
13 located within these filed maps -- old  
14 filed maps in order to require those  
15 parcels that the County has not already  
16 taken.  
17 MR. AMPER: Say that again.  
18 MS. PRUSINOWSKI: The Town has made  
19 overtures to those individuals who owned  
20 parcels other than the County of Suffolk in  
21 order to increase the municipal holdings in  
22 this area.  
23 MR. AMPER: And they have not  
24 accepted those offers?  
25 MS. PRUSINOWSKI: There has been

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1 very little acceptance to date.  
2 MR. ROMAINE: No response.  
3 MS. PRUSINOWSKI: And I'm not  
4 referring to this specific parcel.  
5 MR. AMPER: There's no evidence  
6 that they made any effort to sell the  
7 property to the County of the Town. They  
8 didn't appeal the credit allocation, so I'm  
9 going to go back to an argument that I  
10 raised before and that is that: This  
11 hardship is as a result of the inaction on  
12 the part of the applicant, and that is  
13 impermissible. This is in more of the  
14 woods for folks that are not aware about  
15 this. I don't want to go into the details,  
16 because the number of species of bird, the  
17 history of endangered species on this  
18 property is well-documented. This is an --  
19 I think obviously is a parcel in the middle  
20 of the Pine Barrens that we sought to  
21 protect, and it does not seem to me as  
22 though the applicant has attempted to use  
23 other remedies to resolve the problem for  
24 which he is seeking a way.  
25 MR. WALTER: Mr. Amper, can I ask

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1 you a question?  
2 MR. AMPER: Sure.  
3 MR. WALTER: If the Clearinghouse  
4 had given him one full credit allocation,  
5 would you have objected to that?  
6 MR. AMPER: No, and if he appeals  
7 and it is granted, we wouldn't object to  
8 that either.  
9 MR. WALTER: So if the Commission  
10 could fashion a resolution of this that did  
11 not set precedent, that would be my opinion  
12 just -- and I may have a little more  
13 background as a lawyer than others sitting  
14 on the Board -- but I would not be opposed  
15 based on what I've heard to us figuring out  
16 a way to authorize one credit and have  
17 this -- because --  
18 MR. AMPER: The precedent issue is  
19 an important one.  
20 MR. WALTER: I agree. We have to  
21 do it in a way --  
22 MR. AMPER: But clearly, the  
23 Commission has the authority to rule on the  
24 credit allocation.  
25 MR. WALTER: So could they --

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1 MS. THRON-HOLST: Under what  
2 parameters in this case though?  
3 MR. WALTER: Could they amend the  
4 application, our Counselor?  
5 MR. MILAZZO: The first office is  
6 still part of the public hearing?  
7 MR. WALTER: You're still part of  
8 the public hearing. I'm keeping it all out  
9 in the open now, Dick.  
10 MR. AMPER: Terrific.  
11 MR. MILAZZO: The Clearinghouse  
12 has -- there's an appeal process that would  
13 come to the Commission and you would hear  
14 an appeal, which as suspect, you would  
15 notice it, we would look at the application  
16 under the contexts of an appeal, and we do  
17 that in research and we haven't done that.  
18 MR. WALTER: So this is what my  
19 recommendation is: If Counsel is willing  
20 to do this, close the public hearing now,  
21 leave it open for written comment and  
22 discuss a way to figure out whether we can  
23 convert this to that appeal or how that  
24 takes place, if the Commission is willing  
25 to do that.

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1 MR. ROMAINE: At this point, I'll  
2 make a motion to close this public hearing  
3 and leave it open for written discussion to  
4 put it on our decision calendar for our  
5 January meeting.  
6 MR. WALTER: I think that that  
7 would be an important first step to see if  
8 we can come up with -- what I would deem  
9 would be a settlement, but we have to do it  
10 in a way that it's not -- I don't want  
11 people coming --  
12 MR. ROMAINE: Stipulated.  
13 MR. WALTER: Yeah. We got to come  
14 up with a way to do that. This can't be --  
15 this shouldn't happen this way. You guys  
16 should have appealed your Clearinghouse  
17 decision way back when. That should have  
18 been what happened and you put us in a  
19 tough position.  
20 MR. SCHEYER: I don't agree. May  
21 I?  
22 MR. WALTER: Absolutely. We  
23 haven't closed it officially.  
24 MR. SCHEYER: The client chose at  
25 that point to try to develop the property

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<p>1 because it was not given any -- it was so 2 far from realty, that going to the Zoning 3 Board of Appeals to the Clearinghouse was a 4 useless act -- useless. Therefore -- 5 MR. WALTER: Well, usually after 6 the appeal from the Clearinghouse, it comes 7 to us, doesn't it? 8 MR. SCHEYER: Well, ultimately, 9 this is the Board that has the authority to 10 do what it wants with all of this. The 11 Clearinghouse is only really an arbitrate 12 to you -- 13 MR. WALTER: Dick disagrees. 14 MR. SCHEYER: You're the final 15 authority, they're not. I don't think on 16 the issue of reaching settlement, that this 17 Board has the authority to do it. I would 18 probably get something to Mr. Milazzo on 19 that because I sat on a lot of boards, as 20 you know, and certainly, they have -- 21 you're the final authority. 22 You have the right to make any 23 decisions that you want based on the facts, 24 and it's easy to differentiate the facts. 25 This case is unusual enough that it's not</p>	<p>1 and took title in 1970. He inherited when 2 his father died. 3 MS. PRUSINOWSKI: When was that 4 approximately? 5 MR. SCHEYER: Ten years ago 6 approximately, maybe more. 7 MS. PRUSINOWSKI: And how did he do 8 that? 9 MR. SCHEYER: He's the 10 administrator of his father's estate. They 11 both have the same name. 12 MS. PRUSINOWSKI: And who's Ida 13 Dittmer? 14 MR. MILAZZO: Mother. 15 MR. SCHEYER: Yeah. 16 MS. PRUSINOWSKI: What proof do we 17 have that Parcel 35 and 36 are not in the 18 same name? 19 MR. SCHEYER: You have the title 20 report. 21 MS. PRUSINOWSKI: It doesn't go 22 that far. 23 MR. SCHEYER: We'll get you one. 24 It's not a problem. 25 MR. ROMAINE: I think it's 54 that</p>
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<p>1 going to create a precedent. You're not 2 going to find a case like it if you look 3 all day long. So that if you separate it 4 and differentiate it from anything else and 5 come up with a settlement based on the 6 facts of this particular case, I don't see 7 why at this point there's not the authority 8 to do it. You have the authority to do 9 what you want, really. 10 MR. WALTER: Well, I would disagree 11 with that, but it's very critical in law 12 school you have your wherefore clause that 13 has it together with which as the court 14 deems just, so I'm asking you, your request 15 of this Commission is either the ability to 16 develop or one credit. Is that what you're 17 amending? 18 MR. SCHEYER: Yes. 19 MS. PRUSINOWSKI: Can I ask? I 20 have two questions. 21 MR. SCHEYER: Yes, Brenda. 22 MS. PRUSINOWSKI: How did 23 Mr. Dittmer and when did he take title to 24 the subject parcel? 25 MR. SCHEYER: His father owned it</p>	<p>1 it has to go back to in that particular 2 aerial. 3 MR. MILAZZO: It doesn't include 4 that adjacent parcel lot 36. 5 MR. SCHEYER: If you read it, I'll 6 get a statement from the title company that 7 they don't have, never had any adjacent 8 parcel. 9 MR. WALTER: Anything that we would 10 fashion would have to come under as near, 11 single, and separate. 12 MR. SCHEYER: I will get it for 13 you. 14 MS. PRUSINOWSKI: My question is: 15 How did he take them? 16 MR. SCHEYER: I'll get it for you. 17 MR. PAVACIC: Mr. Milazzo, at this 18 point -- 19 MR. MILAZZO: I'll have a motion in 20 the second to close the hearing -- 21 MS. THRON-HOLST: I would like your 22 input on this. 23 MR. AMPER: Before you close it -- 24 MR. WALTER: We're not going to 25 close it until you speak.</p>

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1 MR. AMPER: The Commission can also  
2 deny this application on the basis of the  
3 fact that the hardship was created by an  
4 inaction of the applicant and allow the  
5 matter of the allocation to be visited  
6 separately. Just another option.  
7 MS. PRUSINOWSKI: In the matter of  
8 the credit?  
9 MR. AMPER: Huh?  
10 MS. PRUSINOWSKI: You mean the  
11 matter of the credit?  
12 MR. AMPER: Uh-huh.  
13 MR. WALTER: We don't want to go  
14 through another public hearing.  
15 MR. SCHEYER: It's going to be  
16 nothing but a lawsuit.  
17 MR. PAVACIC: I'd like to hear Mr.  
18 Milazzo.  
19 MR. MILAZZO: The only issue with  
20 respect to giving -- the staff wasn't  
21 prepared to address a Clearinghouse appeal  
22 and they haven't reviewed the arguments  
23 that you would make and how you would make  
24 different arguments on a Clearinghouse  
25 appeal or LOI appeal to the Commission.

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1 So that's not part of our analyst  
2 to date. If this came in as an LOI  
3 interpretation appeal, there would be  
4 different analyses of different reviews of  
5 cases that may be on point that --  
6 MR. WALTER: That's fair.  
7 MR. MILAZZO: -- haven't been  
8 addressed today because that wasn't what we  
9 expected today.  
10 MR. SCHEYER: I didn't either.  
11 MR. FRELENG: To that point,  
12 there's about a half of dozen parcels just  
13 on this map section 5-29 that are within  
14 the 153 feet that could also be developed  
15 or could also come in for a credit appeal,  
16 so when staff looks at that, I'd like them  
17 to try to look at that area, which is in  
18 the immediate area of the subject area, and  
19 give us some discussion on the history of  
20 those lots that are precedent. That might  
21 be important by what we're doing.  
22 MR. ROMAINE: I think Brenda also  
23 will have her work cut out for her because  
24 the Brookhaven Planning Department will  
25 began an extensive search, and I'd like you

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1 to involve the official examiner of title  
2 for Suffolk County in the clerk's office.  
3 MR. AMPER: One other alternative:  
4 If the Town of Brookhaven offered to  
5 purchase the property, would the applicant  
6 now agree to sell it?  
7 MS. PRUSINOWSKI: Yeah.  
8 MR. SCHEYER: Where did that come  
9 from?  
10 MR. MILAZZO: Mr. Amper --  
11 MR. AMPER: Well --  
12 MS. THRON-HOLST: Didn't you say  
13 that you have way in the past?  
14 MR. AMPER: But he did not  
15 previously challenge the appeal and he's  
16 now willing to consider taking the credit.  
17 Is he open now to sell the property to buy?  
18 MR. MILAZZO: There's a motion by  
19 Supervisor Romaine to close the hearing and  
20 leave the written comment period open  
21 for how --  
22 MR. ROMAINE: Leave the written  
23 comment period open for 30 days and place  
24 this on our decision calendar for our next  
25 regularly scheduled meeting in January.

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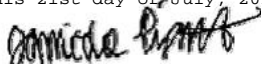
1 MR. PAVACIC: The next meeting is  
2 January --  
3 MR. MILAZZO: It would have to be  
4 30 days.  
5 MR. ROMAINE: February.  
6 MR. PAVACIC: The decision deadline  
7 on this is --  
8 MR. MILAZZO: February 6th, so we  
9 need an extension through the February  
10 meeting.  
11 MR. SCHEYER: What is the February  
12 date?  
13 MR. ROMAINE: February 6th.  
14 MR. MILAZZO: Third Wednesday of  
15 February.  
16 MR. ROMAINE: Oh, is it the third  
17 Wednesday?  
18 MR. MILAZZO: February goes quickly  
19 though because of the schools.  
20 MR. PAVACIC: Mr. Scheyer says he  
21 consents.  
22 MR. SCHEYER: We consent. It is --  
23 your decision time is put off until  
24 February 6th?  
25 MR. MILAZZO: Yes.



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1 MR. WALTER: I'll second the  
2 motion.  
3 MR. PAVACIC: Seconded by  
4 Supervisor Walter.  
5 MR. ROMAINE: Okay.  
6 MR. PAVACIC: All in favor?  
7 MR. WALTER: I.  
8 (Whereupon, there was a unanimous  
9 affirmative vote of the Board.)  
10 MR. PAVACIC: Any opposed? Any  
11 extension? Motion carried.  
12 (Whereupon, this hearing was  
13 adjourned at 4:11 p.m.)  
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1 C E R T I F I C A T I O N  
2  
3 STATE OF NEW YORK )  
 ) SS  
4 COUNTY OF SUFFOLK )  
5  
6 I, JAMIELEE PIGNOTTI, a Shorthand Reporter  
7 and Notary Public within and for the State of New  
8 York, do hereby certify:  
9 THAT the foregoing transcript is a true  
10 and accurate transcript of my original stenographic  
11 notes.  
12 IN WITNESS WHEREOF, I have hereunto set my  
13 hand this 21st day of July, 2015.  
14   
15 \_\_\_\_\_  
16 JAMIELEE PIGNOTTI  
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