

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

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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*

## APPEARANCES:

Kyle Collins Town Planning and  
Development Administrator  
Andrew P. Freleng Chief Planner  
Carrie Meek Gallagher Regional Director, Chair  
Julie Hargrave Education and Outreach,  
SCWA  
Judy Jakobsen  
Laura Jens-Smith Supervisor, Town of  
Riverhead  
Janet Longo Acquisition Supervisor  
Daniel McCormick Deputy Town Attorney,  
Riverhead  
John C. Milazzo Staff Attorney, SCWA  
John W. Pavacic Executive Director, CPBC  
Edward P. Romaine Supervisor,  
Town of Brookhaven  
Martin E. Shea Chief Environmental Analyst  
Louis Tastellano on behalf of Applicant,  
Scott Kogel Kogel Brothers  
Richard Amper Executive Director,  
Long Island Pine Barrens  
Society

MS. GALLAGHER: Notice of Public  
Hearing. Pursuant to the New York State  
Environmental Conservation Law, Article  
57, the Central Pine Barrens  
Comprehensive Land Use Plan, notice is  
hereby given that the Central Pine  
Barrens Joint Planning and Policy  
Commission will hold a public hearing on  
Wednesday, January 23, 2019, on the  
matter of a Core Preservation Area  
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

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

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

on the south side of the property.

Exhibit C contains the survey of the property that showed the dwelling prior to demolition.

Exhibit D contains pictures of the site. You will see that the area where the house existed is really the only cleared portion at the site. The rest is wooded.

There are pictures of the house before it was demolished. It was in significant disrepair. There is a picture of the foundation that the Town historian indicated may have been from the old 1750 house, and that has been removed.

Exhibit E contains the demolition permit from the Town.

Exhibit F contains the copy of the survey showing the proposed dwelling and the limits of the clearing. It is also on the only cleared part of the site, just to a slightly different area than the original structure.

Exhibit G is the deed to the

property.

Exhibit H contains just some information on the historical structure that existed on the site at one time, the Major Leek House.

Exhibit I contains information of the potential bird species on the site or in the vicinity of the site.

Exhibit J is a copy of the wetlands which are -- there are no wetlands indicated on the project site but there are across the street on the south side of East Bartlett Road.

Exhibit K shows you the study area about a half a mile around the site. About 75 percent of the area is public open space. It is mostly in the Core Preservation Area. There are about 30 acres, and conservation easements also. It is 30 acres or 30 parcels, I would have to look at this staff report to get that exactly right.

There are conservation easements and Pine Barrens Credit Program in this area.

There is a large County Park and State land also, and portions of habitable and work area come into this half mile radius. That area is developed with agricultural use and residential uses and a golf course on the east side.

Exhibit L shows you the conservation easement parcels in the study area.

Exhibit M is a copy of the zoning map. This is in the Five Acres Zoning District, this site. Most of this area is covered by the Five Acres Zoning District.

Exhibit N is a copy of a stamp from the County Health Department. The applicant did receive this in 2018. I am not sure how that was obtained, but they did obtain that Health Department approval for this structure.

Exhibit O is a copy of the applicant's letter to support their hardship application.

MR. COLLINS: Do you have a copy from the Law Department directing them to demo the building or make it safe or

secure?

MS. HARGRAVE: Yes.

MR. COLLINS: Question for Counsel, the direction of the municipality to take an action on this property does it have any affect on?

MR. MILAZZO: For the applicant to be approved, they would have to demonstrate the hardship. That would go into his or her argument on why the hardship exists. The Commission could afford to waive to that directive if deems appropriate.

MR. COLLINS: Did we find the letter?

MS. HARGRAVE: The applicant may have it also -- here it is. Sorry. It is in his application. Sorry, here it is. I think it was in your request for determination. It was not in your actual application.

(Handing)

MR. COLLINS: Thank you.

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 Tastellanno 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 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?  
25

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 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. ROMAINÉ: 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. ROMAINÉ: Originally you tried  
5 to sell it to the County?

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

8 MR. ROMAINÉ: 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. ROMAINÉ: 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. ROMAINÉ: 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. ROMAINÉ: 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. ROMAINÉ: 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. ROMAINÉ: 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. ROMAINÉ: 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. ROMAINÉ: So, acquisition is not  
3 going to happen. The only thing that  
4 this Commission has to do 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 conveyance 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. ROMAINÉ: By Pine Lake?

8 MR. TASTELLANO: Yes.

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

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

13 MR. ROMAINÉ: 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. ROMAINÉ: 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?  
25

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?  
25

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

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

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



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

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

MR. ROMAINE: Absolutely.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. AMPER: Say it again.

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

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

MR. TASTELLANO: It is subject to --

MS. JENS-SMITH: If the contract is

pending you being able to get permits?

MR. TASTELLANO: No, subject to mortgage approval.

MS. JENS-SMITH: Not pending permits?

MR. TASTELLANO: They happen to have mortgage approval.

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

MR. TASTELLANO: House.

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

MR. TASTELLANO: Do you have a contact?

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

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

MR. MILAZZO: Okay.

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

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

That cannot happen. I'm sorry.

MS. GALLAGHER: I just wanted to make sure that we had all of the conflating issues on the table for the record and for our decision making process.

MR. TASTELLANO: We thank you for your time and hope and pray for the best.

MR. MILAZZO: Will you give the extension to the April meeting?

MR. TASTELLANO: Yes, we have no choice.

MR. MILAZZO: You will take a motion

to accept the extension.

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

MR. COLLINS: Second.

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

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

MR. TASTELLANO: Thank you.

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

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

MS. GALLAGHER: So that is the 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 ---oOo---

2  
 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

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 LOVILLA E. FOOTE

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