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CENTRAL PINE BARRENS  
JOINT PLANNING and POLICY COMMISSION

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In the Matter of the

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Public Hearing on the

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APPLICATION FOR CORE PRESERVATION

8

AREA HARSHSHIP PERMIT

9

OF MANOR PINES

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3233 Route 112  
Medford, New York

13

14

January 4, 1995  
7:00 P.M.

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18

PUBLIC HEARING

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ORIGINAL

2        A P P E A R A N C E S :

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4        GEORGE PROIOS, Chairman, County of Suffolk

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6        RAY COWEN, State of New York, Representing the  
Governor's Office

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8        BARBARA WIPLISH, Town of Brookhaven, Alternate for  
Supervisor LaMura

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10      BRENDAN FILMANSKI, Town of Riverhead, Alternate  
for Supervisor Janoski

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12      LINDA RILEY, Town of Southampton, Alternate for  
Supervisor Thiele

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14      RAYMOND CORWIN, Executive Director of Central  
Pine Barrens Joint Planning and Policy  
Commission

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17      ALSO PRESENT:

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19      Doris E. Roth, General Counsel for  
the Commission

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21      Donna Plunkett, Central Pine Barrens Joint  
Planning and Policy Commission

22

23      Lorraine Trezza, Administrative  
Assistant to Raymond Corwin

24

25      William Spitz, State of New York

2 MR. PROIOS: I would like to call the  
3 meeting to order. My name is George Proios.  
4 I'm Acting Chairman for the hearing acting on  
5 behalf of County Executive Robert Gaffney, who  
6 is Chairman of the Commission. I will let the  
7 members of the Commission introduce themselves.

8 MR. COWEN: I'm Ray Cowen representing the  
9 Governor's office.

10 MS. WIPLISH: I'm Barbara Wiplish  
11 representing Town Supervisor John LaMura.

12 MS. RILEY: Linda Riley representing  
13 Supervisor Fred Thiele, Town of Southampton.

14 MS. FILMANSKI: I'm Brenda Filmanski  
15 representing Riverhead Town Supervisor Joseph  
16 Janoski.

17 MS. ROTH: Doris Roth, general counsel to  
18 the Commission.

19 MR. PROIOS: I would like to read into the  
20 record the public notice that appeared in  
21 Newsday. Pursuant to the Environmental  
22 Conservation Law Article 57-0121 subsections (9)  
23 and (10), notice is hereby given that three  
24 public hearings will be held by the Central Pine  
25 Barrens Joint Planning and Policy Commission on

2 January 4, 1995, which is an error since  
3 subsequent to that notice the other application  
4 listed here will not be given and since no one  
5 is here from TK Buildings that is no longer on  
6 the agenda. The hearing is to be held at  
7 Brookhaven Town Offices, Building 4 auditorium  
8 at 7 P.M. on the matter of an application for a  
9 core preservation area hardship permit and a  
10 compatible growth area approval.

11 The subject of the hearing is core  
12 preservation area Manor Pines Project a proposed  
13 15 lot subdivision of 73 acres within an A5  
14 zoning district located at the southeast corner  
15 of Halsey Manor Road and Mill Road in  
16 Manorville.

17 Would the applicant or the applicant's  
18 representative like to make a presentation?

19 MR. HAEFELI: I would like to correct the  
20 statement in that public notice. It is not 73  
21 acres, it's 15 acres. We only own 15 acres at  
22 this time. The original property that we owned  
23 was 73 acres.

24 My name is a Richard T. Haefeli, 48G Main  
25 Street, Westhampton Beach, New York. I'm the

1 attorney for the applicants in this particular  
2 matter. I just want to state at the outset that  
3 I have had discussions with the attorneys for  
4 this commission and, as the attorneys know, it  
5 is the position of the applicant that the  
6 Commission does not have jurisdiction in this  
7 matter, that we are not subject to the  
8 provisions of this particular law, that our  
9 particular proposal was approved prior to the  
10 effective date of this particular law. We have  
11 appeared and are appearing tonight because the  
12 Commission has indicated that they were about to  
13 take action against the development that we were  
14 undertaking on this particular subdivision, and  
15 rather than engaging in litigation at this  
16 stage, we agreed to appear before the Commission  
17 tonight and submit the application, but in doing  
18 so, we do not waive our rights that the  
19 Commission does not have jurisdiction.

20  
21 I think we have submitted a fairly detailed  
22 application to this board with respect to what  
23 our position is. I would like to introduce  
24 certain documents into the record. The first of  
25 which is the first page of a deed dated April

21, 1986 when my clients acquired the property. The consideration at the time of acquisition is listed on the deed because it was an executive's deed. Three building permits were issued for three of the lots on the subject property. They were dated October 19th of this year, and I would like to introduce those three building permits, copies of them. Just so the record is clear, I would like to introduce a copy of the resolution adopted by the Town Board of the Town of Brookhaven on May 4, 1993 which authorizes settlement of the litigation between my client and the Town of Brookhaven, and the other document is a copy of the Planning Board Resolution with respect to this particular proposal, which sets forth all of the conditions which the applicants were to meet. Finally, a copy of a letter from the New York State Department of Environmental Conservation dated November 2, 1994 to my clients indicating that they were undertaking an appraisal of the property for the purpose of possible acquisition of the property.

25

I would like to give the Commission a

1  
2 slight background as to this particular piece of  
3 property. In 1986 we acquired the 73 acres for  
4 the consideration of \$369,255. Immediately  
5 after we acquired the property, we applied to  
6 the Town of Brookhaven for approval of the  
7 subdivision of the property into 33 building  
8 lots. At the time we acquired the property, the  
9 property was zoned two acre residential. The  
10 Town requested that we redraw the map, which we  
11 did. The Town then required us to prepare an  
12 Environmental Impact Statement, which we did.  
13 We prepared an Environmental Impact Statement  
14 and the EIS was accepted by The Town of  
15 Brookhaven on June 19, 1989. Thereafter, we  
16 applied to the Town of Brookhaven for the  
17 subdivision pursuant to 281 of the Town law.  
18 That approval was granted in February of 1990.  
19 Immediately thereafter, in February of 1990, we  
20 applied to the Town Planning Board for  
21 preliminary approval of that plus the  
22 subdivision. We were supposed to have a hearing  
23 before the Planning Board in June of 1990. In  
24 May of 1990 the Town Board re-zoned the property  
25 from 2-acre residential to 5-acre residential.

2                   As a result of that re-zoning, my client  
3                   commenced an action against the Town of  
4                   Brookhaven to have the re-zoning overturned.

5                   After the action was commenced, we entered into  
6                   settlement negotiations with the Town of  
7                   Brookhaven with respect to that action. We  
8                   started those negotiations somewhere in October  
9                   of 1992. During the course of those settlement  
10                  negotiations, we discussed with the Town the  
11                  fact that we would have to transfer to the Town  
12                  the 57 acres of land, we would have to transfer  
13                  to the Town the road frontage, we would be  
14                  subject to a number of conditions as to any of  
15                  the lots we would be allowed to build on, and we  
16                  submitted a proposed subdivision and the  
17                  subdivision to the Planning Board as to the size  
18                  of the lots, the actual 15 lots that would be  
19                  developed. I want to emphasize to the  
20                  Commission that the number of lots that we got  
21                  an approval for, the 15, is equal to five acres  
22                  zoning currently imposed in that area and on  
23                  that property. As a result of those settlement  
24                  negotiations, which were negotiations with the  
25                  Town Attorney's Office and included discussions

2 with the Town Planning Board, the Town Board, in  
3 a resolution date May 4, 1993, accepted and  
4 approved a settlement of the litigation based  
5 upon the subdivision of the property or a 15 lot  
6 division of property. The Planning Board,  
7 thereafter, imposed certain conditions on the  
8 property, all of which my clients were aware of  
9 and agreed to prior to the Planning Board's  
10 action and also prior to the time that the Town  
11 Board adopted the resolution authorizing the  
12 settlement.

13 What I think is important in this case is  
14 that at the time we entered into the settlement  
15 with the Town of Brookhaven, at the time the  
16 Planning Board acted in June, the proposed law  
17 that we are talking about Pine Barrens  
18 Commission Law was not in effect, had not been  
19 adopted. That law was not adopted until July  
20 1993. That law provided that it became  
21 retroactive with respect to certain applications  
22 on June 1 of 1993. Our position is clear that  
23 our approval occurred with the Town Board's  
24 resolution in May of '93, so there was no way  
25 that at the time my clients entered into, in

2 good faith, a settlement with the Town of  
3 Brookhaven that we had any knowledge or any  
4 reason to believe that this particular law was  
5 applicable to us. After we entered into the  
6 settlement with the Town of Brookhaven we, in  
7 fact, transferred 57 acres to the Town of  
8 Brookhaven. They are the owners of 57 acres at  
9 the present time. We transferred the road  
10 frontage to the Town of Brookhaven. We imposed  
11 a covenant setting forth all of the conditions  
12 set forth in the Planning Board resolution as to  
13 the amount of lot that could be cleared, the  
14 amount of vegetation, fertilized vegetation,  
15 that would be permitted, set back requirements,  
16 and all of the other conditions in the Planning  
17 Board's minutes.

18 At the time we entered into this settlement  
19 and at the time we transferred that property to  
20 the Town of Brookhaven, there was a first  
21 mortgage held by North Fork Bank and Trust  
22 Company in the amount of \$400,000. In order to  
23 accomplish the settlement and ensure we would be  
24 able to develop on the 15 lots, we got North  
25 Fork Bank to agree to release the 57 acres from

2 the mortgage, agree to release the road frontage  
3 from the mortgage, they also consented to the  
4 conditions set forth in the Planning Board  
5 resolution. As of the present time, what we  
6 have is we own 15 acres of property in the Town  
7 of Brookhaven subject to a \$400,000 mortgage  
8 held by North Fork Bank and Trust Company. We  
9 have a piece of property that basically, if this  
10 proposal and development cannot proceed, has no  
11 value whatsoever.

12 If this commission will use the figures  
13 that the Commission has used in negotiating and  
14 acquiring other parcels of property in the Pine  
15 Barrens area, those figures, in my  
16 understanding, range between \$7,000 and \$10,000  
17 an acre. That means my clients property would  
18 have a value of between \$105,000 and \$150,000.  
19 Remember, we purchased it for \$369,000 and there  
20 is a \$400,000 mortgage currently on that  
21 property. In addition to that, and the reason I  
22 introduced that, November 2nd my client received  
23 a letter from the DEC indicating that they were  
24 interested in acquiring this particular piece of  
25 property. After that initial contact occurred,

I had discussions with a representative from the Nature Conservancy and advised them of the current status of the property, which is that the 57 acres had been transferred to the Town of Brookhaven and that my clients were now the owners of only 15 acres and not the 73 acres they thought. As a result of that knowledge, the Nature Conservancy has removed my clients' property from the list of property they believe they want to acquire. If at the present time the State of New York is not interested in acquiring my clients' property at market value, and if this commission does not grant the permit that is requested, my clients have a piece of property that has absolutely no value to them. At the same time, the Town of Brookhaven, using those same figures, has a piece of property having a value of \$570,000. As a result, I believe that my clients, if they are not granted the application and the permit, are and would continue to suffer a extraordinary hardship that is not something suffered by anyone else in the area, that the position is not something that was entered into by my clients alone. We

2 received building permits from the Town of  
3 Brookhaven as of October 19th of this year.

4 What has occurred with respect to this  
5 particular piece of property is something that  
6 has occurred as a result of negotiations between  
7 my clients and the Town of Brookhaven. Both  
8 parties entered into those negotiations and into  
9 that settlement in good faith believing that  
10 settlement was a fair and just settlement of the  
11 litigation. It was also a fair and just way of  
12 developing this particular piece of property.

13 As a result of those negotiations, the Town owns  
14 the land. We do not own the land at this point  
15 in time.

16 The development of these particular 15 lots  
17 will not adversely affect the area in question  
18 and will not adversely affect the purpose and  
19 intent of the law. The facts and circumstances  
20 in this particular case are unique and  
21 substantially unique to this particular piece of  
22 property. There is no other piece of property  
23 affected by the Pine Barrens Law or in the core  
24 preservation area that has any similar set of  
25 facts and circumstances that would warrant the

2 granting of a variance to permit the  
3 development. I wanted to emphasize, if this  
4 permit is not granted, the property will have no  
5 value. If it has no value, there has been a  
6 taking. The government will have taken my  
7 clients' property without compensating my client  
8 for the property, will have received 57 acres in  
9 return for making my clients property valueless.

10 I have nothing further.

2 11, 14, and 15, except driveways for vehicular  
3 ingress and egress; 16 foot wide asphalt paved  
4 common drive will be required for lots 2, 3, 4,  
5 5, 6, 7, 8, and 9; a 16 foot asphalt paved  
6 common drive with drainage for lots 11 through  
7 14, and no vehicle access, ingress or egress, to  
8 Mill Road for lots 11 and 14; all common drives  
9 will be provided with a "T" turnaround; clearing  
10 plan will be required for each lot at the time  
11 application for building permit; proposed  
12 clearing should be delineated on each lot with  
13 surveys flagging tape prior to the commencement  
14 of any clearing or construction activity; five  
15 foot road widening on Mill Road and Halsey Manor  
16 Road to be deeded to the Town, 57 acres of open  
17 space to be deeded to the Town; none of the lots  
18 shown as approved may be sold, developed or  
19 constructed upon until all the conditions have  
20 been met; all covenants and buffers shall appear  
21 on surveys for individual building permits. The  
22 Town required that those conditions be put in  
23 the form of a covenant and that covenant be  
24 filed with the Suffolk County Clerk's Office.  
25 That covenant has in fact been filed with the

2 Suffolk County Clerk's Office.

3 MR. PROIOS: When the Town re-zoned the  
4 property back in 1990, did they require you to  
5 go back and re-do your EIS?

6 MR. HAEFELI: No, it did not. The original  
7 EIS, which covered 33 acres, also looked at a  
8 possible reduction in the number of lots, and I  
9 submitted a letter to either the Commission or  
10 your attorney at the time I filed this, and it  
11 is our position that no further environmental  
12 review is required on this particular  
13 application as a result of the impact statement  
14 that was prepared and adopted by the Town of  
15 Brookhaven.

16 MR. PROIOS: On the court action, was there  
17 an actual decision in terms of what came out?

18 MR. HAEFELI: Was there a decision? No.  
19 We entered into settlement negotiations while  
20 those actions were pending and we settled the  
21 matter with the Town of Brookhaven. We received  
22 no additional number of lots. We were required  
23 to build pursuant to the 5-acre zoning, 15 lots  
24 is equal to the 5-acre zoning on that particular  
25 property. What we did get from the Town of

2 Brookhaven was the ability to build the lots on  
3 the road, which meant we would not have to put  
4 in any drainage and we would not be required to  
5 pay any park fee, but, in return for that, the  
6 Town received the 57 acres. Part of the crucial  
7 area in the way this particular subdivision was  
8 developed was the amount of land between lot  
9 number 1 one and the Long Island Expressway.  
10 They wanted as much land as possible open in  
11 that area to afford a natural corridor along the  
12 Long Island Expressway with respect to the land  
13 on the other side of Halsey Manor Road and lands  
14 to the north and to the east and west of that,  
15 which was part of, I think, the overall plan for  
16 this particular area at the time.

17 MR. COWEN: Can you comment on the  
18 ownership of the property on this side?

19 MR. Haefeli: No. There is a house right  
20 here. I can comment there is a house on the  
21 corner of Mill Road and Halsey Manor Road right  
22 here. That was built four years ago. That was  
23 a part of the property my clients originally  
24 owned.

25 MR. COWEN: Ray, does your staff have any

2 information on who owns the property?

3 MR. CORWIN: It's on the computer system.

4 MR. COWEN: It's not publicly owned?

5 MR. CORWIN: I think some of it is.

6 MR. COWEN: Is there any adjacent publicly  
7 owned property?

8 MR. CORWIN: I believe on the west side of  
9 Halsey Manor Road there is at least one piece of  
10 County park land. It's the piece known as the  
11 former American Cancer Society piece. I'm sure  
12 there are others.

13 MR. PROIOS: Any other questions of the  
14 applicants from the Commission?

15 MR. HAEFELI: In response to your question,  
16 my client tells me that the American Cancer  
17 Society piece is north of that piece on the  
18 other side of Mill Road.

19 MR. COWEN: What was the date of transfer  
20 of the 57 acres to the Town of Brookhaven?

21 MR. HAEFELI: May or June of this year,  
22 1994.

23 MR. PROIOS: Would you like to have a seat  
24 back there. Any members of public that wish to  
25 make comments?

2 MR. AMPER: I'm Richard Amper, Executive  
3 Director of the Long Island Pine Barrens  
4 Society. Those of us who work on this  
5 legislation contemplated these sorts of  
6 problems. One of the key intentions of this act  
7 was to assure that those projects that were  
8 indeed covered by the act and not grandfathered,  
9 as it is our position this project was not  
10 grandfathered, those projects would be  
11 addressed, first, by government in terms of  
12 alternative of acquisition. My understanding,  
13 having conferred with the Nature Conservancy  
14 this morning, is that the appraisal that was  
15 done on this property for the Department of  
16 Environmental Conservation included the value of  
17 the entire parcel and not merely the 15 acres  
18 currently held by the applicant. In addition,  
19 the Nature Conservancy confirmed to me this  
20 morning a continued interest in this  
21 acquisition, except as might be contra-indicated  
22 by the Department of Environmental Conservation  
23 at some point in the future.

24

25

I have had occasion to express the

Society's concern in the past about the

14 There have been many acquisitions in the  
15 general area and it is a key component of an  
16 important greenbelt. It has other environmental  
17 values, which have been identified by the  
18 County, the Town, and the State, but, more  
19 importantly, these applicants have demonstrated  
20 a very long and difficult process of trying to  
21 obtain their approvals for development of this  
22 property, and on the basis of prioritization  
23 that was designed into this legislation in the  
24 first place, we need to consider acquisition of  
25 the properties of those who have been in the

process longest first. It is not merely the function of the Commission to find out how an applicant can be exempted from the preservation plan, but how he can be properly compensated under it. I would ask the Commission to work as quickly and as hard as it can at evaluating the benefits of overall acquisition of this property, overall acquisition this property, not merely compensation for 15 acres, so that the purposes of the act may be advanced rather than a technicality permitted. We agreed to start by paying those furthest along in the application process fair market value for their land, and I would like the Commission to do everything in its power to see that intent of the law is followed. I would also remind the Commission that there has never been in the history of the Pine Barrens preservation efforts any taking of land without compensation and there will not be one here. The question here is: Can we fairly compensate these landowners for a piece of land that is important to the preservation of the Pine Barrens or are we satisfied merely that the Commission has an excuse to grant them a

2 hardship so we don't have to do the preservation  
3 job?

4 I would ask the Commission to evaluate this  
5 in the light of what the purposes of this  
6 legislation are and the overall public benefit  
7 of preservation at the exact same time and with  
8 the same emphasis that it's giving the private  
9 property owners rights to be heard on the  
10 hardship application. Thank you.

11 MR. PROIOS: Anyone else from the public?

12 MR. DARROW: Good evening. My name is Kim  
13 Darrow, and I'm here representing the Long  
14 Island Greenbelt Trail Conference. Before I  
15 begin my statement, I want to respond to a  
16 statement that one of the commissioners raised  
17 about other publicly owned land. I can tell you  
18 definitely that this property is on the east  
19 side of Halsey Manor Road and the south side of  
20 Mill Road. On the west side of the Halsey Manor  
21 Road, it's on the corner of Mill Road down maybe  
22 two thirds of the way to the Long Island  
23 Expressway begins a piece of property which is  
24 Suffolk County park land. Through that property  
25 presently passes the Long Island Pine Barrens

2 Trail, which was opened last year. It comes out  
3 on Halsey Manor Road because there is a piece of  
4 private property down by the expressway and goes  
5 along Halsey Manor Road, but it comes out  
6 directly across from the Manor Pines property,  
7 so there is that bit of public property that I  
8 do know about definitely.

9 The Long Island Greenbelt Trail Conference  
10 urges the Commission to deny the application for  
11 hardship exemption which would permit the  
12 applicants to proceed with the development known  
13 as Manor Pines, which is in the Core  
14 Preservation Area. The applicants have not  
15 established extraordinary hardship under the  
16 statute. The subject parcel is located, as I  
17 said, east of Halsey Manor Road, south of Mill  
18 Road in the heart of the Core Preservation Area.  
19 It is a locale that is largely undeveloped Pine  
20 Barrens habitat. The recently opened Long  
21 Island Pine Barrens Trail emerges from the woods  
22 at Halsey Manor Road directly opposite the  
23 proposed development, so obviously, the proposed  
24 development would have a significant impact on  
25 the experience of those using the Pine Barrens

2 Trial. The key to qualifying for a hardship  
3 exemption under the Pine Barrens Protection Act  
4 is for the applicant to demonstrate the  
5 following, and I'm quoting from the Act, "the  
6 particular physical surroundings, shape, or  
7 topographical conditions of the specific  
8 property involved would result in an  
9 extraordinary hardship, as distinguished from a  
10 mere inconvenience, if the provisions of this  
11 act, non-development, are literally enforced."  
12 That is section 57-0121(10)(a). The Manor Pines  
13 application, the written application submitted  
14 by the owners and the presentation given by  
15 their attorney here this evening, does not even  
16 address that fundamental standard, and the  
17 reason is obvious, there are no physical or  
18 topographic characteristics of the Manor Pines  
19 parcel that represent, and here again this is  
20 language from the statute, "unique circumstances  
21 peculiar to the subject property," or which, and  
22 again I'm quoting from the statute, "do not  
23 apply to or affect other property in the  
24 immediate vicinity." The property is covered by  
25 pitch pine oak woods, which are typical Pine

2 Barrens vegetation found on other properties in  
3 the immediate vicinity. If the physical  
4 characteristics of this property could be found  
5 to result in extraordinary hardship to the  
6 owners, then all the undeveloped land in the  
7 Core qualifies for hardship exemption and we can  
8 dispense with these hearings. The information  
9 about the applicant's purchase of the property,  
10 the history of Town approvals, re-zoning, and  
11 litigation settlement, which occupies much of  
12 the text of the exemption application and the  
13 presentation we heard this evening is not  
14 relevant to the hardship standards of the Pine  
15 Barrens Protection Act. The application does  
16 not even allege any unique physical  
17 characteristics of this property. The  
18 applicants baldly assert but do not attempt  
19 to demonstrate that, if they cannot develop the  
20 property as planned, they will have "lost all  
21 economic value of their property." The most  
22 glaring omission by the applicant in their claim  
23 of total loss of economic value is their failure  
24 to address the possibility of transferring  
25 development rights, so-called TDR, from the

2                   Manor Pines parcel to a receiving area outside  
3                   the Core and thereby recovering the development  
4                   value of their property. Without exploring that  
5                   important option under the Pine Barrens  
6                   Protection Act, the applicants are hardly in the  
7                   position to claim extraordinary hardship, and it  
8                   might even be said that their application is  
9                   incomplete in that respect.

10                  An incredible assertion appears near the  
11                  end of their hardship application. I'm quoting  
12                  from the application itself: "The status of the  
13                  property itself is a result of the approvals  
14                  received from the Town of Brookhaven and the  
15                  action taken by the Town of Brookhaven is not  
16                  the result of acts or actions by the applicants  
17                  themselves." Are the applicants suggesting they  
18                  made no application for those approvals from the  
19                  Town of Brookhaven? On the contrary, I would  
20                  suggest that the applicants had a rather  
21                  essential hand in extracting the various  
22                  approvals from the Town of Brookhaven. It was  
23                  an active process with all involved.

24                  And while we are examining what is or is  
25                  not the result of the actions by the applicants,

1  
2 let's recall what they recently did to the land  
3 itself. After the applicants were notified by  
4 the Commission that the Pine Barrens Protection  
5 Act forbade them from developing the property,  
6 they sent in the bulldozers, cleared three lots,  
7 dug three basements, and put concrete footings  
8 in two of them. I invite the Commission to  
9 drive out to Halsey Manor Road and see how the  
10 applicants have scarred those lovely pine woods.  
11 The applicant's actions were intentional,  
12 calculated purely and simply to test the  
13 Commission's will to enforce the Pine Barrens  
14 Protection Act. We are grateful that the  
15 Commission took a firm stand and made clear to  
16 the applicants their limited options under the  
17 law. Continued firmness is now called for in  
18 applying the hardship provisions of the Act.

19 In fairness, however, we should recognize  
20 that the applicants have raised some equitable  
21 considerations, which, in spite of their own  
22 questionable actions, need to be addressed. In  
23 order to place these considerations in context,  
24 it should also be observed that, based on the  
25 information set forth in the application itself,

2 it appears that the applicants have only  
3 themselves to blame for not having the necessary  
4 approvals long prior to the statutory cut-off  
5 date of June 1st, 1993. When the Town of  
6 Brookhaven re-zoned the property from 2-acre to  
7 5-acre zoning in May of 1990, the applicants  
8 responded with a lawsuit. When that legal  
9 action was finally settled nearly three years  
10 later, the applicants accepted the constraint of  
11 5-acre zoning. If they had proceed at that  
12 point, we would probably see buildings by now.

13 Nevertheless, there have been agreements  
14 with the Town, and the Town of Brookhaven over  
15 the past few months apparently has encouraged  
16 the applicant to proceed with marketing and  
17 development long after the Town was on clear  
18 notice that the development was prohibited by  
19 the Pine Barrens Protection Act. The approvals  
20 obtained from the Town and this includes the  
21 building permits which we were told were issued  
22 on October 19 of last year, and the commitments  
23 made to the Town, including the conveyance of  
24 part of the parcel to the Town, do not relate to  
25 the hardship provisions of the Pine Barrens

2 Protection Act, but they may be seen as placing  
3 a moral burden on the Town to assist the  
4 developer in exploring and realizing the  
5 economic value possible through the TDR program.  
6 I might add, also in cooperating to facilitate  
7 State acquisition of the property.

8 The application states that the Nature  
9 Conservancy refused to continue with the  
10 appraisal process and to consider purchase of  
11 the property once "the current status of the  
12 property" was determined, apparently by that  
13 they mean the fact there had been a conveyance  
14 to the Town.

15 The Manor Pines property is on the State's  
16 list of property that should be acquired in the  
17 Core Preservation Area. There was a  
18 presentation made to the Pine Barrens' Advisory  
19 Committee last month which showed the map of the  
20 State's acquisition list. This is one of the  
21 parcels, the entire 73 acre parcel. I have  
22 reason to believe it was the State DEC and not  
23 the Nature Conservancy which stopped the  
24 appraisal process, but I do not know why. It  
25 makes no sense. The appraisal was apparently

2 stopped at a time when the threat to the  
3 property was the greatest. When there was every  
4 indication that the applicants would defy the  
5 law and commence development. And that is  
6 exactly what happened. The applicants thumbed  
7 their noses at the Commission and the Pine  
8 Barrens Protection Act, sent in the bulldozers,  
9 and defiled the Core.

10 That act should have signalled the State to  
11 intensify its acquisition efforts, not abandon  
12 them. Where the threat to the Core is greatest  
13 and most imminent, government action to protect  
14 the land should be most forceful. The State  
15 should immediately reactivate its efforts to  
16 purchase the Manor Pines property. Some  
17 creativity and cooperation on different levels  
18 of government may be required. Inasmuch as part  
19 of the parcel in question has already been  
20 conveyed to the Town of Brookhaven, the State  
21 may have to negotiate with the Town as well as  
22 the applicants. While the applicants are  
23 entitled to fair compensation for their  
24 property, the State has an interest in not  
25 paying the exorbitant per-acre price for the

2 land. We don't want to see the State  
3 compensating them for 15 acres what 73 acres  
4 would be worth. Furthermore, for management  
5 purposes, it would be preferable to have the  
6 entire parcel in single public ownership.  
7 Therefore, the State may find it desirable to  
8 pursue an agreement by which it compensates the  
9 applicants for the entire property and the Town  
10 conveys the portion already acquired to the  
11 State. This is up to the parties to work out  
12 something equitable that both the Town of  
13 Brookhaven and the State of New York can live  
14 with. The bottom line, and I agree with  
15 Mr. Amper, is that regardless of everything that  
16 has gone before, the applicant, the owner of the  
17 property, should get fair and full compensation  
18 for it.

19 Finally, the additional requirements of the  
20 hardship section of the Act are not met. If you  
21 look at section 57-0121(10)(c), there are some  
22 additional requirements that are put on there.  
23 The proposed development would indeed, and this  
24 is language of the Act, "result in substantial  
25 impairment of the resources of the Core



2 Core, the Manor Pines property should not be  
3 developed. It should be preserved in its  
4 natural wooded state. However, the Commission  
5 should also be sensitive to the right of the  
6 applicants to receive fair compensation for  
7 their property, either through public  
8 acquisition or transferred development rights,  
9 and the State DEC and the Town of Brookhaven  
10 should take appropriate action to move those  
11 processes along.

12 I agree, from my point of view, the most  
13 realistic and feasible approach at this point is  
14 acquisition, and the State should be charging  
15 full speed ahead on that. Here is a copy of my  
16 statement. I just want to make one other  
17 comment. The hearing tonight is obviously on  
18 the hardship application, but the applicant's  
19 representative did again raise the spector that  
20 the Commission lacks jurisdiction. I simply  
21 disagree. This is not a grandfathered project.  
22 The approval from the Town Planning Board was  
23 after June 1st, 1993, and the Commission has,  
24 and I'm sure is well aware of, the three letters  
25 that I have written, very detailed letters, over

2 the past year, June 30, 1994, September 24,  
3 1994, and November 7, 1994, in which I think I  
4 spell out very clearly that the project is not  
5 grandfathered, the Commission has jurisdiction,  
6 without an exemption application development  
7 can't go forward. That just makes it all the  
8 more imperative that the option of compensation  
9 through acquisition is pursued with all  
10 deliberate speed. I thank the Commission for  
11 hearing me.

12 MR. COWEN: Can you indicate on this map,  
13 which is a subdivision map, exactly where the  
14 trail emerges from the woods on Halsey Manor  
15 Road?

16 MR. DARROW: Here's the expressway. The  
17 trail emerges, again, this is a guess, about  
18 here, somewhere in and around here. If you had  
19 a property map, the trail comes out fairly close  
20 to that property boundary.

21 MR. COWEN: Mr. Darrow, I assume you have  
22 walked that trail. Would you take us on a  
23 journey in a westerly direction from this point.  
24 Where does that trail, for instance, cross Mill  
25 Road?

2 MR. DARROW: The trail winds its way  
3 northwest from here and comes out on Mill Road  
4 maybe a half mile down, and then it follows Mill  
5 Road for a short distance and then departs on  
6 the north side and goes onto County property  
7 again on the north side of Mill Road.

8 MR. COWEN: What distance do you estimate  
9 it traverses Mill Road?

10 MR. DARROW: Maybe a thousand feet. Again,  
11 don't hold me to distances because that's not my  
12 strong point.

13 MR. COWEN: What's the character on Mill  
14 Road?

15 MR. DARROW: It's totally rural. It's  
16 wooded on both sides. On that stretch of Mill  
17 Road there west of Halsey Manor Road there is no  
18 development at all.

19 MR. COWEN: If you continue in a westerly  
20 direction, where does the trail go?

21 MR. DARROW: If this is Mill Road, the  
22 trail, once it comes from Halsey Manor Road and  
23 follows Mill Road, it goes above Mill Road,  
24 north of Mill Road, comes back and rejoins it  
25 where there is wetland for maybe 50 feet or so,

2                   it goes along Mill Road and goes north on County  
3                   park land up toward the Peconic River turning  
4                   west a few hundred or maybe a couple hundred  
5                   yards, parallels the Peconic River out to Wading  
6                   River Manor Road right at the point where the  
7                   bridge crosses the Peconic River.

8                   MR. COWEN: Okay. Take me in an easterly  
9                   direction?

10                  MR. DARROW: The trail, when it comes out  
11                  here, it follows Halsey Manor Road across the  
12                  expressway. Now, this area to the south of the  
13                  expressway and east of Halsey Manor Road, is the  
14                  area known as Manorville Hills. It's one of the  
15                  largest, most topographically varied areas in  
16                  the Pine Barrens, and it's one of the most  
17                  extensive areas where the trail crosses no paved  
18                  roads for miles and miles. Because we are  
19                  waiting for the acquisition process to go  
20                  forward, the trail at the present follows the  
21                  Long Island Expressway for maybe a mile or more  
22                  into the Manorville Hills until we hit some  
23                  County property where it goes south, and again,  
24                  there is a lot of winding around. It goes  
25                  between there and County Road 51. It uses

2 County park lands and Navy co-op lands. The  
3 expressway right of way is very wide here and  
4 fortunately there is room on the south side of  
5 the fence to take the trail within the right of  
6 way. Eventually, we hope to reroute it so it  
7 goes away from the expressway. You have the  
8 expressway a couple of hundred feet to the north  
9 as you're hiking there.

10 MR. COWEN: At no time in the future will  
11 the trail be rerouted so it doesn't cross the  
12 expressway?

13 MR. DARROW: It has to cross the  
14 expressway. We have to get it to Manorville  
15 Hills, which is a spectacular area.

16 MR. COWEN: Going by the dimensions on this  
17 map, I would say that, roughly, the trail  
18 emerges from the woods onto Halsey Manor Road,  
19 let's say, within 600 feet of the expressway and  
20 that probably won't change?

21 MR. DARROW: We hope it will change. We  
22 hope this parcel will be acquired so we will be  
23 able to reroute the trail down so it doesn't  
24 come out on Halsey Manor Road, but, of course,  
25 at this point this is what our wish is. We

2 don't know if that will happen. That would be  
3 our eventual hope that would happen. It's our  
4 hope to eliminate any road walking.

5 MR. FERNANDEZ: Mr. Cowen, I'm with the  
6 Board of Directors of the Long Island Greenbelt  
7 Trail Conference, George Fernandez. I helped  
8 recommend parcels for priority acquisition to  
9 Suffolk County Parks. Practically, not even  
10 practically, every single parcel on either side  
11 of Mill Road, which would be in here, that is  
12 now in private ownership, is priority  
13 acquisition. Every parcel in Manorville Hills  
14 that is in private ownership is now priority  
15 acquisition by Suffolk County Parks. I would  
16 also like to add that I have been working with  
17 organizations such as Nassau/Suffolk Horsemen  
18 and other equestrian groups to identify and  
19 propose to the County a horse route that would  
20 run parallel to the Pine Barrens Trail. The  
21 horse route would stay on the road, go down Mill  
22 Road and use the shoulder of Halsey Manor Road  
23 to work its way toward Manorville Hills. I'm  
24 also working on a Brookhaven Town Advisory  
25 Committee for bicycles that would also take a

2 bike route down Mill Road, down Halsey Manor  
3 Road also using the roadway. This area is  
4 literally a gateway to the largest wilderness  
5 area on all of Long Island, that being  
6 Manorville Hills. The one house that you heard  
7 described earlier is the only home in the entire  
8 area. Once you get onto Mill Road you are in  
9 the middle of nowhere, and the experience is  
10 unmatched from a recreational perspective for  
11 any user group. Once you hit that area you just  
12 keep heading east and you can stay in the woods  
13 pretty much without seeing a house for a long  
14 way. We are talking about working your way out  
15 to Flanders, literally.

16 I wanted to make a statement but basically  
17 I have covered everything just now that I wanted  
18 to say. I want to add that if the Commission  
19 should rule to allow the builder to develop the  
20 parcel, I think it's very important that in a  
21 covenant, these people who live in this area  
22 understand what is permissible from the  
23 perspective of land use, as far as dumping,  
24 motorized vehicles, off the road vehicles, it's  
25 a major problem. I think if someone owns

2 property in that area, in this subdivision,  
3 within a covenant agrees not to own one of these  
4 vehicles and is found in these woods, destroying  
5 these woods, is found dumping in these woods, I  
6 think they should be severely reprimanded or  
7 punished. I think it's important that if you do  
8 allow development so close to such a pristine  
9 area, there has to be some kind of way of  
10 communicating with the people who are blessed  
11 with the right to live there to accept some sort  
12 of stewardship to this area. Basically, that's  
13 all I wanted to add. I really think the land  
14 should be acquired. The value of the Core, to  
15 me, is going to be public land, the public  
16 deserves access to this land. We deserve to  
17 create as incredible a recreational experience  
18 as possible for all people. I think this would  
19 really put a damper on that dream of creating a  
20 real wilderness area and maintaining that area  
21 and that type of experience there. Basically,  
22 that's it. Thank you.

23

MR. PROIOS: Okay. Anyone else?

24

25

MR. SCHWENK: My name is Edwin M. Schwenk,  
Executive Director of the Long Island Builders

2 Institute. I want to take issue with any  
3 aspects over the Town of Brookhaven. Through  
4 some six or seven years of trial and tribulation  
5 hardship the gentleman did get legitimately  
6 three building permits to build. They put the  
7 three foundations in. Irrespective of the fact  
8 they are supposed to know every bit of  
9 legislation in Albany and Suffolk County or  
10 wherever, they went ahead in a legitimate way  
11 and acquired three building permits, put in  
12 foundations, and did it with good intents. The  
13 rest is a legal question as far as how that sets  
14 with the legislation. I'm not an attorney.

15 I want to take issue with Mr. Darrow over  
16 the TDR's. So far in the Pine Barrens TDR's are  
17 fantasy land. TDR's do not amount to anything  
18 at this juncture and for you to make a statement  
19 that they have not examined the TDR program to  
20 see what they could do and where they could do  
21 it is an impossibility because we don't have  
22 one. You know what, I question if we are ever  
23 going to have one. So anything of that brought  
24 into the fact that that in fact gives value to  
25 the property is a figment of someone's

2 imagination. The TDR program is zip. It means  
3 nothing. It means nothing to the value of  
4 anybody's property at this time. The Long  
5 Island Builders Institute hopes that over a  
6 period of time that will develop, but at this  
7 point, to say that these gentlemen have not  
8 explored all the possibilities is a misnomer and  
9 not fair. If this doesn't happen, for whatever  
10 reasons legally, their property is worthless.  
11 The TDR's are not worth a damn. Thank you very  
12 much.

24 MS. WIPLISH: I would like to make a  
25 comment. The Town validly issued the permits.

2 The applicant met with all the conditions put  
3 forward by the Planning Board and when those  
4 conditions were met there was no reason for the  
5 Town not to issue the building permits. There  
6 is separate issue as to the Pine Barrens. The  
7 hardship application, not the issuing of the  
8 building permits. It's a separate, distinct  
9 issue.

10 MR. HAEFELI: Mr. Chairman, I take strong  
11 emphasis and object to that statement. The Town  
12 of Brookhaven issued those permits based upon  
13 the facts available to them, based on the facts  
14 whether this law was applicable at the time.  
15 The Town of the Brookhaven's position from day  
16 one was that this law was not applicable to this  
17 application. The statement made by this lady on  
18 behalf of the Town of Brookhaven is wrong.

19 MS. WIPLISH: I'm agreeing with you.

20 MR. HAEFELI: No, you are not.

2 from the Pine Barrens Commission.

3 MR. COWEN: Yes, they would.

4 MR. PROIOS: The law specifically states  
5 you can proceed along the path of getting all  
6 your municipal permits. All the law precluded  
7 was physical construction in the Pine Barrens.

8 MR. HAEFELI: You would not have issued  
9 building permits in October or November of this  
10 year if the Town of Brookhaven believed this  
11 particular application was subject to the  
12 jurisdiction of the Pine Barrens Commission.  
13 You would have held them up. I want that  
14 emphasised and I want that on the record.

15 MR. COWEN: Do you have anything in writing  
16 that indicates the Town of Brookhaven has said  
17 to you, in writing, that in fact your project is  
18 not subject to this Pine Barrens Act?

19 MR. HAEFELI: Do I have anything? Building  
20 permits.

21 MR. COWEN: Other than the building  
22 permits?

23 MR. HAEFELI: I have a settlement from the  
24 Town of Brookhaven. I have a written approval  
25 from the Planning Board. What else would you

2 like me to do. I have had numberable  
3 conversation with the Planning Board of the Town  
4 of Brookhaven, with the Town Attorney's Office  
5 of the Town of Brookhaven. If, at any stage,  
6 the Town of Brookhaven or their legal staff  
7 believed that this application was part of the  
8 Pine Barrens Commission jurisdiction, they would  
9 have held it up until such time as that issue  
10 was resolved.

11 MR. COWEN: Just for the record, you are  
12 misinformed on that. That is not the  
13 requirement of this act.

14 MR. HAEFELI: Just for the record The Town  
15 of Brookhaven would not have issued building  
16 permits, would not have accepted 57 acres if  
17 they felt this particular application was  
18 subject to the review of the Pine Barrens Act.

19 MR. COWEN: The action is irrelevant for  
20 the purpose of this proceeding.

21 MR. HAEFELI: It is totally relevant. It  
22 is important to this particular proceeding. We  
23 didn't act on our own. We did this in  
24 conjunction with the Town of Brookhaven based  
25 upon a settlement that occurred prior to the

2 effective date of your law.

3 MR. COWEN: Well, you may believe that, but  
4 that's not the case. At this point the  
5 proceedings are totally separate.

6 MR. HAEFELI: No, they are not. Let me do  
7 one more thing. This appears to be a serious  
8 question as whether or not the DEC is interested  
9 in this piece of property. I want to introduce  
10 the letter my clients received from the  
11 appraiser indicating they were going to do an  
12 appraisal of the property. My client  
13 subsequently heard from that appraiser and was  
14 advised that this property was taken off the  
15 list. Maybe the DEC can tell us whether or not  
16 this piece of property is being considered for  
17 acquisition since we have been told it is not  
18 and the DEC is present here.

19 MR. COWEN: The DEC is present here in the  
20 capacity of representing the Governor's Office  
21 not the DEC, but I will answer your question.  
22 The property in its present configuration would  
23 not have been put on our list for acquisition.  
24 I can tell you that much. I will also tell you,  
25 however, that I don't know where the information

2 came from that the appraisal was stopped,  
3 because my information, as of 5 o'clock this  
4 afternoon, is that the appraisal is continuing,  
5 and I expect to have it in my hands within two  
6 or three days.

7 MR. HAEFELI: He is one of the owners of  
8 property. Did you speak with the appraisal  
9 company?

10 MR. TEDALDI: Yes. They called me up about  
11 a month ago and said your property is off the  
12 list.

13 MR. COWEN: I'm telling you the latest  
14 information is that the appraisal is on-going,  
15 and I expect to have an appraisal in my hands  
16 within two or three days.

17 MR. PROIOS: Let's go on to our next  
18 speaker.

19 MR. OLSEN: My name is Walter Olsen. As  
20 most of you known I'm cofounder of a group  
21 called CPR that represents many of the property  
22 owners that own property in the Core of the Pine  
23 Barrens. I didn't come here tonight prepared to  
24 speak on this particular application, but I feel  
25 compelled to speak. I would begin by saying

2 that I don't know the applicants. I have never  
3 spoken to them, and I have no ax to grind as far  
4 as these applicants are concerned. What I am  
5 concerned about is the on-going attitude that  
6 there is going to be no development on any of  
7 these projects regardless of status of prior  
8 approvals or anything else. I recall the  
9 arguments that Mr. Amper has made repeatedly  
10 saying that what this was all going to result in  
11 is the lack of litigation every time a project  
12 comes up, but here we are with all that same  
13 litigation here now on a project that's supposed  
14 to be going forward.

15 The argument is that there are 15 acres,  
16 apparently, that these people want to develop.  
17 They have agreed to give to the State, for free,  
18 57 acres, and I think everyone is missing the  
19 point of the whole thing. If you continue to  
20 embark on this route, this whole thing is doomed  
21 to failure, because you cannot go out and  
22 purchase every one of these parcel, even though  
23 you might want to, and preserve everything on  
24 the face of the earth. You can't and I don't  
25 think it was the intent of the legislation to

2 purchase parcels such as those along that road  
3 that have approvals and are very expensive to  
4 purchase. You will bankrupt the whole system  
5 and you are not going to accomplish the goals of  
6 this whole thing to begin with.

7 I go back to the argument I made in the  
8 beginning to Mr. Corwin when I was first aware  
9 of this and I said instead of arguing with these  
10 people, going on appraisals, and trying to now  
11 purchase this and prevent the development of it,  
12 save that money, take the 57 acres that you have  
13 gotten for nothing, and save that money that you  
14 would spend on purchasing this whole thing from  
15 these applicants and use it to purchase property  
16 in the Core that's of much lower value and  
17 thereby accomplish the goals that this thing was  
18 all set out to do. I think you have lost sight  
19 of what the goals are. You're talking about  
20 purchasing property that's along developed  
21 roads. I don't think that was the intention of  
22 this legislation. I think it's a misuse of the  
23 funds. I can appreciate the passionate feelings  
24 that the Trails Commission has that they would  
25 like to see all of this preserved, but we have

2 to look at it in a realistic manner and say at  
3 what point do you stop purchasing, and what is  
4 important for purchase and what is not important  
5 for purchase. When a applicant such as this  
6 comes to you and has already given to the Town  
7 of Brookhaven 57 acres for nothing and you're  
8 ready to throw that whole deal out the window  
9 and start a new litigation all over again, I  
10 know what I would do if I was the applicant, I  
11 certainly would insist at this point, if he had  
12 73 acres, to say you are going to have to  
13 purchase the entire 73 acres from me at fair  
14 market value and now you're going to be talking  
15 about a lot more money than you can ever afford  
16 to pay for any of this.

17 I think you have to get focused back on  
18 what the realities are. Does this represent the  
19 beginning of the litigation that Mr. Amper said  
20 was going to end due to the Pine Barrens Act. I  
21 don't see the end to the litigation, and here we  
22 are, you're ready to throw the whole thing out  
23 the window. I would urge the Commission to  
24 grant this application and let this project go  
25 forward and the public should be grateful that

2                   they have 57 acres for free.

3                   MR. PROIOS: Thank you. I'm compelled to  
4                   say that the Commission here is pretty much  
5                   bound by a law that we did not create, and we  
6                   are bound by how we look at some of these  
7                   applications and until the State Legislature  
8                   changes the provisions there, we sometimes may  
9                   have to take a narrower view than we would like  
10                  to.

11                  Any other speakers?

12                  MS. ENGLAND: My name is Marilyn England  
13                  representing the Open Space Council. We are an  
14                  environmental advocacy group. Before I start, I  
15                  would like to say that although we are very  
16                  concerned with land preservation, we are not  
17                  insensitive to your particular predicament, so  
18                  hopefully, our statement will reflect that, but,  
19                  however, we do agree with the Greenbelt Trail  
20                  people that this project as a hardship exemption  
21                  application should be denied. We also ask the  
22                  Commission to urge the State to resume  
23                  acquisition negotiations for that highly  
24                  endangered parcel as quickly as possible.

25                  We are concerned that despite the

reassuring statements of the applicant that this permit will not be inconsistent with the purposes of and objectives of Pine Barrens law, it is precisely this kind of incremental and piecemeal development the Pine Barrens legislation seeks to prevent.

The positioning of this project in a largely intact part of the Core Preservation Area would contribute to the already serious problem of forest fragmentation in the Pine Barrens, substantially compromise the ecological integrity of the surrounding area, and clearly contravenes the law's mandate to preserve the Pine Barrens ecosystem.

We know too well that virtually all of Long Island was built incrementally, one project at a time, with each one claiming, as this one does, there would be no significant impact. We also know that human impacts from pets, dumping, and the alteration of natural flora, and other activities are not confined to the footprint of projects themselves, but spread well beyond, especially when surrounding land is in a natural state. Thus, we are not just talking about

2 impact to the 15 acres, but probably  
3 considerably more over time. We are really  
4 talking about carving a large hole in a  
5 relatively pristine part of the Core  
6 Preservation Area.

7 Allowing building is an action of last  
8 resort, not the first option. Because this  
9 project is so far along, the State must make it  
10 a top priority for acquisition. Reactivating  
11 takes negotiations and offering a fair and  
12 equitable settlement that takes into account the  
13 unique set of circumstances surrounding this  
14 case. Since part of the property has already  
15 been deeded to the Town of Brookhaven, the State  
16 may need to enter into negotiations with the  
17 Town as well. And finally, before any hardship  
18 exemption is considered, we think that the  
19 applicant should be required to explore the  
20 possible alternative of TDR's for financial  
21 satisfaction.

22 In conclusion, we ask the Commission to  
23 deny this hardship application, at least until  
24 all other possibilities have been exhausted and  
25 to take affirmative action to preserve the land.

2 Thank you.

3 MR. PROIOS: Any other members of the  
4 public who wish to address the Commission?

5 MR. HAEFELI: When this plan was proposed,  
6 the purpose of the lot configuration was to  
7 leave as much access from the southerly line of  
8 lot number 1 and the Long Island Expressway for  
9 the purpose of insuring that there would be a  
10 corridor along the Long Island Expressway for  
11 wild life and for whatever other purposes may  
12 result from it. All that was taken into  
13 consideration at the time this map was proposed.  
14 It was also taken into consideration when the  
15 original subdivision was reviewed by the  
16 Planning Board of the Town of Brookhaven. Most  
17 of the concerns expressed tonight were concerns  
18 that were considered by the Town of Brookhaven  
19 over the last five or six years. They took into  
20 consideration the input of the Suffolk County  
21 Pine Barrens Review Commission, which was in  
22 effect prior to this particular law. A number  
23 of the conditions imposed on these lots came  
24 from that commission, recommendations of that  
25 commission. They also took into consideration

2 the recommendation made by the Suffolk County  
3 Planning Commission as far as preserving as much  
4 open space as possible and preserving the  
5 corridors between the lots and the Long Island  
6 Expressway as possible.

7 Just a point. My clients did in fact go  
8 and do the work that was stated here tonight  
9 based on building permits issued. We are not  
10 law breakers. We are not people that go and do  
11 things not permitted by the law. My clients'  
12 position is as stated earlier this evening, they  
13 did not undertake that work without building  
14 permits. They undertook it based upon their  
15 concept of whether or not this board has  
16 jurisdiction plus the building permits.

17 Finally, no matter what you want to read  
18 into the Pine Barrens law, there is a theory of  
19 law known as "a vesting of rights." An  
20 individual's rights are vested at a certain  
21 point in time when a substantial change of  
22 circumstances has occurred and when an applicant  
23 and owner of property would lose substantial  
24 amounts in the value of that property as a  
25 result of action taken. This particular case

2 falls within the parameters of vesting rights  
3 case, irrespective of anything you people want  
4 to say. It is also a regulatory taking, if in  
5 fact my clients are unable to build. This  
6 particular proposal was prepared and approved.  
7 That's all I have to say.

8 MS. FILMANSKI: The Town Board proposed the  
9 settlement on May 4th and the Planning Board  
10 approved it on the 7th of June?

11 MR. HAEFELI: Yes.

12 MS. FILMANSKI: What is the frequency of  
13 the Planning Board meetings in Brookhaven?

14 MR. HAEFELI: I have no idea, but the  
15 settlement from the resolution authorizing the  
16 settlement by the Town Board specifically  
17 states, we are talking about this particular  
18 plan, is recommended and endorsed for acceptance  
19 by the Commissioner of Planning Environment and  
20 Development Planning staff. When the Town Board  
21 adopted the resolution authorizing the  
22 settlement they did it at a time when they were  
23 given a recommendation to settle based upon this  
24 plan from the Planning Board.

25 MS. FILMANSKI: That may well be, but my

2 question is: There was no other meeting prior  
3 to the June 7th and subsequent to the May 4th?

4 MS. WIPLISH: This would be the only time.

5 MR. COWEN: Have you conveyed any of these  
6 parcels to subsequent owners?

7 MR. HAEFELI: No. We have entered into a  
8 contract.

9 MR. COWEN: Which of the Town's various  
10 boards or commissions have the authority to  
11 approve either subdivision or a land division?

12 MR. HAEFELI: What we have is a settlement  
13 and the Town Board has the authority. This is a  
14 settlement of a litigation that was brought by  
15 my clients against the Town of Brookhaven and  
16 the Town law authorizes the Town to settle that  
17 litigation and that's exactly what occurred.

18 MR. COWEN: Did you in fact get land  
19 division approval?

20 MR. HAEFELI: Yes.

21 MR. COWEN: And this was issued by the  
22 Planning Board?

23 MR. HAEFELI: And it was also part of the  
24 stipulations of settlement by the Town Board.

25 MR. PROIOS: Any other questions? Any

2 comments from the public?

3 MR. HAEFELI: I'm going to ask this be  
4 closed tonight. There is no reason to keep this  
5 hearing open, and I am going to ask the Board to  
6 undertake an immediate determination.

7 MR. COWEN: We are not going to do this  
8 tonight. Is that your expectation?

9 MR. HAEFELI: A decision tonight? No, but  
10 close the hearing tonight.

11 MR. PROIOS: Generally, we ask for  
12 additional information and look at the  
13 surrounding area and try to put it in  
14 perspective. We have two meetings scheduled  
15 next week. We are going to close the hearing on  
16 Thursday the 12th with the Commission meeting on  
17 the 13th.

18 If there are no other comments, this  
19 hearing is adjourned.

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4 I, JOAN R. LIVOTI, a Notary Public in and for  
5 the State of New York, do hereby certify:

6 THAT the foregoing minutes are a true and  
7 accurate transcript of my stenographic notes.

8 IN WITNESS WHEREOF, I have hereunto set my hand  
9 this 5th day of January, 1995.

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JOAN R. LIVOTI