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1 CENTRAL PINE BARRENS COMMISSION
2 COUNTY OF SUFFOLK: STATE OF NEW YORK
3 -----X
4 In the Matter of the Application of
5 FKK, INC.
6 For a Hardship Exemption, Pursuant to
7 Environmental Conservation Law Article 57
8 -----X
9 Public Hearing
10
11 Southaven County Park
12 Victory Avenue
13 Yaphank, New York 11980
14 December 19, 2018
15 3:00 p.m.

10

11 A P P E A R A N C E S:
12 John Milazzo, ESQ.
13 Daniel P. McCormick
14 Julie Hargrave
15 Ed Romaine
16 Janet Long
17 Andrew Frelong
18 Carrie Gallagher, Chair
19 Laura Jens-Smith
20 Kyle Collins
21 Kevin Papasian
22 James Egan
23 Eugene DeNicola
24 Richard Amper
25

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1 PUBLIC HEARING
2 MS. GALLAGHER: Notice of Public
3 Hearing, Pursuant to the New York State
4 Environmental Conservation Law Article
5 57-0121(10) and the Central Pine
6 Barrens Comprehensive Land Use Plan.
7 Notice is hereby given that the Central
8 Pine Barrens Joint Planning and Policy
9 Commission will hold a public hearing
10 on Wednesday, December 19, 2018, on the
11 matter of a Core Preservation Area
12 Extraordinary Hardship Waiver.
13 The name of the project is FKK Inc.

14 Core Preservation Area Hardship Waiver
15 Application.

16 Okay, so, you may start.

17 MS. HARGRAVE: This is the site of
18 a gas station in Calverton, in the Town
19 of Brookhaven, on the north side of the
20 LIE. At Exit 71, if you are on the
21 south side. You can't go north where
22 this exit exists, but this is on the
23 corner of the north service road going
24 onto the LIE at Nugent Drive, Edwards
25 Avenue, where they merge.

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2 So, you are probably familiar with
3 this site and it contains a gas station
4 and an existing convenience store.
5 This was built in 1973. The
6 convenience store was developed or
7 there was a service station converted
8 to a convenience store in 2000.

9 Again, this is in the Core
10 Preservation Area. It is near the
11 border of the Core, but you will see in
12 the study area map, a little further to
13 the north, north of the Peconic River
14 is the compatible growth area, but this
15 is not the Core Preservation Area, and
16 because the applicant proposes to
17 expand the convenience store and
18 redevelop the site, this is development
19 activity and they submitted a hardship.

20 To go over some of the site
21 structures, it is a one acre site and
22 there is a 1,500 square foot
23 convenience store, and a gas station.
24 There is a canopy and multiple floor
25 product dispensers. There is some

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1 PUBLIC HEARING

2 parking for other vehicles and some
3 landscaping. Most of the site is
4 significantly disturbed. There are a
5 few pitch pine trees and cedars in the
6 rear of a property and a mote area,
7 buffer area, to the fence, which
8 delineates their property line.

9 MR. ROMAINE: Essentially this
10 property has not been changed since it
11 was built in '73?

12 MS. HARGRAVE: Right, that is my
13 understanding.

14 And, over their fence, on the other
15 side of the fence is the estate land,
16 and this property is like a triangle
17 shape, it has two road frontages, one
18 on Edwards and one on the north service
19 road.

20 So, again, just to go over their
21 proposal, this is the convenience
22 store, the existing convenience store,
23 and this is the area of the gas pumps,
24 and the project proposes to move the
25 convenience store a little further east

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1 PUBLIC HEARING

2 on the site and further in the rear,
3 and then develop more of a larger area,
4 bay area for gas dispensers, on the
5 east side of the site.

6 MR. ROMAINE: Is the number of gas
7 dispensers changing?

8 MS. HARGRAVE: It is increasing to
9 six, from four.

10 MR. FRELONG: Are the tanks being
11 relocated, the underground tanks?

12 MS. HARGRAVE: Well, there are
13 existing underground tanks. That was
14 one question we had. The new tanks
15 would be developed in accordance with
16 existing current Health Department
17 regulations for lining and storage, but
18 we maybe have to clarify with, the
19 engineer is here, with whether the
20 existing tanks will be replaced and
21 stored in a way that is up to current
22 standards.

23 There will be more parking on the
24 site as well, and most of this buffer
25 area, will be disturbed, some trees

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2 will be removed, but again that is a
3 mote grass area with trees and the
4 canopy.

5 So, just to go over some of the
6 other conditions of the site, it says
7 we received a response from the
8 Historic Preservation Office and there
9 is no concern for historic or cultural
10 resources on this site. The project
11 may require a DEC permit for the Wild
12 and Scenic Recreational Rivers permit
13 since it's in the jurisdiction of that

14 zone.
15 MR. FRELONG: Does that mean it's
16 within a mile, half mile, do we know
17 what the buffer is?
18 MS. HARGRAVE: It's completely
19 within that boundary. It's very close
20 to the river.
21 MR. ROMAINE: It's very close to
22 the river.
23 MS. HARGRAVE: You can see --
24 MR. ROMAINE: There is the gas
25 station, there is Mill Road, and then

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1 PUBLIC HEARING
2 there is the river. That is
3 essentially the configuration of the
4 land.
5 MR. FRELONG: I know where the site
6 was, I was just looking for a distance
7 for the record.
8 MS. HARGRAVE: I don't have the
9 exact distance from the river, from the
10 surface water of the river, but it is
11 within the boundaries, I know that, and
12 you are aware of that too.
13 MR. DENICOLA: Well, we know the
14 river runs on the other side of Mill
15 Road and Mill Road is just slightly to
16 the east.
17 MR. MILAZZO: Why don't you
18 introduce yourself, for the record.
19 MR. DENICOLA: Oh, I'm sorry.
20 Eugene DeNicola, D-E-N-I-C-O-L-A,
21 200 Rail Road Avenue, Sayville, New
22 York.
23 (Whereupon Mr. DeNicola was sworn
24 in.)
25 MS. HARGRAVE: I am just going to

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1 PUBLIC HEARING
2 go through the exhibits and then the
3 applicant will speak.
4 The Staff Report is Exhibit A.
5 You can see the site in Exhibit B
6 in an aerial, it's almost at the corner
7 of South River Road and to the north is
8 the Peconic River.
9 Exhibit C contains pictures of the
10 site, it's an existing operating gas
11 station and convenience store. There
12 was a fire in the convenience store,
13 electrical fire earlier this year, but

14 that is reopened and continuing to
15 operate, and you will see some of the
16 existing vegetation that remains on the
17 site and the rear fence boundary.

18 The existing survey is in Exhibit
19 D, you can see the placement of the gas
20 station and convenience store, and the
21 convenience store is going from about
22 1,500 square feet to almost double the
23 size, to 2,950 square feet is the
24 proposal.

25 The site plan is in Exhibit E,

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2 showing the proposed canopy, and gas
3 pumps, and the convenience store, and
4 additional parking.

5 Exhibit F is just a record that we
6 were able to obtain from a previous
7 spill that occurred on the site but
8 that is closed.

9 Exhibit G is a Study Area Map of
10 the site, so you can see other land
11 uses in the area, again to the north is
12 the Peconic River, and then just north
13 of that on River Road is the boundary
14 line of the compatible growth area and
15 the Core, so, it wraps up and around
16 Canoe Lake by Old Calverton Links Golf
17 Course, and comes back down to River
18 Road. Then, to the south of this site
19 is a significant area of open space in
20 the Core Preservation Area, with the
21 exception of the condominium
22 development at Calverton Hills and some
23 single-family residential lots that are
24 developed along South River Road.

25 MR. ROMAINE: Also known as Mill.

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2 MS. HARGRAVE: That's right, and
3 also on River Road north of Peconic.

4 Exhibit H is the Applicant's
5 Petition, and we will speak to that.

6 The applicant has explained in
7 their petition essentially that they
8 are trying to upgrade, and update, and
9 create a better flow of access through
10 this site, and that is their reasoning
11 for this proposed expansion.

12 MR. COLLINS: I just have a quick
13 question on your summary and discussion

14 of Item 4 of the Staff Report, it talks
15 about Covenants and Restrictions that
16 are on there, how were those obtained?
17 Were they private, between the Town of
18 Brookhaven on a previous approval, and
19 how is that relevant to what the
20 commission is looking at?

21 MS. HARGRAVE: It was just
22 something that was in the record on the
23 site about the no sale of chilled
24 alcoholic beverages, and that was the
25 only covenant.

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2 MR. COLLINS: Do we know how that
3 was obtained, was that obtained through
4 some previous site plan approval or was
5 that a private covenant between a
6 previous seller or something?

7 MS. HARGRAVE: The service station
8 was converted to a convenience store in
9 2000 and a CO was issued then, so, the
10 covenants were filed in '99, I think it
11 came out of that site plan approval,
12 but I have the covenants and I can
13 check to see who they were written to,
14 I think they were to the Town from the
15 owner at that time. There is a new
16 owner now, the new owner, we have the
17 deed from the new owner who purchased
18 this site for \$2.5 million dollars.

19 MR. COLLINS: The sale of chilled
20 alcohol is not some standard we need to
21 take a look at under the hardship?

22 MS. HARGRAVE: No, no. It just
23 came up in their deed and we always
24 look at the deed and covenants or
25 easements on the site.

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2 MS. JENS-SMITH: It may be because
3 it enters right onto the expressway.

4 MR. ROMAINE: I can't fathom why
5 the town would have done that 18 years
6 ago, but that is probably the reason,
7 that it is close to a major arterial
8 highway and they don't want people
9 buying beer and driving right onto the
10 expressway, because once you do that,
11 you can even get back on Edwards Avenue
12 driving south, because it's a divided
13 street at that point, or you get on the

14 expressway going west, so.
15 MS. HARGRAVE: We just found that
16 the site is 537 feet to the surface
17 water of the river, so, just so you
18 know.
19 MS. GALLAGHER: Any other questions
20 for Julie before we have the applicant?
21 (No responses given.)
22 MR. MILAZZO: We have marked as our
23 commission's exhibit that one report
24 and it includes Staff A through H, and
25 we gave a copy of that to Mr. DeNicola?

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1 PUBLIC HEARING

2 MS. HARGRAVE: I did.

3 MR. DENICOLA: Good afternoon, let
4 me introduce myself again, Eugene
5 DeNicola, 200 Rail Road Avenue,
6 Sayville, New York 11782, for the
7 applicant.

8 To address the covenants with
9 regard to alcoholic beverages, the Town
10 of Brookhaven used to impose a
11 restriction on the sale of alcoholic
12 beverages, either by singles, or by
13 chilled, or what have you. In two
14 cases against the Town of Brookhaven,
15 that was over turned. The New York
16 State Alcoholic Beverage Control Board
17 has superseding jurisdiction and the
18 Town cannot control the sale of
19 alcoholic beverages.

20 MR. ROMAINE: So, that covenant is
21 null and void?

22 MR. DENICOLA: Yes. We don't have
23 to worry about it. Hess versus the
24 Town of Brookhaven and there was
25 another case that I believe Dave Sloane

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1 PUBLIC HEARING

2 handled, Exxon versus the Town of
3 Brookhaven, and in both instances the
4 Town was determined to supersede the
5 jurisdiction and the restriction was
6 determined to be null and void.

7 I have submitted a detailed
8 petition, which is part of the package
9 that Ms. Hargrave submitted with her
10 package, perhaps the commission has
11 read the petition.

12 MS. GALLAGHER: Exhibit H.

13 MR. DENICOLA: I am going to try to

14 address the issues that pertain to the
15 environmental conservation law and just
16 try to emphasize the fact that the
17 application being made by the applicant
18 is in fact appropriate and should be
19 approved by this board.

20 To my left is a site plan that is
21 proposed by the applicant. The green
22 would be the area that would be
23 maintained. There is no natural area
24 on the site. There is no Pine Barrens
25 forest, there is no surface water on

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2 the site. This is a disturbed site and
3 has been in the same condition since at
4 least 1973 when a two bay gas lane
5 filling station with an office --

6 MR. ROMAIN: I believe it was a
7 Texaco.

8 MR. DENICOLA: I don't remember the
9 brand, but I know it was a two bay
10 repair station that was converted in
11 2000 to a convenience store, which is a
12 positive, I don't have to go into the
13 history of gas lane filling stations
14 and repair bays, because the repair
15 bays in gas stations do not exist
16 anymore. My dad had three, so, I kind
17 of know the history of what happened to
18 that.

19 In any event, if I may, the
20 proposed redevelopment of the site is
21 merely an updating and modernization of
22 a 45 year old site that was originally
23 occupied as an auto repair shop, prior
24 to conversion to a convenience mart
25 accessory to the fueling station. The

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2 site has existed in it's current
3 location, shape, and dimensions since
4 at least 1973. The applicant's
5 proposal will not change the size,
6 shape, and dimensions of the subject
7 parcel, nor expand beyond it's current
8 size, shape, and dimension. So, this
9 is the site, we are not going into any
10 other Pine Barrens forest or any of the
11 Pine Barrens habitat whatsoever.

12 The subject site use was issued a
13 Certificate of Occupancy for a

14 one-story gas filling station in May of
15 1973. In May of 2000, a Certificate of
16 Occupancy was issued to convert the
17 repair bays to a convenience store. In
18 June of 2014, following Super Storm
19 Sandy, it received a certificate of
20 compliance for installation of a
21 transfer switch for emergency use as a
22 generator site, so that gasoline could
23 be sold at this site, should the
24 electricity go out, as it did after
25 Super Storm Sandy, which we all are

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1 PUBLIC HEARING
2 very familiar with.

3 The conversion to the convenience
4 mart was a positive factor in the Core
5 Preservation area, as it eliminated the
6 need for oils, anti-freeze, waste oil
7 disposal, brake fluids, and similar
8 substances in open use for repair and
9 maintenance of vehicles.

10 The applicant's proposal is simply
11 a readaptation of uses existing on the
12 site and which predated the Pine
13 Barrens Legislation by some 20 years.

14 Any expansion of the structures are
15 strictly limited to the existing site
16 and it's substantially the same
17 location as the existing structures and
18 improvements.

19 The proposed increase in the size
20 of the convenience store, the canopy,
21 and the number of dispensers is to
22 accommodate the increasing traffic,
23 which has naturally occurred over the
24 past 45 years. As the commission may
25 know, and as I am sure Supervisor

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1 PUBLIC HEARING

2 Romaine knows, this type of use does
3 not generate traffic, it simply picks
4 up pass by traffic that is already
5 existing on the roadway. The
6 redevelopment, as proposed will permit
7 vehicle operators to more efficiently
8 access the fuel dispensers, fuel their
9 vehicles, and exit the site without
10 cueing or waiting for an open fuel
11 dispenser.

12 The engineer will discuss an issue
13 that was raised in the report of why

14 you are changing the site, an engineer
15 will discuss that issue with the
16 commission.
17 The proposed redesign, and
18 redevelopment of the site, and the
19 improvements proposed will occur, as I
20 indicated, on the subject site only,
21 which again has no Pine Barrens
22 ecosystem, therefore, there will be no
23 disturbance of the Pine Barrens forest
24 or habitat in any respects. There is a
25 fence along the westerly portion of the

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1 PUBLIC HEARING
2 property separating the site from the
3 Pine Barrens. As indicated, if you go
4 around the corner, I will call it no
5 more than 500 feet, is the Peconic
6 River.
7 MR. ROMAIN: Can I ask a question?
8 MR. DENICOLA: Yes.
9 MR. ROMAIN: The original
10 convenience store that the Town
11 approved back in 2000, about 1,500
12 square feet?
13 MR. DENICOLA: Yes, a little over,
14 correct.
15 MR. ROMAIN: They are now looking
16 to expand it to 2,900 and change?
17 MR. DENICOLA: 2,950 square feet,
18 and this site is open 24 hours a day,
19 seven days a week.
20 MR. ROMAIN: I got that. The only
21 question I had is, are you going to be
22 burning Pine Barrens credits if this is
23 approved?
24 MR. DENICOLA: I think we have to.
25 MR. ROMAIN: I want to get ahead,

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1 PUBLIC HEARING
2 because I know you have to come to us.
3 MR. DENICOLA: Yes, our next step
4 would be the Town of Brookhaven,
5 provided the commission approves our
6 proposal, but yes, we will be requiring
7 Pine Barrens credits because the store
8 will be in excess of 1,500 square feet
9 and anything in excess of 1,500 square
10 feet requires Pine Barrens. I think
11 it's one half credit for every 750
12 square feet in excess of 1,500 square
13 feet with a maximum of 3,000 square

14 feet.
15 MR. FRELONG: Quick question.
16 The change of use that was done 18
17 years ago, did this board or commission
18 make a determination on that change of
19 use?
20 MR. DENICOLA: I did not represent
21 the owner at that time. I do not know.
22 MR. COLLINS: Do we know that,
23 John?
24 MS. HARGRAVE: No, no.
25 Just so you know, this is the deed

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2 and it talks about the special
3 exception that the Town granted, but
4 no, we don't have anything in the file.
5 I can check, but we don't have that
6 decision or there was no decision.
7 MR. ROMAINE: They didn't change
8 the foot print?
9 MS. HARGRAVE: No, no. It was just
10 a conversion, but still, it didn't come
11 to a decision.
12 MS. JENS-SMITH: It started out as
13 two gas bays or four gas bays?
14 MR. DENICOLA: Are you talking
15 about the bays or the pumps?
16 MS. JENS-SMITH: The pumps.
17 MR. DENICOLA: Four dispensers.
18 MS. JENS-SMITH: That's what it
19 always was back in '73?
20 MR. DENICOLA: That's, to the best
21 of my knowledge, that is what it always
22 was. It was four dispensers and a two
23 bay station.
24 MS. JENS-SMITH: I thought you had
25 said two bay station.

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2 MR. DENICOLA: No. The bays where
3 they repaired cars was an office and
4 two bays.
5 MR. COLLINS: Did that change in
6 use require determination from this
7 board whether that was development or
8 not?
9 MR. MILAZZO: Did they change it
10 under town codes, as change of use?
11 MS. HARGRAVE: It was a special
12 exception.
13 MR. MILAZZO: We would have to

14 research it.
15 MR. DENICOLA: Well, it was
16 approved by the Town of Brookhaven and
17 a certificate of occupancy was issued.
18 So, I indicated that there would be
19 no disturbance of the Pine Barrens
20 forest or the Pine Barrens habitat by
21 this project. As I indicated, the
22 subject site has no surface water and
23 the proposed improvements will have no
24 adverse effect or impact on the Pine
25 Barrens habitat or forest, whatsoever.

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2 The proposed redevelopment is limited
3 to the site and, as such, will not
4 cause or encourage any development
5 beyond the subject site, as proposed by
6 the site plan. This is a site that is
7 singular and alone, if you will, at the
8 intersection of two major roadways,
9 County Road 24 and the service road of
10 the Long Island Expressway, Interstate
11 495, which is also the access, the
12 service road is the access, a ramp if
13 you will, to the westbound lanes of the
14 expressway, and both of those roads
15 carry thousands of cars per day. If
16 you spend some time there, there are
17 tractor trailers, trucks, vehicles,
18 traffic is constant. Within the site,
19 the redevelopment will occur in an
20 orderly efficient manner. The proposal
21 is compact on the site.

22 Now, obsolescence of the existing
23 structure should be considered by the
24 commission, to permit the applicant to
25 redevelop the site, which is unique, as

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2 to it's location. Although in the Core
3 area, it's location in the intersection
4 of two heavily traveled roadways, as I
5 mentioned the intersection of County
6 Route 24, also known as Edwards Avenue,
7 and the north service road of the Long
8 Island Expressway, as I indicated,
9 which is also the entrance to the
10 westbound lanes of the expressway, also
11 known as Interstate 495. Each roadway
12 carries thousands of vehicles per day,
13 so this is really not a pristine area

14 that we are speaking about, in terms of
15 the site and the road system upon which
16 it fronts. The uses have operated on
17 the site for 45 years with no adverse
18 affect or impact to the Pine Barrens.
19 The proposed improvements will be
20 consistent, not only with the current,
21 but long-term integrity of the Pine
22 Barrens ecosystem.

23 MR. COLLINS: Just one correction
24 on your last statement, the gas station
25 use existed for 45 years, but the

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1 PUBLIC HEARING
2 convenience store use did not.
3 MR. DENICOLA: My apologies.
4 You're right.
5 The gasoline filling station has
6 been there for 45 years from 1973 to
7 2000. They did repairs in the site,
8 which is for 27 years, and for the last
9 18 years it has been a convenience
10 store.

11 Thank you, sir.
12 The site is located at the entrance
13 service road to the Long Island
14 Expressway and it serves a public need
15 and benefit, it provides gasoline and
16 food at that access point.

17 Now, it is a site in a rural area
18 with no other gasoline filling station
19 for a substantial distance in all
20 directions. I rode yesterday, I drove
21 north, south, east, and west. I am
22 certainly not as familiar with the area
23 as the supervisor is, but the first gas
24 station that I was able to find, going
25 up Edwards Avenue, would be at Route 25

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2 just east slightly east of Edwards
3 Avenue --
4 MR. ROMAINE: They built that multi
5 one.

6 MR. DENICOLA: -- is a Bolla gas
7 station with, I don't know how many --

8 MR. ROMAINE: Edwards Avenue going
9 south, it's the circle. The Riverhead
10 circle, the Southampton/Riverhead
11 circle.

12 MR. DENICOLA: That's toward
13 Riverhead, but up toward Route 25, and

14 then the other way there is a Hess
15 station.
16 MR. ROMAINE: Plus there is one
17 going west on the expressway, you would
18 have to get off at 70 and there is a
19 Mobil gas station there on the south
20 side.
21 MR. DENICOLA: Yes, so, there is
22 really not that much in the area for
23 the residents, and there are residences
24 in the area. I know I went along River
25 Road --

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2 MR. ROMAINE: Calverton Hills has
3 250 plus condos there.
4 MR. DENICOLA: And, this is a
5 public benefit, to have this station at
6 this location, without having any
7 adverse affect on the Pine Barrens.
8 MR. MILAZZO: Are you proposing,
9 are you seeking relief under the
10 hardship standard for a compelling
11 public need, when you say public
12 benefit several times?
13 MR. DENICOLA: Yes, this is part of
14 a compelling public need, because there
15 is no other service like it for a
16 substantial distance in all directions,
17 and it is at the entrance to the
18 service road, and there is a transfer
19 station in the event that we have
20 another serious storm event. It has
21 been fitted with a transfer switch for
22 emergency use of a generator. That was
23 done, as I indicated, in 2014, so, in
24 the event of another serious storm
25 event, this location will be able to

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2 provide gasoline for the health and
3 safety of the public at this critical
4 and unique location, and I think we
5 have to admit that it is at a critical
6 and unique location on two highly and
7 heavily traveled roads.
8 The addition of a new underground
9 fuel storage tank, the applicant is
10 proposing, right now there is 28,000
11 gallons of fuel available and I think
12 we are proposing another 10.
13 Is that correct?

14 MS. GALLAGHER: Is this both
15 gasoline and diesel?
16 MS. JENS-SMITH: It says multiple.
17 MS. HARGRAVE: I'm sorry, I think
18 existing is 28,000 and you are adding
19 another 10.
20 MR. MILAZZO: So, 38,000?
21 MR. PAPASIAN: It would be 38,000
22 total.
23 The Suffolk County Department of
24 Health allows up to 40,000. You need a
25 variance over 40,000.

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2 MR. DENICOLA: Now, the increase in
3 fuel storage capacity will, one, ensure
4 supplies of fuel. Two, reduce gasoline
5 tank and truck deliveries to the site.
6 The underground fuel storage tanks will
7 meet all requirements of the Suffolk
8 County Department of Health for storage
9 of gasoline. The underground fuel
10 storage tanks are double wall fiber
11 glass. In between the inner wall, and
12 the engineer may address this in more
13 detail, and the outer wall, there is a
14 sensor, which monitors any leak that
15 may occur from the inner wall. The
16 sensor immediately signals an alarm to
17 which there is an immediate response.
18 All piping under ground is double wall
19 as well. All underground fuel storage
20 tanks are strictly monitored to avoid
21 any underground water contamination.
22 To the best of my knowledge, there has
23 been no known failure of a double wall
24 fiberglass underground fuel storage
25 tank in Suffolk County.

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2 MS. GALLAGHER: Well, not that had
3 it's system working correctly, just to
4 be very clear.
5 MR. DENICOLA: We are talking about
6 the tank itself failing. I am unaware
7 of any that has occurred, and I have
8 represented several gasoline companies.
9 That is why I said to the best of my
10 knowledge, and as much as the fuel
11 storage tanks are under ground there is
12 no danger of fire, since there is no
13 oxygen, and the fuel tanks are securely

14 sealed.
15 With regard to the dispenser pumps,
16 they are located under the canopy, in
17 which the fire suppression system is
18 located. In the event of a fire at the
19 dispenser pumps, sodium bicarbonate
20 will be sprayed on all dispensers and
21 the dispenser pumps are automatically
22 shut down. There will be no increase
23 in the danger of fire if the waiver is
24 well requested by this commission. The
25 waiver granted in the instant case will

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1 PUBLIC HEARING
2 not be inconsistent with the purposes
3 and intent of the Environmental
4 Conservation Law.
5 Even though we are preserving the
6 Pain Barrens, this is at the
7 intersection of two major roadways,
8 entering an interstate highway and has
9 been in existence for 45 years, it is
10 not affecting the Pine Barrens at all
11 and yet is serving the people in this
12 area where this is no similar service
13 and I dare say that there will be no
14 other gas stations permitted in this
15 area in the distant future.
16 MR. MILAZZO: I'm sorry, Mr.
17 DeNicola, when you say area, we spend a
18 lot of time talking about 537 --
19 MR. DENICOLA: No, we are talking a
20 lot more than 500, Mr. Milazzo.
21 MR. MILAZZO: So, what is area in
22 your statement?
23 Does that include the gas station
24 on Edwards and 25, is that in the area?
25 MR. DENICOLA: Up to that, sure,

0032

1 PUBLIC HEARING
2 sure. I drove all the way up Edwards,
3 there is nothing. I drove all the way
4 south passed the condominiums, there is
5 nothing. I drove on River Road or Mill
6 Road, there is nothing. I drove on
7 Mill Road, there is nothing. I drove
8 the other way up to the, it used to be
9 a motel, it's in Riverhead, it's not in
10 Brookhaven, so, yes it's a very large
11 area, miles.
12 The applicant's request is the
13 minimum relief necessary for a modern

14 facility to accommodate the demand to
15 properly serve the public and it's need
16 for fuel and food availability, just in
17 summary.

18 Then, I am going to have my
19 engineer speak to why we are
20 redesigning the site for it's ingress,
21 egress, etc. The site is unique in
22 that it's located at the intersection
23 of two heavily traveled roadways, Route
24 24 and Interstate 25. The granting of
25 the waiver will not be detrimental to

0033

1 PUBLIC HEARING

2 other properties in the area. This is
3 the only site that is being developed,
4 and nothing else can be affected.
5 There will be absolutely no adverse
6 effect or impact to the Pine Barrens
7 forest or habitat. There will be no
8 disturbance of expansion into the Pine
9 Barrens forest, nor any impairment of
10 the resources of the Core Preservation
11 area. The site has no Pine Barrens
12 growth, habitat, or service water. To
13 grand the permit is in the public
14 interest for gasoline supply
15 availability and food in a rural
16 location of the entrance to Interstate
17 495. The new structures will meet new
18 building codes, which I think will be
19 an important factor and a new sanitary
20 system will benefit the ecology as
21 well. The applicant is obviously going
22 to install a new sanitary system to
23 meet current Suffolk County Department
24 of Health requirements.

25 The site is open 24 hours a day,

0034

1 PUBLIC HEARING

2 seven days a week. Now, most of the
3 stations in the area close at 10:00.
4 The Bolla station I was referring to
5 earlier closes at 10:00.

6 Now, I was told that there is a
7 ferry that comes to Orient from
8 Connecticut and it comes after 10:00 at
9 night, and there is absolutely no
10 service station open from Orient to
11 this site. My client tells me that
12 when people are going wherever they are
13 going, they come in to the site to use

14 the bathroom, to buy food, to fill up
15 their cars with gasoline, so, it is a
16 critical use at a critical location and
17 I thank the commission for their
18 attention.

19 I just would like to ask Mr.
20 Papasian here to give your name,
21 address, and profession.

22 (Whereupon Mr. Papasian was
23 sworn in.)

24 MR. PAPASIAN: Here is my card
25 (handing).

0035

1 PUBLIC HEARING

2 Hello, everyone. My name is Kevin
3 Papasian and I am a Professional
4 Engineer with B. Thayer and Associates.

5 Leading off with what we were
6 discussing, the one big question is why
7 are we rebuilding this site the way we
8 are, and we are making the building a
9 little bigger inside, and the one thing
10 about a gas station is that we don't
11 have the ability to go up. We can't
12 have a second story. It's the only
13 retail where our point of sale is
14 outside. It's the only retail out
15 there that has the point of sale being
16 outside. That being said, we have to
17 do something to modernize the facility.
18 Dealing the Town of Brookhaven in the
19 past, we have experience with, we know
20 that Brookhaven's big thing is 3,000
21 square feet and you don't ever want to
22 go beyond that, and this site we don't
23 really want to go much bigger than that
24 anyway. So, that's why we are making
25 the building bigger, we also will meet

0036

1 PUBLIC HEARING

2 ADA requirements. A lot of things it's
3 also about, which Mr. DeNicola
4 indicated, is that we don't want to
5 have delivery trucks coming all of the
6 time. That is the reason mainly for
7 the building getting bigger.

8 Now, the location of the building,
9 why are we moving the building? If you
10 look at the pamphlet, I think you guys
11 have the survey, on the survey it shows
12 the current building and the current
13 islands. They are kind of crunched

14 together right next to each other, kind
15 of in the middle of the site, right
16 about here (indicating).

17 MS. HARGRAVE: It's in D.

18 MR. PAPASIAN: And, the issue you
19 have, it's human nature, and if you all
20 get gas, it happens, you park your car
21 at the pump and you go inside, and the
22 problem with the current layout is that
23 it happens all the time. We have four
24 cars parked at those pumps, there is no
25 through lane, and it backs everything

0037

1 PUBLIC HEARING

2 up, especially going on the North Road,
3 all the breweries opening up, all the
4 tastings, they are everywhere. It's
5 now not just fall, it's all year round.
6 So, especially peak hour in the
7 afternoon, this new layout will make it
8 so cars can park here in the travel
9 through lane, so we won't have that
10 cueing issue, and that is why we have
11 it set up like it is, because we have
12 parking in front, so people can use the
13 parking spaces, as opposed to not using
14 the parking spaces. Currently, right
15 now, how the site is set up, parking
16 that is there is not really beneficial
17 to the people. The building is here,
18 pumps are here, parking is all the way
19 back here. People are not going to go
20 backwards into the one-way road. That
21 is the reason why we have to re-design
22 the layout. It really makes sense this
23 way and it works. If you see most
24 newer gas stations, they are set up
25 where the pumps are there and there is

0038

1 PUBLIC HEARING

2 parking in front, because you have to
3 make people want to park, because
4 people are lazy, they just don't do it.
5 That is one of the reasons why, it's a
6 human nature kind of ergonomics thing,
7 to make things as simple as possible
8 for people. There is no traffic cop
9 out there, you have to keep things as
10 easy as possible to prevent cueing.

11 We are going to maintain the
12 existing curb cuts the way they are.
13 As Mr. Romaine mentioned, it is a

14 divided highway on Edwards Avenue, and
15 this is obviously one-way, so the big
16 concern of traffic is people making
17 left turns, but we don't have that
18 problem here, there is no left turn to
19 be had, so we don't have that problem.

20 We will also upgrade the sanitary
21 system to Suffolk County Health
22 Department requirements, put in a
23 grease trap and antiseptic tank. Right
24 now it's just a regular cesspool, which
25 is probably about however old the site

0039

1 PUBLIC HEARING

2 is, 50 years old, so has to be
3 upgraded.

4 The tanks, and there is a question
5 about that, the existing tanks are
6 double wall fiberglass. They meet
7 Suffolk County Department of Health
8 standards and they will be maintained
9 where they are. We are adding one
10 additional tank and that would be a
11 10,000 gallon tank. It will be
12 situated in the same general area as
13 the current tanks that will remain.

14 When we do redo this facility, the
15 intent will be to upgrade, not only the
16 existing tanks, the tanks will remain,
17 the current tank, but we will upgrade
18 all of the equipment on it, the piping
19 on it. One of the things Suffolk
20 County does, you can look into it
21 yourself, Suffolk County has one of the
22 strictest tank law in the country. Not
23 only does it have to be double wall
24 fiberglass tanks, but there will be
25 double wall fiberglass piping, there

0040

1 PUBLIC HEARING

2 will be monitoring on each dispenser,
3 on each pipe, and into each
4 interstitial space in the tank, which
5 are the two layers of fiberglass. It
6 means that if anything changes in any
7 way or form, the whole system shuts
8 down, so, that is what we would be
9 putting here. We have it now and we
10 will have it in the future up to the
11 latest standards. We are up to date to
12 I think probably the most current
13 standards, so we still meet the current

14 standards, but it's like getting a new
15 car, standards are new. All of that
16 stuff will be upgraded and new.
17 With regard to location, the one
18 thing that is key, if anyone gets gas,
19 no body gets up and gets gas, you do it
20 as a convenience. This is the next
21 station going eastbound on the LIE, on
22 the LIE going eastbound is the one just
23 built, the Bolla on the LIE. There is
24 no other gas station where you get off
25 the road and it's right on the corner

0041

1 PUBLIC HEARING

2 there. This is the only gas station
3 for about 20 miles until the next one
4 going eastbound, that you would run
5 into when you get off the LIE --
6 westbound, excuse me.

7 There is 20 miles roughly. It
8 could be 16 miles, 24 miles. I don't
9 know, but it is basically Exit 64 to
10 this exit until you see the next gas
11 station going westbound on the LIE, so,
12 there is a need regarding that.

13 There have been other approvals,
14 for a Hess at Sills Road, they never
15 built it, and it never will be built,
16 the permits expired on Sills Road on
17 the northeast corner. I don't know
18 what the status is of that right now,
19 but I know it is --

20 MR. ROMAINE: Not going forward.

21 MR. PAPASIAN: I don't know.
22 Permits expired, so, they would have to
23 go back to the Town of Brookhaven and
24 get all new approvals, so, I mean this
25 site does have a need and I think

0042

1 PUBLIC HEARING

2 Mr. DeNicola mentioned about the other
3 locations, which are all pretty far
4 away, so there is a need for it.
5 Traffic is increasing, as we know, and
6 it is everywhere. Right or wrong?

7 So, this right here will improve
8 definitely the ergonomics of the site,
9 how it flows, which will also modernize
10 the whole facility with a better
11 esthetic look to it.

12 We have this, a building look that
13 Town of Brookhaven has approved in the

14 past, with a nice rooftop on it, and
15 when it's all said and done, it will
16 look like this (indicating).
17 MS. JENS-SMITH: There is no
18 seating going in the convenience store,
19 correct?
20 MR. PAPASIAN: There is no seating
21 and no food preparation. That is
22 required by the Town of Brookhaven, you
23 can't do that.
24 The Town of Brookhaven requirements
25 for special permit for a gas station is

0043

1 PUBLIC HEARING
2 probably Zone J5, so, it is in the
3 correct zoning for a gas station and
4 convenience store.
5 Overall, this site would definitely
6 be an improvement upon what is there
7 now.
8 Any questions or concerns?
9 MR. FRELONG: I have a question.
10 Just for the record, you are
11 familiar, Mr. DeNicola, with ECL570121?
12 MR. DENICOLA: Well, somewhat, yes.
13 MR. FRELONG: And, for the record,
14 I did see it in your petition, but for
15 the record, you are applying for this
16 hardship under compelling public need?
17 MR. DENICOLA: Well, I think there
18 is a compelling public need for this
19 station, because there is no other
20 provision for gasoline within a
21 substantial area, and it is at a very
22 unique location, as I indicated, at 24
23 and the LIE entrance.
24 MR. FRELONG: Just for the record,
25 you are familiar with the requirements

0044

1 PUBLIC HEARING
2 for compelling public need, pursuant to
3 the law?
4 MR. DENICOLA: I have read the
5 ordinance, as best as you can comply
6 with that ordinance, which is virtually
7 impossible to comply with.
8 MR. FRELONG: One more line of
9 though then, the existing tanks, I am
10 interested in the underground
11 infrastructure.
12 The existing underground tanks on
13 site, they were put in in '73?

14 MR. PAPASIAN: No.
15 The tanks were put in, I don't know
16 the exact year, I probably have the
17 registration that will say it, but I
18 assume they were put in around the year
19 2000.

20 MR. FRELONG: So, the condition of
21 the tanks?

22 MR. PAPASIAN: Well, the tanks are
23 required to be tank tested every year.
24 It would be to Suffolk County
25 Department of Health standards. It

0045

1 PUBLIC HEARING
2 meets it every time.

3 Tanks usually have, and Suffolk
4 County does not enforce it, but Nassau
5 County requires that tanks stay within
6 the warranty of the tanks. Tanks come
7 with a 30 year old warranty and those
8 tanks are still within that warranty.

9 MR. FRELONG: Steel tanks?

10 MR. PAPASIAN: Yes, double wall
11 fiberglass.

12 MR. FRELONG: You are not being
13 compelled by the Health Department to
14 replace your tanks?

15 MR. PAPASIAN: No. As long as they
16 keep passing the tightness tests and
17 requirements of the county, they are in
18 compliance.

19 MR. FRELONG: The sanitary system,
20 you will be upgrading the sanitary
21 system on the site?

22 MR. PAPASIAN: On the site, we will
23 be putting in the typical Suffolk
24 County Health Department requirements
25 for a commercial facility. No matter

0046

1 PUBLIC HEARING
2 how you look at it, we will be putting
3 in basically a thousand gallon
4 antiseptic, thousand gallon grease
5 trap, and then putting in a --

6 MR. FRELONG: Have you had any
7 conversations with the Health
8 Department?

9 MR. PAPASIAN: Not on this site
10 yet, but I have done hundreds of them.

11 MR. FRELONG: Are you familiar with
12 the trend with the Health Department in
13 Counties to upgrade sanitary systems to

14 more modern systems?
15 MR. PAPASIAN: Yes. Well, this
16 will be modernized.
17 MR. FRELONG: And, you are not
18 being compelled by the Health
19 Department to do anything --
20 MR. PAPASIAN: Right now, by
21 itself, no.
22 MR. FRELONG: Okay. Thank you.
23 MR. COLLINS: Just to follow-up on
24 that, Health Department, have they or
25 you considered an IA system, an

0047

1 PUBLIC HEARING
2 Alternative Innovated System?
3 MR. PAPASIAN: Right now, we have
4 not.
5 The process of how we do this is, I
6 am going to go through your board, then
7 we go to Brookhaven, and we have
8 discussions with the County at that
9 point, so, because we know it's going
10 to become an Exxon, and our client is
11 not Exxon, so we need to make sure we
12 do it step by step.
13 MS. GALLAGHER: There is also no
14 approved commercial systems.
15 MR. ROMAINE: I don't believe the
16 Health Department has requirements for
17 new construction in residential or
18 commercial.
19 MS. GALLAGHER: Well, they would
20 encourage us.
21 MR. ROMAINE: Encourage or require
22 are two different requirements.
23 MS. GALLAGHER: Do they have an
24 approved commercial system because the
25 last conversations we had, they still

0048

1 PUBLIC HEARING
2 didn't have approved system for
3 commercial use.
4 MR. COLLINS: Absolutely. I sit on
5 the subcommittee.
6 MR. PAPASIAN: I will follow-up on
7 that.
8 When we get to that bridge, we will
9 discuss with the Town what the best
10 mode of action is to put in a system
11 that meets their requirements and also
12 fulfills the needs of the store's
13 requirements.

14 Right now, how the code works, we
15 are putting in a system that let's say
16 a McDonald's would be putting in, and
17 the flow is never going to get to that,
18 but we put it in anyway because that is
19 what is required. It needs to meet the
20 minimum. The minimum grease trap is a
21 thousand. The minimum antiseptic tank
22 is a thousand gallons. The flow of
23 this is nowhere near that, but that is
24 what we put in currently on basically
25 all gasoline convenience stores.

0049

1 PUBLIC HEARING

2 MS. GALLAGHER: Well, you don't
3 have food preparation or sit down, so.

4 MR. PAPASIAN: It's all, bathroom's
5 use are minimal.

6 MR. MCCORMIICK: Question, can you
7 elaborate on your rational concerning
8 why you cannot put a second story
9 convenience area in that building?

10 MR. PAPASIAN: How many convenience
11 stores will have a second story?
12 Should you put an elevator in, the ADA,
13 it's just not realistic for a
14 convenience store.

15 If you go into a retail, like an
16 Old Navy or something, it's a big
17 building, it has elevators, it's a
18 total different entity.

19 The amount of time people spend in
20 this building is less than four
21 minutes, they go in, get out. They are
22 getting their coffee, their kit kat,
23 they are, leaving. It's not about
24 going into different levels and stuff.
25 It's not meant to be that way, so it

0050

1 PUBLIC HEARING

2 doesn't work. It's all about speed.

3 Think about it, you go get your
4 gas, if you can't get into the site
5 quick, you don't go there. Except for
6 this site, there are not gas stations
7 everywhere. We are in a unique spot
8 where there is not much out there, but
9 a second story would not make sense.
10 Especially considering the existing
11 building is so old, if you are familiar
12 with these types of buildings,
13 especially that there were originally

14 bay stations, there are no foundations.
15 There is basically nothing on them. I
16 have done a lot of these and I know
17 when a lot of applicants try rebuilding
18 these bay stations into convenience
19 stores, they think that they are saving
20 money by using the existing structure
21 and then they realize they have to
22 basically rip the entire structure out
23 and put new footings everywhere, so,
24 it's really not feasible from a
25 structural standpoint or from an actual

0051

1 PUBLIC HEARING

2 retail standpoint, and that is the
3 reason why you don't put up a second
4 story.

5 MR. MCCORMIICK: Are you saying
6 it's not a question of being physically
7 possible, you are saying it's not
8 practical?

9 MR. PAPASIAN: It's not practical,
10 but in this case it's not physically
11 either because the existing building is
12 an old bay station. It's a cinder
13 block building. The codes it was built
14 by were met at the time.

15 MR. MCCORMIICK: Are you
16 representing it could not handle a load
17 bearing aspect of a second story?

18 MR. PAPASIAN: Not with -- for the
19 amount of money that it would cost you
20 to do that, it would not be cost
21 effective.

22 MR. MCCORMIICK: For the accuracy
23 of the record, are you aware that there
24 are two gas stations at Exit 70
25 westbound, just south of the bridge?

0052

1 PUBLIC HEARING

2 MR. PAPASIAN: There are, but they
3 are not the traffic flow, that is not
4 westbound.

5 MR. ROMAINE: The Mobil and 711.

6 MR. PAPASIAN: Yes, but they are
7 not --

8 MR. ROMAINE: He mentioned
9 westbound. If you go westbound on the
10 expressway, you don't hit another gas
11 station until Route 112. That is the
12 new Mobil Bolla station that they just
13 built.

14 MR. PAPASIAN: If you are coming
15 from the City, a lot of people go to
16 the wineries and stuff, they do that,
17 from way out west, Nassau County, they
18 usually are driving on the LIE to get
19 gas, they are looking for a sign or
20 something they can see from the exit
21 ramp where they can get off and right
22 back on, it isn't until you get to
23 Route 112. If they know about going
24 111 South another mile, yeah, you will
25 always find something off the beaten

0053

1 PUBLIC HEARING

2 path, but we are not talking about ease
3 and the traffic flow where you are
4 going.

5 MR. AMPER: Are we taking testimony
6 from the public?

7 MS. GALLAGHER: It is a public
8 hearing.

9 (Whereupon Mr. Amper was sworn in.)

10 MR. AMPER: My name is Richard
11 Amper. I am Executive Director of the
12 Long Island Pine Barrens Society
13 located at 547 East Main Street in
14 Riverhead.

15 I just heard 45 minutes of the best
16 reason in the world to expand this and
17 to accommodate people who need gas in
18 that location, and it just sounds like
19 a wonderful thing, but Mr. Frelong has
20 sort of narrowed this down, and I hope
21 we will hear from Ms. Hargrave or
22 Counsel on this, but this is a Pine
23 Barrens act. There is a special law
24 that is supposed to protect this and
25 there are rules and regulations that

0054

1 PUBLIC HEARING

2 govern what constitutes the
3 qualifications for hardship, they have
4 public health, restoring preservation,
5 it's enumerated and laid out in 102110
6 and 10B and they say, and this is what
7 I have not heard anything in the whole
8 presentation, so, how does this conform
9 of the compelling public need
10 requirement?

11 I don't care whether it's a
12 wonderful store or a great gas station,
13 it made the mistake of being in the

14 Core Preservation Area and this is how
15 we deal with Core Preservation
16 hardships, so, I hope before there is a
17 final decision on this, and in the
18 future I think staff should say this
19 does or doesn't conform to this, or the
20 argument is that this is important to
21 public health and safety, or whatever
22 it is, but that was missing. We had a
23 great long discussion about whether it
24 was a good project in the right place
25 at the right time, but if it does not

0055

1 PUBLIC HEARING

2 meet the law's requirement for
3 compelling public need, they can't have
4 it. It's sad, and there will be too
5 fewer gas pumps in the area, and all
6 kinds of bad things would happen, but
7 it would be worse if we granted a
8 compelling public need that doesn't
9 meet the requirements of the law.

10 MS. GALLAGHER: Do you want to be
11 sworn in Mr. Egan?

12 MR. EGAN: Yes, I do.

13 (Whereupon Mr. Egan was sworn in.)

14 MR. EGAN: My name is James Egan.
15 I have two homes, one is 77 Hollow Road
16 in Stony Brook, and 114 Willis Avenue
17 in Port Jefferson.

18 I have never met the applicant. I
19 don't know him. I have never been to
20 the gas station.

21 I had an issue, I was vacationing.

22 MR. MILAZZO: You speak fast. She
23 is writing down what you're saying.
24 That's all. Just go slow for her.

25 MR. EGAN: I was vacationing in the

0056

1 PUBLIC HEARING

2 middle of the winter and I needed
3 aspirin for my son. His temperature
4 was 106 degrees, and I went to, I was
5 staying at a nice place, winter rates,
6 it was beautiful. I had to drive
7 10-miles to a gas station to get what I
8 needed in the snow. That is a
9 compelling public need, if I have ever
10 seen one.

11 I realize their expansion is a
12 question of why expand. Now, if you
13 look at the Pine Barrens act, it's

14 supposed to preserve the Core of the
15 Pine Barrens. Well, it's preserved,
16 that property is there. I don't see
17 any reason why somebody can't take
18 something and make a better product for
19 the community. That is a public
20 compelling need.

21 If you look at your other
22 decisions, JC&JC Land, they have a sand
23 mine in the middle of the Core -- what
24 is the name of it, Mr. Milazzo?

25 MS. GALLAGHER: Westhampton

0057

1 PUBLIC HEARING
2 Properties.

3 MR. EGAN: That went to the second
4 department, and they did it under
5 hardship, and they excavated to three
6 feet of our ground water, and there
7 would be no impact on the environment,
8 and they had an existing use, and they
9 were allowed to expand it to the three
10 feet of our ground water, and you are
11 going to tell me that every crane,
12 every bulldozer they operate is not
13 going to drop one drop of oil? There
14 is nothing to protect the environment.

15 The second department said that
16 that was not a self created hardship.
17 They have an existing system, an
18 existing building, they are looking to
19 improve it. They are looking to give
20 the community what the community wants,
21 otherwise, they would be out of
22 business.

23 The law is to protect the birds,
24 the trees, the ground water, clearing,
25 this man is not clearing anything.

0058

1 PUBLIC HEARING

2 This man is feeding his family and
3 taking care of the community that keeps
4 coming to him, because he is paying his
5 taxes, his insurance, he wants to make
6 a better product.

7 Mr. Amper, you are going too far.
8 Okay.

9 MR. AMPER: Not I, the State of New
10 York.

11 MR. EGAN: Another one, if you look
12 at the three hardships you gave Edward
13 Tuccio (phonetic). He is in the middle

14 of the Core, in the middle of the Pitch
15 Pine, you gave him three hardships, not
16 one, under compelling public need for
17 mini-storage. Your issue was the tanks
18 underground. Was he going to store
19 anything that is noxious that is going
20 to leak into the environment, and he
21 said no, and he lived up to that, and
22 he showed engineering, and they are
23 doing the same thing. They didn't ask
24 me to talk. I am afraid I am hurting
25 their application because you people

0059

1

PUBLIC HEARING

2

never invite me to Christmas. I didn't
3 get an invitation this year or last
4 year.

5

Thank you very much.

6

MS. GALLAGHER: Christmas? We have
7 cake, cookies, and coffee.

8

MR. EGAN: You did offer me a
9 cookie. You have always been very
10 nice.

11

I agree with the application. The
12 law is written to protect the
13 environment. I don't see these people
14 hurting the environment.

15

That lady back there smiled to me
16 and said, hey, we are going to need
17 Pine Barren credits, we would be happy
18 to talk to you.

19

They are doing exactly what you
20 want, they are using Pine Barren
21 credits, they are building a product,
22 they are giving the public what they
23 need.

24

Mr. Milazzo, you care so much about
25 the integrity of the law, I know you

0060

1

PUBLIC HEARING

2

do, but here is the thing, you ignore
3 precedent. It's not going to set a
4 precedent, you ignore them, and you
5 have these fickle judges in the State
6 Supreme Court. I am dying to get to
7 Federal Court. It's nothing personal.

8

MR. MILAZZO: I don't think it is.

9

MR. EGAN: The Federal Court judges
10 offer life. These State Supreme
11 Judges, number one, Judge Rouse
12 (phonetic) made a decision against me,
13 he is a highway superintendent, he does

14 not know the law.
15 Best of luck to you, you deserve
16 your application. Have a good day.
17 MR. DENICOLA: Thank you, sir.
18 MS. GALLAGHER: Would anybody else
19 like to make any public comments?
20 MR. DENICOLA: If I may?
21 With regard to the standards, I
22 believe, now I did not read my petition
23 into the record, I assume it's a part
24 of the record, and I assume the
25 commission has read it. My petition

0061

1 PUBLIC HEARING
2 covers a great deal of ground more than
3 my comments.
4 MS. GALLAGHER: It's included in
5 the record, as an exhibit.
6 MR. DENICOLA: The granting of the
7 permit by this commission will not be
8 materially detrimental to other
9 property or improvements in the area in
10 which the subject property is located.
11 It will not increase the danger of
12 fire, endanger public safety, or result
13 in substantial impairment of resources
14 of the Core Preservation Area. It will
15 not.
16 The waiver will not be inconsistent
17 with the purposes, objectives, or the
18 general spirit intent of this article,
19 meaning, the Environmental Conservation
20 Law.
21 This service station has been there
22 for 45 years. It is being updated,
23 improved to the current codes and to
24 meet the current demands of the
25 increase in population and traffic.

0062

1 PUBLIC HEARING
2 Stand at that corner and tell me
3 that you would not know that you are in
4 the Core Preservation Area of the Pine
5 Barrens, that much I can assure
6 Mr. Amper.
7 The waiver is the minimum relief
8 necessary to relieve the extraordinary
9 hardship. You need something to serve
10 the public. You have to have a service
11 station. That was a station with the
12 pumps in front, if you recall, the bay
13 station and the pumps in front, it is

14 no longer designed for that purpose.
15 The traffic has increased 100 fold
16 since 1973 and maybe more, maybe a
17 thousand fold.
18 I believe those are your
19 standards --
20 MR. MILAZZO: Mr. DeNicola, you
21 read the Section C part of the
22 hardship, so, there is Section A, "the
23 property has no beneficial use, if it's
24 used for it's present purpose, and it's
25 lack of beneficial use results from A,

0063

1 PUBLIC HEARING
2 B, and C or 1, 2, and 3."
3 So, that is also part of the
4 criteria, and I think what you were
5 hearing from Mr. Frelong is, did you
6 address those as well?
7 Like you said, it is in your
8 petition. I am just making sure you
9 have everything on the record that you
10 want and you are addressing the
11 commission.
12 I am just a traffic cop, telling
13 people to slow down.
14 MR. DENICOLA: I addressed it in my
15 petition and I am hoping the commission
16 has --
17 MR. MILAZZO: They have it.
18 MR. DENICOLA: -- and I am saying
19 this respectfully, common sense for
20 what we are asking.
21 We are not adversely affecting the
22 Pine Barrens, no matter what Mr. Amper
23 says. I understand he would like to
24 lock us in on a technicality to stop
25 anything, except a tree growing and a

0064

1 PUBLIC HEARING
2 little bunny rabbit running around.
3 Thank you very much.
4 MS. GALLAGHER: Mr. Amper, you have
5 additional comments to make?
6 MR. AMPER: This is the Core
7 Preservation Area of the Pine Barrens
8 Act. It's a little more than 50,000
9 acres, and it's land that was never
10 intended to be developed at all.
11 MR. DENICOLA: But, people are
12 there.
13 MR. AMPER: I like people as much

14 as the next guy. I am merely saying
15 that the people, the people of the
16 State of New York, set aside a
17 particular area where these rules don't
18 apply, because of the need to protect
19 the Pine Barrens and the land beneath
20 them, so, we established very specific
21 rules to say in order to break the rule
22 that says no building in the Pine
23 Barrens, you need to show certain
24 things that constitute compelling
25 public need, and the law says exactly

0065

1 PUBLIC HEARING

2 what that is, and I am sorry for you,
3 individually, or for your project, but
4 it does not conform to that which
5 allows this commission to grant
6 permission for development in the Core.
7 We don't develop in the Core.

8 We got close to 3 million people
9 and an enormous body of land and it is
10 just 50 acres that we don't build on
11 and, unless you can show, according to
12 that law, that this meets the
13 requirement for an exception, and it's
14 okay for a gas station and convenience
15 store where nothing was intended to be
16 built, they can't, not that they wont,
17 that they can't approve it, and
18 shouldn't.

19 MR. EGAN: I would like to respond.
20 I have previously been sworn in.
21 The applicant is not applying for Pine
22 Barren credits. That is Mr. Milazzo
23 stating that you have a extraordinary
24 hardship. The only application you
25 have before the Pine Barrens is an

0066

1 PUBLIC HEARING

2 extraordinary hardship. There are no
3 other applications, so, everybody has
4 to jump through a hoop where there is
5 kind of a definition.

6 If this man's gas station were to
7 burn to the ground, as houses have
8 burned to the ground, or been torn down
9 in the Core, if you had a thousand
10 square foot house, on Shultz Street
11 alone (phonetic), right across from the
12 Greek church, it is literally on a
13 tigered salamander breeding ground, the

14 house was torn down, it was 1,200
15 square feet, under non-development
16 piece, they had a previous home there,
17 they now have a 5,000 square foot home,
18 that is non-development, under
19 extraordinary hardship.

20 This man is improving an existing
21 service, which there is a demand. He
22 can show cars, volume, not 100 an hour,
23 200 an hour, therefore, he needs
24 increased deliveries of fuel.

25 If you are increasing your delivery
0067

1 PUBLIC HEARING

2 of fuel, you have a big tanker coming
3 up and down the highway. I would
4 rather see that tanker once a month
5 because he is filling tanks, instead of
6 twice a month, that protects the
7 public.

8 As far as no beneficial use, that
9 is ridiculous, that is for a hardship
10 when you have raw land and you say you
11 want to build a house, I bought it, I
12 inherited it, it has no beneficial use
13 because you can't make tomatoes on it,
14 you can't have chickens on it. If I
15 can't build a single-family home, which
16 you have allowed on Howells Road, that
17 was the argument, okay, he had no
18 beneficial use and he was selling it to
19 a contract vendee.

20 This man wants to take a use, wants
21 to expand an existing use, that existed
22 and has not a certificate of
23 non-conforming use, he has a CO, which
24 meets zoning. All he is doing, he was
25 in the Core before the Core existed,

0068

1 PUBLIC HEARING

2 and if you want to talk about how the
3 Core was designed, Mr. Amper, it was
4 with you and Mr. Breslin who sat down
5 because Mr. Breslin won in court
6 initially, and do you know how you
7 decided on what was going to be in the
8 Core and what was going to be in the
9 compatible growth, was based on mutual
10 agreement, not that one area was
11 anymore significant or sensitive than
12 the other. So, the people in the
13 compatible growth got all of their

14 rights if the met zoning. This man
15 needs zoning. He is in the Core, so he
16 has to jump through a hoop, which he
17 has, which has no real definition, and
18 he is in no way detrimental to this
19 Core.

20 MR. FRELONG: I think Mr. Egan
21 should direct his comments to the
22 commission.

23 MR. MILAZZO: Traffic cop.

24 MR. EGAN: This man has met his
25 extraordinary hardship. He is asking

0069

1 PUBLIC HEARING
2 to expand existing use.

3 MS. JENS-SMITH: Can I ask, what
4 year did the applicant buy the
5 property?

6 MR. DENICOLA: Several years ago.
7 It's in the petition. I don't have it
8 in front of me.

9 He paid \$2.5 million dollars for
10 it.

11 MS. JENS-SMITH: He bought it after
12 it was in the Core Preservation?

13 MR. MILAZZO: Post-Pine Barrens
14 Act.

15 MR. DENICOLA: Yes, he knew it was
16 a Core Preservation Area. We are not
17 denying that.

18 What our position is, is that we do
19 serve a very important public service.
20 If you don't have a gas station and
21 it's 2:00 in the morning, and you have
22 to get somewhere, this is a very
23 critical use. Try running out of gas
24 in this area, it's a rural area,
25 forgive me if you live there, there is

0070

1 PUBLIC HEARING
2 nothing here.

3 MS. JENS-SMITH: I do live there,
4 and you do make arrangements for that,
5 because you know the hours of things,
6 and that is part of the beauty of
7 living there.

8 MR. MILAZZO: One at a time.

9 MR. DENICOLA: When you have an
10 emergency or if you are driving, do you
11 ever forget to put gas in your car?

12 MS. JENS-SMITH: When you live in a
13 rural area, you prepare.

14 MR. ROMAIN: I think we have made
15 a complete record, so.
16 MR. DENICOLA: Thank you.
17 I believe the applicant has
18 established, I don't want to say a
19 right, but his conditions for a grant
20 by this commission.
21 This is, to me, this is not a hard
22 case to understand, based on the
23 situation of the site. It is not
24 hurting this Pine Barrens in any shape,
25 manner, or form, and it is serving a

0071

1 PUBLIC HEARING
2 serious public purpose. You are
3 reducing tanker truck deliveries,
4 reducing box trucks, and the way it's
5 laid out, you have cars that can move
6 in and out much more easily, no cues,
7 no back ups, and this station is
8 designed for current vehicle
9 maneuvering.
10 I don't want to take up anymore of
11 your time. Thank you so much for your
12 time.
13 MR. ROMAIN: Thank you for
14 presenting your case.
15 MS. GALLAGHER: Are there any
16 questions for the applicants or his
17 representatives?
18 MS. JENS-SMITH: I would like to
19 note, you know, they keep stating that
20 there are no other gas stations open at
21 all, but I believe there are.
22 MR. PAPASIAN: If you take the
23 North Road, which most people do from
24 the ferry, because it takes 25 minutes
25 with the lights, there are no gas

0072

1 PUBLIC HEARING
2 stations on the North Road coming back,
3 there are none that are open at 10:00,
4 even on Route 25.
5 You live out east, east of
6 Riverhead, there is nothing open that
7 late at night.
8 MS. JENS-SMITH: There is.
9 Valero.
10 MR. PAPASIAN: Okay, so, one, but
11 most people won't come this way because
12 if you know you can't get off the LIE
13 to get here.

14 MR. ROMAIN: The ferry route is
15 they are taking the North Road from the
16 ferry and then shooting down to the
17 Expressway.
18 MR. MILAZZO: Is there a feasible
19 alternative for a person to get fuel
20 coming off the ferry?
21 MS. JENS-SMITH: Yes.
22 MR. PAPASIAN: What do you mean?
23 MR. MILAZZO: If they are coming
24 off the ferry.
25 MR. PAPASIAN: That late at night,

0073

1 PUBLIC HEARING
2 they would have to know. If they are
3 from the area, like Laura mentioned,
4 you know where to go, but we are not
5 talking about that. We are talking
6 about the North Fork, people coming
7 from Nassau County, the City, late at
8 night, going to the wineries or the
9 breweries, or Greenport, they don't
10 know anything. They just know they are
11 on a road looking for a gas station.
12 MR. COLLINS: I just wanted to
13 point out, and it should be addressed,
14 and I am not sure prior to this
15 hearing, is about the change of the use
16 that happened in 2000, and if so, that
17 did need some determination and
18 probably should be included as part of
19 this record, and as part of the
20 application.
21 MR. ROMAIN: It's hard to go back
22 and try to undo what should have been
23 done then legally.
24 MR. COLLINS: But, just from
25 getting an approval from one

0074

1 PUBLIC HEARING
2 municipality regulatory agency, does
3 not eliminate the need to get whatever
4 necessary approvals that are from
5 another agency.
6 MR. ROMAIN: I don't disagree, but
7 I am sure there is a statute of
8 limitations somewhere.
9 MR. COLLINS: I would disagree with
10 that.
11 MR. MILAZZO: I would suggest you
12 close the hearing today and then have
13 them address it.

14 MS. GALLAGHER: Keep the record
15 open.
16 MR. MILAZZO: The commission may
17 need a showing on the hardship that
18 would have been required to change the
19 use in post-Pine Barrens Act.
20 MR. DENICOLA: I don't know if I
21 would consent to that, Mr. Milazzo,
22 quite frankly, because 18 years have
23 gone by and there is a waiver
24 provision, there are latches, and other
25 things that I would not have my client

0075

1 PUBLIC HEARING
2 re-apply on that.
3 MR. MILAZZO: So, that is your
4 position and it is on the record.
5 MR. DENICOLA: Thank you. That's
6 correct.
7 MR. ROMAINE: Should we make a
8 motion to close the public hearing?
9 MS. GALLAGHER: Let me just, are
10 there any other, I see there may be
11 additional public comments and I don't
12 want to cut off public comments at a
13 public hearing.
14 MR. AMPER: Just for the record,
15 since we all promised to speak the
16 truth, Mr. Breslin had nothing,
17 whatsoever, to do with the design of
18 the Pine Barrens Core Area map and
19 disagreed with it's final result.
20 There was no conspiracy with the
21 developers to do favors for friends.
22 It was done by a scientist, an
23 environmentalist, and approved by the
24 New York State Legislature, and I would
25 like to keep playing by the rules.

0076

1 PUBLIC HEARING
2 MR. EGAN: One more thing.
3 MS. GALLAGHER: Mr. Egan, just to
4 remind you, address the commission, not
5 Mr. Amper.
6 MR. EGAN: I have documentation I
7 would like to submit that Mr. Breslin's
8 property, which is on, right next to --
9 what is that -- American Physiology
10 Society --
11 MR. ROMAINE: William Floyd
12 Parkway.
13 MR. EGAN: They made a deal. Mr.

14 Breslin made a deal, the developers
15 made a deal, and they sold the public
16 out. He got his 2,000 acres. I would
17 like to submit that into this record,
18 and every one else in the Core, matter
19 of fact, he got A1 zoning for his
20 property for A5 and this commission
21 created documentation that said it
22 wasn't. I would like to submit that to
23 this record.

24 This commission selectively chooses
25 who gets approved and who does not get

0077

1 PUBLIC HEARING

2 approved, based on who you know. I
3 don't know anyone.

4 It's untrue. Mr. Breslin was, and
5 I have all the newspaper articles, Mr.
6 Breslin said let's sit down and make a
7 deal, and Mr. Amper was part of it.

8 It's untrue, Mr. Amper.

9 Thank you very much.

10 MR. ROMAINE: I will resubmit my
11 motion to close this public hearing.

12 MS. GALLAGHER: And, to keep this
13 record open for 30 days.

14 MR. FRELONG: Second.

15 MR. MILAZZO: When is the decision
16 deadline, Julie?

17 MS. HARGRAVE: February 22nd.

18 MS. GALLAGHER: Keep it open until
19 January 22nd.

20 MR. MILAZZO: Yes, but, also Mr.
21 DeNicola, when this application was
22 received, the commission's February
23 meeting would have been within the 120
24 days, and then the commission moved the
25 February meeting because of a holiday,

0078

1 PUBLIC HEARING

2 it's President's week, so the
3 commission will need an extension of
4 the February meeting to make a
5 decision.

6 Would your client consent to that
7 extension? It's one week.

8 MR. DENICOLA: Yes, we will consent
9 to it.

10 MR. MILAZZO: The record will stay
11 open for 30 days.

12 Mr. Egan you have 30 days for you
13 to submit your documents, and then the

14 commission reserves the right to just
15 respond to those, so, we would do those
16 responses in two weeks, and that would
17 put us at the beginning of February,
18 which would all be in time for the
19 February meeting, and we will give you
20 a copy of everything that we have.

21 MS. HARGRAVE: Can I just correct a
22 technicality in the staff report.

23 There was a question about Pine
24 Barrens credits and the Town's code
25 requirement to redeem Pine Barrens

0079

1 PUBLIC HEARING
2 credits in a convenience store
3 application, there is one issue here
4 with this site being in the Core, it's
5 a sending area, not a receiving area,
6 so it's been the practice at a minimum
7 to not land Pine Barrens credits in the
8 Core, so, on other cases we have seen
9 maybe land has been acquired in lieu of
10 buying Pine Barrens credits where they
11 are not supposed to be landed.

12 MR. ROMAINE: That is a question
13 that you should put into my chief of
14 staff, I am sure she will make a wise
15 decision.

16 MR. MILAZZO: The commission has
17 not allowed Pine Barrens credits to be
18 received in the Core, which would be an
19 issue if you were trying to from 15 to
20 a 2,950 because you would need those
21 credits to get there, so, that is an
22 issue.

23 MR. ROMAINE: We have a motion to
24 close the public hearing and to keep
25 the record open for 30 days, so, we

0080

1 PUBLIC HEARING
2 need a vote on that.

3 MR. COLLINS: Second.

4 MS. GALLAGHER: All in favor?

5 (Chorus of ayes.)

6 MS. GALLAGHER: Any opposed?

7 (No verbal responses.)

8 MS. GALLAGHER: Any abstentions?

9 (No verbal responses.)

10 MS. GALLAGHER: Public hearing is
11 closed.

12 (TIME NOTED: 4:40 P.M.)

13 {Upon reviewing of the audio, the

14 verbiage contained in the transcript is
15 correct and is an accurate record of
16 the hearing.}
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0081

1 C E R T I F I C A T E
2
3

4 I, ALEXA PELLIZZI, a Shorthand Reporter and
5 Notary Public of the State of New York, do
6 hereby certify:
7 THAT the foregoing is a true and accurate
8 transcript of my stenographic notes.
9 IN WITNESS WHEREOF, I have hereunto set my hand
10 this 19th day of December, 2018.
11
12
13
14

15 _____
16 ALEXA PELLIZZI
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