

CENTRAL PINE BARRENS COMMISSION

COUNTY OF SUFFOLK: STATE OF NEW YORK

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In the Matter of the Application of
KOGEL BROTHERS

For a Core Preservation Area Extraordinary Hardship
Waiver, Pursuant to Environmental Conservation Law
Article 57

One Independence Hill
Farmingville, New York

January 23, 2019
3:26 p.m.

PUBLIC HEARING

RECEIVED

FEB 7 2019

*Central Pine Barrens
Joint Planning & Policy Commission*

2 APPEARANCES:
 3
 4 Kyle Collins Town Planning and
 Development Administrator
 5 Andrew P. Freleng Chief Planner
 6 Carrie Meek Gallagher Regional Director, Chair
 7 Julie Hargrave Education and Outreach,
 SCWA
 8
 9 Judy Jakobsen
 10 Laura Jens-Smith Supervisor, Town of
 Riverhead
 11 Janet Longo Acquisition Supervisor
 12 Daniel McCormick Deputy Town Attorney,
 Riverhead
 13
 14 John C. Milazzo Staff Attorney, SCWA
 15 John W. Pavacic Executive Director, CPBC
 16 Edward P. Romaine Supervisor,
 Town of Brookhaven
 17 Martin E. Shea Chief Environmental Analyst
 18
 19
 20
 21 Louis Tastellano on behalf of Applicant,
 Scott Kogel Kogel Brothers
 22
 23 Richard Amper Executive Director,
 Long Island Pine Barrens
 Society
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was an 800 square foot dwelling on the property that was built in the 1970s. In 2017 the structure was demolished by the applicant. The Town required the applicant to repair or demolish the structure. The applicant chose to demolish including the removal of the foundation.

The proposal is to build a new 2,200 square foot residence on the property. The applicant was seeking a building permit from the Town, to my understanding, and then they were told to come and apply to the Commission.

As far as the property, some background on it, there was a structure dating back to 1750 that existed on the site before the house that existed that was recently demolished. It was called the Major Leek House. You will see some information in the staff report on this structure.

It was occupied by a revolutionary war soldier. The structure was eventually

2 MS. GALLAGHER: Notice of Public
 3 Hearing. Pursuant to the New York State
 4 Environmental Conservation Law, Article
 5 57, the Central Pine Barrens
 6 Comprehensive Land Use Plan, notice is
 7 hereby given that the Central Pine
 8 Barrens Joint Planning and Policy
 9 Commission will hold a public hearing on
 10 Wednesday, January 23, 2019, on the
 11 matter of a Core Preservation Area
 12 Extraordinary Hardship Waiver.

The name of the project is Kogel
 Brothers Core Preservation Area Hardship
 Waiver Application.

So Julie, we will turn it to you for
 staff report.

MS. HARGRAVE: This is a Core
 Hardship on a 5.32 acre undeveloped
 property in Middle Island on East
 Bartlett Road.

The site is mostly wooded and
 adjacent to Cathedral Pines County Park
 and State land on the west side. The
 County Park is on the east side. There

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moved to Mount Sinai where it is today.

At the recent application the
 Commission determined this project
 constitutes development back in November
 2018. The applicant submitted the
 hardship waiver. So this information is
 all in the staff report. The Commission
 did not coordinate this application.

Exhibit A, is the staff report and it
 asks for the applicant to address the
 hardship criteria, because their
 application did not contain that
 information.

Also if they can provide information
 to the Commission on when they purchased
 the property. We are still waiting for a
 review of the project from the Natural
 Heritage Program. So pending receipt of
 that information, the Hearing may need to
 be kept open.

Exhibit B is an aerial of the project
 site. It is mostly wooded except for the
 area -- this is a 2016 aerial so it shows
 the structure that was demolished in 2017

2 on the south side of the property.
 3 Exhibit C contains the survey of the
 4 property that showed the dwelling prior to
 5 demolition.
 6 Exhibit D contains pictures of the
 7 site. You will see that the area where
 8 the house existed is really the only
 9 cleared portion at the site. The rest is
 10 wooded.
 11 There are pictures of the house
 12 before it was demolished. It was in
 13 significant disrepair. There is a picture
 14 of the foundation that the Town historian
 15 indicated may have been from the old 1750
 16 house, and that has been removed.
 17 Exhibit E contains the demolition
 18 permit from the Town.
 19 Exhibit F contains the copy of the
 20 survey showing the proposed dwelling and
 21 the limits of the clearing. It is also on
 22 the only cleared part of the site, just to
 23 a slightly different area than the
 24 original structure.
 25 Exhibit G is the deed to the

2 property.
 3 Exhibit H contains just some
 4 information on the historical structure
 5 that existed on the site at one time, the
 6 Major Leek House.
 7 Exhibit I contains information of the
 8 potential bird species on the site or in
 9 the vicinity of the site.
 10 Exhibit J is a copy of the wetlands
 11 which are -- there are no wetlands
 12 indicated on the project site but there
 13 are across the street on the south side of
 14 East Bartlett Road.
 15 Exhibit K shows you the study area
 16 about a half a mile around the site.
 17 About 75 percent of the area is public
 18 open space. It is mostly in the Core
 19 Preservation Area. There are about 30
 20 acres, and conservation easements also.
 21 It is 30 acres or 30 parcels, I would have
 22 to look at this staff report to get that
 23 exactly right.
 24 There are conservation easements and
 25 Pine Barrens Credit Program in this area.

2 There is a large County Park and State
 3 land also, and portions of habitable and
 4 work area come into this half mile radius.
 5 That area is developed with agricultural
 6 use and residential uses and a golf course
 7 on the east side.
 8 Exhibit L shows you the conservation
 9 easement parcels in the study area.
 10 Exhibit M is a copy of the zoning
 11 map. This is in the Five Acres Zoning
 12 District, this site. Most of this area is
 13 covered by the Five Acres Zoning District.
 14 Exhibit N is a copy of a stamp from
 15 the County Health Department. The
 16 applicant did receive this in 2018. I am
 17 not sure how that was obtained, but they
 18 did obtain that Health Department approval
 19 for this structure.
 20 Exhibit O is a copy of the
 21 applicant's letter to support their
 22 hardship application.
 23 MR. COLLINS: Do you have a copy
 24 from the Law Department directing them to
 25 demo the building or make it safe or

2 secure?
 3 MS. HARGRAVE: Yes.
 4 MR. COLLINS: Question for Counsel,
 5 the direction of the municipality to take
 6 an action on this property does it have
 7 any affect on?
 8 MR. MILAZZO: For the applicant to
 9 be approved, they would have to
 10 demonstrate the hardship. That would go
 11 into his or her argument on why the
 12 hardship exists. The Commission could
 13 afford to waive to that directive if
 14 deems appropriate.
 15 MR. COLLINS: Did we find the
 16 letter?
 17 MS. HARGRAVE: The applicant may
 18 have it also -- here it is. Sorry. It
 19 is in his application. Sorry, here it
 20 is. I think it was in your request for
 21 determination. It was not in your actual
 22 application.
 23 (Handing)
 24 MR. COLLINS: Thank you.
 25 MS. GALLAGHER: Are there any other

2 questions?

3 MR. FRELENG: Just for the record,
4 Julie, you did mention and it is not here
5 in the staff report that there is no
6 written petition that addresses the
7 hardship criteria.

8 MS. GALLAGHER: So I assume we will
9 hear from the applicant on that. Julie,
10 anything else we need to discuss or any
11 other questions before we bring up the
12 applicant.

13 MS. HARGRAVE: No.

14 MS. GALLAGHER: Do they need to be
15 sworn in, John?

16 MR. MILAZZO: Yes, please.

17
18 (Whereupon Louis Tastellano and Scott
19 Kogel having first been duly sworn by a
20 Notary Public of the State of New York,
21 testified as follows)

22
23 THE REPORTER: Please state your name
24 and business address for the record.

25 MR. TASTELLANO: Louis Tastellano,

2 2693 Middle Country Road, Lake Grove, New
3 York 11755.

4 MR. KOGEL: Scott Kogel, 390 Middle
5 Country Road, Middle Island, New York
6 11953.

7 MR. TASTELLANO: Good afternoon.
8 Thank you for seeing us today. We find
9 it difficult to establish the hardship
10 under your criteria, but we have done
11 everything that you have asked us to do.

12 We started this project back in
13 November of 2017. We were contacted -- we
14 put a sign on the property for sale. We
15 were contacted by the Middle Island Civic
16 Association. We met with them on December
17 19, 2017.

18 MR. ROMAINE: Is that Gail Bailey?

19 MR. TASTELLANO: Yes, very nice,
20 very helpful lady.

21 We had several pieces of property
22 that the Town wanted. We worked with them
23 on it. They told us at the time to
24 contact -- they were going to have Sarah
25 Anker contact us. Which we did in January

2 of 2018. In early January we met with
3 her. She said they wanted the parcel. We
4 said fine, no problem.

5 A few weeks later we called back and
6 they said the Peconic Land Trust was
7 taking the parcel, taking over the
8 property, the deal from us. We said fine.
9 We called Peconic Land Trust several
10 times. Never got any response. Never
11 heard from anybody.

12 In the interim we met with Suffolk
13 County Heather Amster --

14 MS. GALLAGHER: That is New York
15 State DEC.

16 MR. TASTELLANO: They had interest
17 in the property, and again they referred
18 us to Peconic Land Trust.

19 So we did everything that we were
20 told to do. We followed the rules. The
21 Town told us to take the house down. We
22 took the house down.

23 MR. ROMAINE: Why did the Town tell
24 you to take the house down?

2 MR. TASTELLANO: The house was
3 dilapidated.

4 MR. ROMAINE: It was an unsafe
5 structure?

6 MR. KOGEL: That is correct.

7 MR. ROMAINE: So the municipality
8 directed you to remove an unsafe
9 structure?

10 MR. KOGEL: Correct.

11 MR. ROMAINE: What you are looking
12 to do now, I am trying to understand, is
13 replace that unsafe structure with a
14 similar structure. Obviously new and
15 safer?

16 MR. KOGEL: Correct.

17 MR. TASTELLANO: There were also
18 discussions about we would leave the
19 house -- put a new house where the old
20 house was. We would covenant with CC&Rs,
21 no further clearing.

22 We tried to maintain everything the
23 way it was. The driveway to come out.
24 Everything to keep it simple and not
25 disturb anything.

2 We did all of that. We went to the
 3 Board of Health and got our Board of
 4 Health approval. We went to the Highway
 5 Department and got our highway approval.
 6 We went to the Planning Board, and in late
 7 September we got notice from the Planning
 8 Board to come here.

9 MR. ROMAINE: They usually don't
 10 take up things that are in the Pine
 11 Barrens Core unless the Commissioner said
 12 you have a hardship and you can go
 13 forward.

14 But this is not a self-imposed
 15 hardship. This was a hardship that was
 16 imposed by local government forcing you to
 17 tear down that unsafe structure that you
 18 are looking to replace.

19 MR. KOGEL: Correct.

20 MR. TASTELLANO: So we tried to do
 21 everything we were asked to do. They
 22 asked for the tree clearing plan, and we
 23 gave it to them. We gave them a limited
 24 clearing plan, showing very little
 25 clearing on the property. We tried to do

2 everything that the Town and everybody
 3 asked us to do, and we have done that.

4 MR. ROMAINE: Originally you tried
 5 to sell it to the County?

6 MR. TASTELLANO: Right, but nobody
 7 ever got back to us.

8 MR. ROMAINE: Sarah Anker said that
 9 she would help you with that?

10 MR. KOGEL: We met at Sarah Anker's
 11 office. We talked about saying we want
 12 to sell this property. We reached out to
 13 many different individuals. Honestly the
 14 frustration is that there was no
 15 communication at all.

16 Now, Heather is back. She called us
 17 and she said where are you on this
 18 property. We told them that we had sold
 19 it. We are in the middle of a contract.
 20 She was shocked that it was not picked up
 21 by anyone else in the Department.

22 MR. ROMAINE: The way acquisitions
 23 usually take place is, the County goes
 24 forward and contacts the Town. The Town
 25 goes in on 30 percent of it and the

2 County does 70 percent of it.

3 So we happen to have someone here
 4 from County Real Estate, without
 5 identifying who they are. I would
 6 strongly suggest that person contact
 7 Legislator Anker.

8 MR. TASTELLANO: The problem, Mr.
 9 Supervisor, we didn't want to -- we were
 10 going to sell the property to them.

11 MR. ROMAINE: I know and you
 12 invested a lot of time and energy.

13 MR. TASTELLANO: We got no response
 14 and we went ahead and got permits.

15 MR. ROMAINE: That's too bad,
 16 because I will tell you now the Town
 17 would have told Legislator Anker
 18 absolutely. We are in for the 30
 19 percent. Moving forward it would
 20 probably rate high behind Cathedral Pines
 21 in an area where there is a lot of
 22 government ownership. I am just
 23 surprised she did not move forward on
 24 that.

25 MR. TASTELLANO: So that is our

2 problem. How do we prove a hardship when
 3 we have done everything that you have
 4 asked us to do.

5 We went ahead with the permit
 6 process. We started it, because we only
 7 had a window -- we had to apply for the
 8 permit within one year of the demo. So we
 9 did all of that. We got the Health
 10 Department approval without a problem. We
 11 filed with the Planning Board and got our
 12 building permits.

13 We did everything and we sold the
 14 house to people who live in the area.
 15 They just want to move into a bigger
 16 house. So we did everything and we
 17 thought we were doing them right.

18 We have never been before the Board
 19 for anything else before. This was a
 20 shock to us. So we don't know how to
 21 address your criteria.

22 MR. ROMAINE: Well, I will say this,
 23 I wish you had called me earlier. I
 24 would have Legislator Anker -- I don't
 25 even know if this is her district.

2 MR. TASTELLANO: We did meet with
 3 Mr. Loguercio.
 4 MR. ROMAINE: Councilman Loguercio?
 5 MR. TASTELLANO: We did meet with
 6 him and that is how we ended up in Sarah
 7 Anker's office. Before we even went
 8 crazy with all this, we said let's go and
 9 make an appointment and see you guys and
 10 find out if you were interested.
 11 MR. ROMAINE: I have a very simple
 12 record. I support every single
 13 acquisition bar none. But now you are at
 14 a point that you have invested a lot of
 15 money and you are just looking to replace
 16 the house that you had to tear down.
 17 You had to do that because it was an
 18 unsafe structure.
 19 MS. GALLAGHER: But the property is
 20 in contract, so you are not going to live
 21 there?
 22 MR. TASTELLANO: No, no, we sold it.
 23 MR. KOGEL: We are in contract.
 24 MS. GALLAGHER: So now it is a
 25 problem --

2 MR. ROMAINE: So, acquisition is not
 3 going to happen. The only thing that
 4 this Commission has do to is decide
 5 whether it is a hardship imposed on you
 6 by government to tear down the structure,
 7 whether you can replace that structure.
 8 I think that is the question. Does
 9 that constitute a hardship, the fact that
 10 the Town government, because the structure
 11 became unsafe, asked you to take it down
 12 and now you want to rebuild a structure in
 13 its place? That is the issue.

14 MR. TASTELLANO: We will file a
 15 convenience that we will not clear
 16 anything else. We will file CC&Rs that
 17 the back portion of the property will
 18 remain natural. We don't want to disturb
 19 it.

20 MR. MILAZZO: Who are you? What is
 21 your relationship to the applicant?

22 MR. TASTELLANO: Mr. Kogel is the
 23 owner. I do all the building for them.

24 MR. MILAZZO: So you're the builder?

25 MR. TASTELLANO: Yes. We have

2 several other pieces that we also
 3 addressed at the time that the County or
 4 the Town is now purchasing. Lake Terrace
 5 and Church Street, we have ten acres
 6 there. The Town is buying that from us.

7 MR. ROMAINE: By Pine Lake?

8 MR. TASTELLANO: Yes.

9 MR. ROMAINE: I think the Town is
 10 buying that outright.

11 MS. LONGO: I think we are partners
 12 are that.

13 MR. ROMAINE: We have to hear from
 14 Sarah on that.

15 MR. KOGEL: I had three appraisers
 16 call me this week from you guys.

17 MR. ROMAINE: Just stay in touch
 18 with either myself or Annette Eaderesto.

19 MR. KOGEL: Yes, Ms. Eaderesto is
 20 very helpful.

21 MR. TASTELLANO: And we had a piece
 22 on Carmen's Road that finishes on --

23 MR. MILAZZO: Okay, that is not
 24 relevant to your hardship request.

25 So, the law sets forth the criteria

2 for demonstrating a hardship. Your job,
 3 as the owner and the builder, is to
 4 demonstrate. Go through the criteria and
 5 show how if you're not allowed to build,
 6 if you cannot get this hardship -- the law
 7 sets out the criteria. You have to
 8 address the criteria.

9 That is what the purpose of a hearing
 10 is, to allow you that opportunity to put
 11 all of the information that you think is
 12 relevant to making that showing on the
 13 record, which is taken down by the
 14 stenographer, so that the Commission can
 15 review that and say, hardship is
 16 demonstrated or hardship is not
 17 demonstrated. What we always tell the
 18 applicant is that the Commission looks at
 19 hardships in the line of all the prior
 20 decisions which are all available on the
 21 website.

22 So how does this fit in that path
 23 that the Commission has gone down now for
 24 20 years. So that is your job and that is
 25 what we are here today for.

2 All the other information is
 3 interesting, but it doesn't prove or
 4 disprove the existence of a hardship. So
 5 this is your opportunity. So there you
 6 go.

7 MR. TASTELLANO: We can't address
 8 the hardship that you want. We have done
 9 everything that you have asked us to do
 10 we have done.

11 MR. COLLINS: John, I will renew my
 12 question. If the vested rights
 13 associated with this property are not
 14 vacated because they were directed at the
 15 Town, no hardship would have to be
 16 required?

17 That is my question and I think that
 18 is the way the Supervisor presented it as
 19 well.

20 MR. MILAZZO: I am not going to
 21 provide legal -- you can raise that
 22 question.

23 How long have you owned this piece of
 24 property?

2 MR. TASTELLANO: The Kogel family
 3 has owned it since 1981.

4 MR. MILAZZO: When they bought it in
 5 1981, was there someone living in that
 6 house?

7 MR. TASTELLANO: Yes.

8 MR. MILAZZO: And they owned it from
 9 1981 through to today?

10 MR. TASTELLANO: Yes, and other
 11 family members owned it prior to them.

12 MR. MILAZZO: It was habitable in
 13 1981?

14 MR. TASTELLANO: Yes.

15 MR. MILAZZO: And you have owned it
 16 since 1981. You testified that the Kogel
 17 family has owned it since 1981.

18 MR. FRELENG: When you received the
 19 directive from the Town to take down the
 20 building, was anyone living in the
 21 building at the time?

22 MR. TASTELLANO: No.

23 MR. FRELENG: How long was it vacant
 24 prior to that?

2 MR. TASTELLANO: I don't know. I
 3 am not sure.

4 MR. FRELENG: Can you provide that
 5 between now and the next time this Board
 6 meets?

7 MR. TASTELLANO: I can find that
 8 out, yes.

9 MR. McCORMICK: I have a question.
 10 When the Town directed you to address
 11 this problem, was it economically
 12 feasible to repair the house at that time
 13 such that it would have been safe and
 14 secure according to the Town or was the
 15 only viable option to demolish the
 16 building including the foundation?

17 MR. TASTELLANO: I think at the time
 18 it was --

19 MR. McCORMICK: Can Mr. Kogel answer
 20 that?

21 MR. TASTELLANO: He was not here at
 22 that time.

23 MR. KOGEL: I wouldn't know.

24 MR. TASTELLANO: He was not in the
 25 family business at the time.

2 MR. McCORMICK: So what is your
 3 understanding?

4 MR. TASTELLANO: They did ask us to
 5 take the house down because it was
 6 unlivable.

7 MR. McCORMICK: Technically they
 8 asked you, I reviewed the report, to
 9 render the building safe and secure.

10 So my question is, at that time was
 11 it economically feasible to repair the
 12 structure as it appears here such that it
 13 would have been habitable and the Town
 14 would have been satisfied or was the only
 15 viable option demolition including the
 16 foundation?

17 Do you understand the question?

18 MR. TASTELLANO: I understand what
 19 you're saying. I was not in the house.
 20 I cannot answer that for you. I can ask
 21 Mr. Kogel, Sr. and find out about that.

22 MR. McCORMICK: Including the
 23 foundation. Did they ask you to remove
 24 the foundation?

25 MR. TASTELLANO: Yes, and they

2 wanted to inspect that it was all
 3 removed. We did have an inspection back
 4 in December 2017.

5 MR. ROMAINE: Do you know who the
 6 inspector was? Was it Bob Incogliota
 7 (phonetic), Senior Building Inspector.

8 MR. TASTELLANO: I don't know.

9 MR. ROMAINE: He usually does that.
 10 Was there a public hearing on this house.

11 MR. TASTELLANO: I'm not aware of
 12 that. We got a letter in the mail dated
 13 July 10, 2017 -- yes, it was Bob.

14 MR. ROMAINE: Usually what happens
 15 is if you don't demolish it within a
 16 certain period of time the Town will
 17 demolish it and charge you tax. Charge
 18 you property tax.

19 So, it was probably a demo. If the
 20 Town was saying demolish it or we will.

21 MS. GALLAGHER: It sounds like the
 22 report said something different. Right,
 23 saying render it safe?

24 MR. McCORMICK: Right, generally the
 25 Town requires that it be rendered safe

2 same. The driveway is the same.

3 MS. GALLAGHER: John, I guess the
 4 question is, if they think they can
 5 provide additional information in a
 6 period of time, right?

7 MR. MILAZZO: Do you have anything
 8 else to provide?

9 MR. TASTELLANO: That is it, sir.

10 MR. MILAZZO: The Commission
 11 decision deadline is according to the
 12 agenda, April 5.

13 So what the Commission would
 14 typically do is offer the opportunity for
 15 anyone in the public to speak on this
 16 application. After that is received, you
 17 can close the hearing portion.

18 MR. GALLAGHER: I think I see one
 19 person.

20 MR. MILAZZO: I am sure there is at
 21 least one person.

22 They can submit additional
 23 information by your February meeting.
 24 That would give you the ability to have --
 25 what I think the Commission may ask for is

2 and secure, if that is feasible. That is
 3 why I asked you that question.

4 It may have been determined from an
 5 economic standpoint it would have been
 6 more viable to remove it than secure it.

7 MR. TASTELLANO: I think the idea at
 8 the time was we remove it and build new.

9 MR. McCORMICK: How much was it to
 10 remove?

11 MR. TASTELLANO: About \$22,000.

12 MR. McCORMICK: If you got the
 13 building permit at the same time as the
 14 demo, we wouldn't be here.

15 MS. JAKOBSEN: Would the house be
 16 the same size and in the same location?

17 MR. TASTELLANO: The house would be
 18 in the same location. The original house
 19 was about 800 square feet. The new house
 20 is about 2200 square feet. It is a four
 21 bedroom home. The original house was a
 22 two bedroom ranch.

23 MS. GALLAGHER: So a larger
 24 footprint.

25 MR. TASTELLANO: The location is the

2 an extension to the April meeting day. It
 3 is April 5th, but it just asks for two
 4 more weeks.

5 So that way if you receive
 6 information by February you can either
 7 have conversation in the March meeting
 8 like you did with FKK today, which will
 9 give you the ability to prepare a decision
 10 for April.

11 That would sort of be a path forward
 12 for making a decision in this matter.

13 MS. GALLAGHER: But I do see a
 14 member of the public who would like to
 15 comment.

16 MR. AMPER: My name is Richard
 17 Amper. I am the Executive Director of
 18 the Long Island Pine Barrens Society.

19 (Whereupon Richard Amper having first been
 20 duly sworn by a Notary Public of the
 21 State of New York, testified as follows)

22 THE REPORTER: Please state your name
 23 and business address for the record.

2
3 MR. AMPER: Richard Amper, 547 East
4 Main Street, Riverhead, New York 11901.

5 Well I am, as you, very sympathetic
6 about what they have gone through. This
7 property, in my opinion, should have been
8 acquired. I think that you agree that if
9 someone had come to you that they would
10 have done that.

11 MR. ROMAINE: Absolutely.

12 MR. AMPER: Instead somebody from
13 the Town directed them to go to the Civic
14 Association. The Civic Association
15 recommended that they go to Anker. Anker
16 recommended that they -- or maybe more
17 than one person recommended they go to
18 Peconic Land Trust, which is an exercise
19 in futility.

20 So I think they have gone though
21 hell, and are trying to come out on the
22 other side. Having said that, we are back
23 to last week's discovery, and that is that
24 there is no evidence that it meets the
25 requirement for a hardship.

2 I think that Counsel has made it
3 clear that they have an opportunity to do
4 that over the next few weeks, and see if
5 and how they can.

6 I don't want us to go about
7 undermining the intention of hardships
8 because we feel sorry about the way
9 government has handled the project to this
10 point. If we did that we would not be
11 doing right by the Pine Barrens Act at
12 all.

13 If I had my choice, and this does not
14 solve the problem of the people who have
15 now bought the house from them, I would go
16 back and say since we botched the
17 acquisition the only to make them whole is
18 to resolve the acquisition.

19 If they went to him (indicating), and
20 he was prepared to support and there was a
21 person associated with the County to agree
22 to try to move that forward. If we were
23 to go to Anker and say why did this not
24 move ahead. Certainly it was not Peconic
25 Land Trust's fault.

2 What I don't want to see is that
3 because they were mishandled by any number
4 of people in and out of the government,
5 that we somehow suspend obligation to meet
6 the explicit requirements of the hardship
7 provision of the Pine Barrens Act.

8 I think that you have a challenge and
9 I am not sure you can meet that challenge.
10 I believe that this does not meet the
11 requirements for a hardship exemption. It
12 is not at all clear to me that what the
13 County did and what you folks did with the
14 house that was there is in any way, shape
15 or form germane to whether or not this
16 constitutes a hardship.

17 Yet it sounds to me like you got the
18 last one right from the last meeting. I
19 want us to get this one right, because
20 where the Pine Barrens Society gets into
21 confrontation is where we look at our law
22 and say the law is not being enforced in
23 this particular case because these guys
24 got a rough deal from government at any
25 number of levels.

2 The only thing that I will add, and
3 it is just a personal thing, if
4 Commissioner Romaine has an opportunity to
5 pick up the phone and find out if whether
6 there is still an acquisition in the
7 making. We understand there is County
8 proximity. There is State land proximity.

9 This should have been without a
10 problem obtained. It should have been
11 preserved. It is in the Core, and so he
12 was not allowed to develop it. So we
13 believe in those cases, government should
14 acquire it.

15 That didn't happen. Maybe it still
16 can. But what can't happen is for
17 everybody to say, they got a raw deal so
18 it doesn't matter what the Pine Barren's
19 statue is with respect to hardship.

20 MR. ROMAINE: No, there would have
21 to be precedent. If there is precedent
22 where government requires you to do
23 something and as a result you suffer a
24 loss, that may meet the hardship
25 criteria.

2 MR. AMPER: I would urge you to get
 3 John's input and satisfy yourselves about
 4 that, because it is not clear to me that
 5 the Town having done what it needed to do
 6 for public safety obviates the
 7 jurisdiction of this Commission to make a
 8 hardship decision.

9 In the meantime, anything that I can
 10 do to help these people resolve the matter
 11 the way it should have been resolved in
 12 the first place, I'm happy to do.

13 MS. GALLAGHER: It sounds like the
 14 difficulty would be that there is a
 15 contract.

16 MR. AMPER: Say it again.

17 MS. GALLAGHER: I think the
 18 difficulty is that the people sitting
 19 back there are in contract to purchase
 20 the property to build a home.

21 MS. JENS-SMITH: Is it pending
 22 permits? Is the contract pending
 23 permits?

24 MR. TASTELLANO: It is subject to --

25 MS. JENS-SMITH: If the contract is

2 pending you being able to get permits?

3 MR. TASTELLANO: No, subject to
 4 mortgage approval.

5 MS. JENS-SMITH: Not pending
 6 permits?

7 MR. TASTELLANO: They happen to have
 8 mortgage approval.

9 MR. MILAZZO: Your delivery of that
 10 premises is a house or a piece of
 11 property?

12 MR. TASTELLANO: House.

13 MR. MILAZZO: Have you provided the
 14 contract to us?

15 MR. TASTELLANO: Do you have a
 16 contact?

17 MR. MILAZZO: So you are in contract
 18 to sell a house for whatever amount of
 19 money and it is not subject to getting
 20 approvals? It is subject to them getting
 21 a mortgage?

22 MR. TASTELLANO: Subject to them
 23 getting mortgage approval. It says we
 24 are going to build and erect a single
 25 family home 2200 square feet.

2 MR. MILAZZO: Okay.
 3 MR. AMPER: How can the failure to
 4 obtain a mortgage obviate the need to
 5 meet the requirements of this law?
 6 Sympathetic as we are, we can't just make
 7 this stuff up as we go along.

8 I am sorry, because it will come back
 9 and get us in another way at another time.
 10 So that the criteria for getting a Core
 11 area hardship will be how much sympathy we
 12 have for the applicant.

13 That cannot happen. I'm sorry.
 14 MS. GALLAGHER: I just wanted to
 15 make sure that we had all of the
 16 conflating issues on the table for the
 17 record and for our decision making
 18 process.

19 MR. TASTELLANO: We thank you for
 20 your time and hope and pray for the best.
 21 MR. MILAZZO: Will you give the
 22 extension to the April meeting?

23 MR. TASTELLANO: Yes, we have no
 24 choice.
 25 MR. MILAZZO: You will take a motion

2 to accept the extension.

3 MR. ROMAINE: Make a motion to
 4 accept the extension until the April
 5 meeting.

6 MR. COLLINS: Second.

7 MS. GALLAGHER: So we are keeping
 8 the record open.

9 MR. MILAZZO: But there will be no
 10 more public. You have 30 days. You have
 11 before the Commission's next meeting in
 12 February 27. Actually you have 30 days
 13 until February 22 to provide any
 14 information that you deem relevant for
 15 your application for it to be considered
 16 by the Commission.

17 MR. TASTELLANO: Thank you.

18 MR. AMPER: Do we have the authority
 19 to use that 30 day period to return to
 20 the review of this matter?

21 MR. MILAZZO: Anyone can provide any
 22 comments they wish on this application by
 23 February 22, which should be a Tuesday.

24 MS. GALLAGHER: So that is the
 25 motion. Do we have second.

2 MR. COLLINS: Second.
3 MS. GALLAGHER: All in favor?
4 (Chorus of ayes.)

5 MS. GALLAGHER: Any opposed?
6 (No verbal responses.)

7 MS. GALLAGHER: Any abstentions?
8 (No verbal responses.)

9 MR. TASTELLANO: Thank you for your
10 time.

11 MR. MILAZZO: Did you make a motion
12 to adjourn the meeting?

13 MR. ROMAINE: I make a motion to
14 adjourn the meeting.

15 MR. COLLINS: Second.

16 MS. GALLAGHER: All in favor?
17 (Chorus of ayes.)

18 MS. GALLAGHER: Any opposed?
19 (No verbal responses.)

20 MS. GALLAGHER: Any abstentions?
21 (No verbal responses.)

22 MS. GALLAGHER: Public hearing is
23 closed.

24 (TIME NOTED: 3:58 p.m.)

25 ---oo---

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3
4 I, LOVILLA E. FOOTE, a Notary Public
5 for and within the State of New York, do hereby
6 certify that the above is a correct transcription of
7 my stenographic notes.

8 -----
9 LOVILLA E. FOOTE
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