

Condensed

PINE BARRENS COMMISSION

Public Hearing

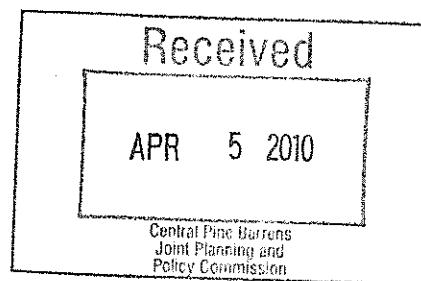
Brookhaven Town Hall
One Independence Hill
Farmingville, NY

Wednesday, March 17, 2010
2:00 P.M.

PRESENT

PETER A. SCULLY, CHAIR
MARK LESKO, Member
ANNA E. THRONE-HOLST, member
SEAN M. WALTER, Member

BRENDA PROSINOWSKI, Alternate for Mark Lesko
CARRIE MEEKS-GALLAGHER, Suffolk County
MARTY SHEA, Southhampton Town.



<p style="text-align: center;">1</p> <p>PINE BARRENS COMMISSION Public Hearing</p> <p style="text-align: center;">Brookhaven Town Hall One Independence Hill Farmingville, NY</p> <p style="text-align: center;">Wednesday, March 17, 2010 2:00 P.M.</p> <p style="text-align: center;">PRESENT</p> <p>PETER A. SCULLY, CHAIR MARK LESKO, Member ANNA E. THRONE-HOLST, member SEAN M. WALTER, Member</p> <p>BRENDA PROSINOWSKI, Alternate for Mark Lesko CARRIE MEEKS-GALLAGHER, Suffolk County MARTY SHEA, Southhampton Town.</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">1 PROCEEDINGS</p> <p>2 MR. SCULLY: I would like to call this</p> <p>3 public hearing to order. I will read from the</p> <p>4 notice which is provided for the record:</p> <p>5 Pursuant to New York State Environmental</p> <p>6 Conservation Law Article 57-0121(9), notice is</p> <p>7 hereby given that the Central Pine Barrens Joint</p> <p>8 Planning and Policy Commission will hold a public</p> <p>9 hearing on March 17, 2010 on the matter of an</p> <p>10 application for a Compatible Growth Area Hardship</p> <p>11 Exemption.</p> <p>12 The name of the Project is The Hamptons</p> <p>13 Club at Eastport.</p> <p>14 The Applicant/Owner is CASCO I, LLC.</p> <p>15 Applicant's Representative is: Nelson</p> <p>16 Pope and Voorhees, LLC.</p> <p>17 Project Site Location is: South of Port</p> <p>18 Jefferson-Westhampton Road (CR-111) and North of</p> <p>19 Sunrise Highway (Route 27) Service Road,</p> <p>20 unincorporated hamlet of Eastport, Town of</p> <p>21 Brookhaven, Suffolk County, New York.</p> <p>22 Project Description is as follows:</p> <p>23 Applicant requests a Compatible Growth Area</p> <p>24 Hardship Permit to construct 119 residential units</p> <p>25 consisting of a mix of attached town homes and</p>
<p style="text-align: center;">2</p> <p>1 JOHN MILAZZO, Esq. 2 Counsel for Commission 3 PO Box 587 4 3525 Sunrise Highway 5 Great River, NY 11739 6 7 FORCHELLI, CURTO, DEEGAN, SCHWARTZ, MINEO, COHN & 8 TERRANA, LLP 9 333 Earl Ovington Blvd. - Suite 1010 10 Uniondale, NY 11533 11 BY: KATHLEEN DEEGAN DICKSON, ESQ. 12 13 RAY CORWIN, Executive Director 14 CPBC 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: center;">4</p> <p>1 flats housed in 58 buildings and three 2 single-family dwellings with associated individual 3 onsite septic systems to be clustered on a 76.44 4 acre project site, currently in the A-1 Residential 5 Zoning District. The project proposes a Change of 6 Zone from A-1 Residence Zoning District to the B 7 Resident Zoning District. The project includes 8 33.43 acres of open space, and 4.19 acres in 9 streets, 5.3 acres of surface water features for 10 drainage and aesthetics, a recreation building and 11 a pool. The project proposes to redeem 44 sanitary 12 credits and 11 Pine Barrens Credits. The applicant 13 is requesting relief from the clearing limit of 53 14 percent.</p> <p>15 I ask that the Commission members 16 identify themselves for the record.</p> <p>17 MR. LESKO: Mark Lesko of Brookhaven. 18 MR. SHEA: Marty Shea, representing 19 Southhampton Town.</p> <p>20 MS. THRONE-HOLST: Anna E. 21 Throne-Holst, Member.</p> <p>22 MS. PROSINOWSKI: Brenda Prosinowski, 23 designated alternate, representative for the 24 Brookhaven supervisor Mark Lesko.</p> <p>25 MR. WALTER: Sean Walter, Riverhead.</p>

<p>1 MS. MEEKS-GALLAGHER: Carrie 2 Meeks-Gallagher, Suffolk County. 3 MR. SCULLY: Peter Scully, representing 4 the Governor of the State of New York. 5 Ms. Hargrave? 6 MS. HARGRAVE: Julie Hargrave. I am 7 going to give each of you a copy of the exhibits 8 that I gave to the stenographer: The staff report 9 that is the first exhibit, you all received that in 10 your County packet. It hasn't changed, but the 11 rest of the information behind it are new exhibits. 12 Again, the staff report hasn't changed. 13 We will just go through the list of exhibits, we 14 have them. The first one is the staff report and 15 it contains a couple of exhibits within it. The 16 location map of the site; the concept plan; the 17 subdivision map; a ground water contributing area 18 map, which is all of Suffolk County, and it was 19 part of the analysis; the final resolution that the 20 Commission adopted on January 18, 2006, for the 21 previous project on the project site; and the 22 environmental assessment form for the current 23 project, and a contract that the applicants 24 submitted that relates to the credits that are 25 proposed to be purchased to offset the density and</p>	5	<p>1 now, doesn't comply with Article 6, but the way 2 that the applicant has proposed to mitigate that 3 part of the project is to submit the credits to 4 offset, to allow the additional density to land on 5 the site and offset those increases in flow. 6 The third one is whether you would like 7 the applicant to consider this project as a 8 non-contiguous cluster since it includes a project 9 that's off site -- a present site which is off 10 site, and a piece of land that is off site, The 11 Oaks at East Moriches, would you want to see that 12 owner and that project or that land included in the 13 project site of this project, so that you could 14 look at them together, since they are extremely 15 closely related, as far as the credits coming from 16 one piece of land and landing here. So that's just 17 an item for discussion. 18 The impact in that watershed and the 19 additional septic systems on the site may impact 20 the ground water and the marshes of Seatuck Creek. 21 That may warrant more discussion. 22 The traffic impact: The applicant has 23 submitted information on the traffic count and the 24 proposed impact to traffic and the environmental 25 review forms go through how the project won't</p>	7
<p>1 the intensity of use on site. 2 So just to give a quick project 3 description, the project site, again, is in 4 Eastport. It's currently zoned A-1 Residential. 5 It's 76.44 acres, and the proposal is for 119 6 duplex units. The amount of open space is 7 approximately 33 acres. The applicant proposes to 8 submit 55 credits, 11 of which would be Pine 9 Barrens' credits and 44 credits for flow credits 10 that would come from a project site called The Oaks 11 at East Moriches, which is outside of the Pine 12 Barrens, southwest of this project site. 13 A couple of things: I provided on page 14 2 a list of items and issues for discussion. I 15 will just go through those and there were a couple 16 -- a few more things that I would like to add for 17 the discussion today. So I will just quickly go 18 through the list the. 19 Item Number 1, the financial evidence 20 that was submitted, related to taxes and how the 21 project relates to revenue for the town and its 22 students and various things of that nature but not 23 really related to the financial hardship on the 24 applicant's part. So that is up for review. 25 The project, as it is proposed right</p>	6	<p>1 create traffic impact, but there may be some more 2 discussion on that that could be explained by the 3 applicant. 4 The precedent of this project: There 5 are other subdivisions in the area that are either 6 currently approved or are proposed to be built out 7 as standard as a rights subdivisions and they could 8 possibly ask for the same thing that this applicant 9 is asking for, looking at density and space. If 10 they are, that may or may not include land credits 11 similar to what this applicant is proposing, so 12 sort of foreseeing this could happen elsewhere in 13 the Pine Barrens and outside the Pine Barrens. 14 The Oaks in East Moriches is not in the 15 Pine Barrens, so transferring density from outside 16 the Pine Barrens to inside the Pine Barrens, but 17 this is a receiving site and it does -- and, 18 therefore, it is allowed to have a 20-percent 19 increase in density as a right. It wouldn't need 20 to get extra Town Board review, but this is a 21 change of zone and it's increasing more than 20 22 percent; as a right it's 64 units and this is 23 adding 55 more to that. It's an 86 percent 24 increase in density. 25 There were covenants filed when the</p>	8

<p>1 original project on the site was approved, and as 2 you probably know, the site is currently under 3 construction or it may be halted at this moment but 4 it was under construction. So they had all, the 5 applicant had all the approvals in place to build 6 the site, and there were covenants about no further 7 subdivision; easements were filed and just some 8 clarification on how those covenants or easements 9 will be modified under this new project.</p> <p>10 There are ponds proposed, so we would 11 like more information on how there are going to be 12 -- if there's any herbicides, it looks like there's 13 going to be five-inch pond, to minimize the 14 herbicides and everything, and so much would occur 15 in the ponds.</p> <p>16 The status of the grassland restoration 17 is a part of the previous project. Most of the 18 site, except for the wooded part on the east side, 19 was disturbed and graded under the last -- pursuant 20 to the last project, so I'm not sure what the 21 status is. There was a grassland set aside and 22 what the status of that is right now. And, 23 similarly, the soil management plan that was 24 implemented as part of the last project, what is 25 the status of that?</p>	9	<p>1 Pine Barrens? M I L A Z U.</p> <p>2 MR. SCULLY: Let me just make clear 3 that we can ask the applicant.</p> <p>4 MS. HARGRAVE: The applicant is here.</p> <p>5 MR. SCULLY: The applicant is here 6 seeking a hardship. The applicant is here seeking 7 a hardship, what is the hardship regarding?</p> <p>8 MS. HARGRAVE: Yes. They submitted a 9 hardship position. The package of exhibits will 10 make it easier as we go through these various 11 arenas we will read them.</p> <p>12 MR. SCULLY: Just so we are clear, the 13 hardship is required by virtue of?</p> <p>14 MS. HARGRAVE: Well, the site was over 15 cleared as part of the last approval and there was 16 an approval given or granted, so at a minimum, that 17 approval needs to be amended. We can't put back 18 the vegetation that was removed pursuant to the 19 approvals that occurred under the last project, but 20 this is a project that the final result is an 21 increase in intensity and density on the site, so 22 it would have to meet standards under the Pine 23 Barrens' plan.</p> <p>24 MR. SCULLY: Is this technically a 25 modification of the previously issued approval or</p>	11
<p>1 The applicant submitted or stated in the 2 application that the National Heritage Program said 3 there were no endangered species, and we have not 4 seen a copy of that letter, but maybe they could 5 submit that letter.</p> <p>6 Just to clarify the total open space and 7 the bulk of it is one continuous block, but there 8 are fringes and I want to be clear on the amount of 9 open space to be proposed.</p> <p>10 A couple of other things in addition to 11 that list: The applicant, under the proposed 12 zoning to B Residents, the applicant could build 13 149 units, so this is for 119 units, and what would 14 be the impact of building out the site an 15 additional 30 units.</p> <p>16 I think that's about it for the items. 17 The rest of the staff report explains the standards 18 and how they meet standards or don't meet 19 standards, and just the characteristics of the 20 site.</p> <p>21 So, do you have any questions?</p> <p>22 MR. SHEA: Just one question: Has the 23 applicant considered, as an option, redeeming 55 24 Pine Barrens' credits as opposed to 11 Pine 25 Barrens' credits and 44 credits from outside the</p>	10	<p>1 is it a new and separate hardship application?</p> <p>2 MR. MILAZZO: I think they have asked 3 for a modification of the existing permit, and 4 that's a question that I think you should allow 5 them to make that presentation so we can hear what 6 the arguments are and then the staff can review 7 their presentation and decide whether it needs a 8 new application.</p> <p>9 MR. SCULLY: Other questions for staff?</p> <p>10 Is there a representative here from the 11 applicant?</p> <p>12 MS. DICKSON: Good afternoon. My 13 name is Kathleen Deegan Dickson. I am the attorney 14 for the applicant. I am with the firm of 15 Forchelli, Curto, Deegan, Schwartz, Mineo, Cohn & 16 Terrana, Uniondale, New York. I am the attorney 17 for COSCO I, LLC.</p> <p>18 As the staff correctly pointed out, we 19 are here for the modification to the original 20 hardship, actually to the plan under which the 21 original hardship was eventually granted.</p> <p>22 In 2007 the applicant received approval 23 from the Town of Brookhaven to construct 64 24 single-family homes on the property. As part of 25 that application, a hardship waiver was granted by</p>	12

<p>1 this Commission for clearance of additional land 2 because of the configuration of the property. That 3 waiver was given on, January 18, 2006. 4 After all the approvals were granted, 5 the applicant commenced construction on the 6 property. They put in all the infrastructure 7 improvements, made the roadway and traffic 8 improvements on the public property outside of the 9 site, did the clearing that was required, continued 10 the clearing that was required for this project, 11 put in the ponds or the infrastructure for the 12 ponds, and constructed three single-family model 13 homes, and that was what they were going to market 14 the rest of the development with.</p> <p>15 Over the course of the next couple of 16 months, the economy drastically changed. I think 17 that the national mindset changed dramatically and 18 the idea of 64 large single-family homes was not as 19 appealing to purchasers, to people who were buying 20 houses, to the people who are in need of housing in 21 the town, and therefore, there were no offers made 22 on any of these three model homes.</p> <p>23 It was a completely different world when 24 this project was first proposed in 2003. I think 25 everybody here knows that the world is a</p>	13	<p>1 previously approved for construction will not be 2 built out under this modified plan. 3 There is a question that has been raised 4 a couple of times about precedent that I would like 5 to address. There is no negative precedent that's 6 granted by this. An applicant has a right to come 7 for a different application at any time. What I 8 think most people are incorrect in relating this to 9 is a second bite at the same apple. If we came in 10 and were denied the first time and we came back in 11 with the same exact plan, that would be a second 12 bite at the same apple. That I will concede 13 wouldn't be appropriate. This is a completely 14 different plan, and we will walk you through it. 15 Chic Vorhees is here today and he will get into a 16 lot of the nitty-gritty of the project. I am going 17 to give you a sort of general overview of 18 everything.</p> <p>19 The 2006 hardship waiver was granted, 20 and in granting it the Commission recognized the 21 hardship that is inherent in the land itself. I 22 would like to read from the decision itself. In 23 the "whereas" clauses it's stated: "The project 24 did not meet the clearing standards since the site 25 was cleared and used for farming prior to 1993,</p>	15
<p>1 dramatically different place than it was then. The 2 market for single-family homes was all the rage 3 then; people would buy them as fast as you could 4 build them. That has changed over the last two 5 years, and I think that there is a recognition 6 throughout Long Island that there is a need for 7 housing for the younger generation so that they can 8 remain on Long Island, for parents whose children 9 have moved away and they don't need the big house 10 anymore and they want to move into something that 11 is a little more manageable. There is a need for 12 diversity of housing in this area.</p> <p>13 The applicant has made an application to 14 the Town of Brookhaven for a change of zone to 15 Resident B, to change the nature of the 16 development, but just the nature of the dwelling 17 construction on it. I want to clarify that the 18 footprint and design of the development will remain 19 unchanged. There were 64 lots approved, there will 20 be 64 lots here as well. The subdivision plan is 21 not changing. What the proposal will have is 119 22 homes, with three of them being the existing 23 single-family homes, and the remaining being 24 attached duplex on the other 58 lots around the 25 site. Notably three of the lots that were</p>	14	<p>1 Long Island Barrens Protection Act."</p> <p>2 That is germane because, just to clarify 3 something that Ms. Hargrave said, I don't want 4 anybody to think that the property was over cleared 5 without the permission of the Commission. The 6 property was over cleared historically, and then 7 our client came in and had a situation that already 8 existed.</p> <p>9 There was also a finding by this 10 Commission in granting the hardship that the 11 project, as depicted and also likewise this 12 project, retains a 32-acre contiguous, open-space 13 area, an important view-shed corridor from Sunrise 14 Highway through to CR 111, that would not have 15 occurred if it was developed primarily within the 16 cultivated sealed portion of the site, to retain 17 the woods on both the east and western portions of 18 the site.</p> <p>19 The center of the site was already 20 cleared and there was wooded portions on both 21 sides. So rather than build on the already cleared 22 part and take away our view sheds that everybody 23 had become accustomed to and that is valuable to 24 the community, this Commission determined that it 25 was more appropriate to locate -- the applicant,</p>	16



<p>1 along with this Commission, decided it was more 2 appropriate to locate the development on the 3 westerly side of the site. It leaves the cleared 4 area cleared and preserves the wooded area to the 5 east.</p> <p>6 The Commission further went on to say: 7 "The applicant has demonstrated that the hardship 8 is unique to the project since it contains a 9 cultivated field, with wooded areas on the east and 10 western portions of the site." That does not apply 11 to a substantial portion of the communities 12 surrounding this project. That has not changed 13 with this application.</p> <p>14 Then the decision further goes on to say 15 "The vegetation of the aforementioned farm fields 16 will be maintained in a special field provided for 17 habitatious areas, avians, and insect species." 18 That, again, is not going to change with this 19 application.</p> <p>20 The Commission also in its decision made 21 a determination that the development of this 22 property would not alter the essential character of 23 the area and, again, reading from the decision, the 24 Commission stated, "There is an existing 240-unit 25 residential development project for seniors living</p>	17	<p>1 applicant \$1,000 a day, actually over \$1,000 a day, 2 about \$400,000 a year in taxes, insurance, and just 3 general carrying costs of the project. So he, 4 right, now having three homes that are built and 5 not marketed, lends him to believe, and I think 6 rightly so, that building another 61 houses are not 7 going to be marketed, and so there has to be a 8 change, otherwise there is going to be an economic 9 disaster for the applicant. That's the economic 10 hardship, and I don't think that anybody can 11 question that carrying \$1,000 in its carrying 12 costs, in addition to all of the maintenance and 13 investment that was put in, could not bear -- would 14 not create a hardship on even the most flush of 15 applicants.</p> <p>16 Pretty much everything that has been 17 done, though, translates to this new plan. There 18 is nothing that was done that would not be able to 19 be used as part of this expanded plan -- expanded 20 is the wrong word -- as I mentioned before, the 21 footprint is not going to be expanded. The 22 floor-area ratio of what is going to be built is 23 essentially the same. We are going to be 24 constructing 55 additional units, but they are 25 going to be smaller units, so where you have</p>	19
<p>1 in Bristol Estates, immediately adjacent to the 2 west side of the site. There are agricultural 3 areas to the northeast of the site and in the 4 general vicinity. Therefore, the relief granting 5 will not alter the essential character of the 6 community.</p> <p>7 Keep in mind the relief granted was the 8 relief from the clearing limit. It wasn't for 9 development of the site, it was just because of the 10 nature of the property the relief was warranted.</p> <p>11 Now, here we are four years later, and we have the 12 added hardship that not only the site provides, but 13 also that the economy provides. The applicant, 14 over the last number of years, in the last three 15 years since the project was approved, has incurred 16 over 3-1/2 million dollars in hard costs, meaning 17 actual construction costs: Improving the roadway, 18 putting in a traffic signal on the Sunrise Highway 19 service road, the infrastructure inside the 20 development and the development of the three model 21 homes that they made a very good effort to market 22 and sell with no success.</p> <p>23 In addition to the hard costs, they 24 incurred well over a million dollars in soft costs, 25 and maintaining this project right now costs the</p>	18	<p>1 single-family homes that could have five or six 2 residents, three, it could have a full family 3 living there, maybe some in-laws, now we are going 4 to have smaller units that will be very suitable 5 for a young couple, newly married, empty nesters, 6 maybe some single professionals. It's going to be, 7 just by the size of it, it will be limited in the 8 number of people that will be accommodated.</p> <p>9 In addition, because of the size of the 10 units, it will be more affordably priced. There 11 will be 30 homes set aside for first-time home 12 buyers, and we are hoping to get a program with 13 Long Island Housing Partnership to help administer 14 that. All of the units will have geothermal heat 15 available to it. All of the first-time home buyer 16 units will have geothermal heat and energy 17 installed at the owner's expense -- I am sorry, at 18 the applicant's expense -- at the builder's 19 expense, whereas all of the rest will also have it 20 available.</p> <p>21 A major part of this application is also 22 the redemption of 11 Pine Barrens' credits. This 23 will take 11 Pines Barrens' credits that are on the 24 market, it will retire them permanently, and that 25 will advance the purpose of the Act and of this</p>	20

<p>1 board -- of this Commission, and it will have a 2 benefit for the surrounding area. 3 The Pine Barrens' credits and the 4 sanitary credits that are required in order to 5 obtain final compliance with Article 6, where the 6 client has been contacted -- the applicant has been 7 in contract with the owner of The Oaks property, 8 which has already approved, 62 lot subdivisions 9 right down the road -- it is, as I said, already 10 approved and could be built pretty much at any 11 time. I know that the town and board of the town 12 here have both been in discussions with the owner 13 to try and have it successfully preserved as open 14 space, and by purchasing 55 credits, 44 sanitary 15 credits and 11 Pine Barrens' credits from this 16 property, it will facilitate that negotiation, so 17 we have been told. 18 The check-board heating is here, as you 19 have all discussed. The fact that the number of 20 students in the schools will actually decrease, 21 despite the number of units increasing by this 22 project. With the decrease in the number of 23 students, while the taxes are remaining the same or 24 slightly higher, the impact on the schools will be 25 very, very positive. There will be fewer students</p>	<p>21</p> <p>1 sanitary and Pine Barrens' credits, and the 2 application goes through in detail each of the 3 criteria, each of standards that this Commission is 4 to look at and demonstrate how the application 5 complies. 6 A question came up about the potential 7 density of 149 units that would be available under 8 the Residents B Zoning: The applicant is willing 9 to commit to not fully develop under the B Resident 10 Zoning, to develop only up to the limits that are 11 proposed here. He is not looking to maximize the 12 buildout of the property, it's just the B Residents 13 Zone should best fit under the existing code, so 14 there need not be any fears that there will be an 15 additional 30 units on top of this 119. 16 With that, I would like to introduce 17 Chic Vorhees. 18 MR. SCULLY: Can you clarify what 19 relief it is that you are seeking? 20 MS. DICKSON: We are seeking -- the 21 limit is 53 percent and we are proposing 57, for 22 single-family, one acre zoning. 23 I do want to point out that if the Town 24 Board grants the change in zone application to B 25 Residents, the clearing limits under the B</p>
<p>22</p> <p>1 and more money, so over the originally approved 2 plan, it would have a substantial benefit to the 3 schools. 4 The traffic generation is less than what 5 you would expect with a 55-unit increase because we 6 are not putting 55 additional single-family homes 7 for people with three or four cars in their house. 8 Again, Chic will have those numbers. The increase 9 is marginal and, then, if you consider the increase 10 of The Oaks -- I am sorry, the decrease from The 11 Oaks that will be preserved, we are going to take 12 all of those cars that the 62 units would have had, 13 once that's settled, those cars will not be on the 14 road. In fact, it will be a net decrease in 15 traffic in the area. This is the immediate area, 16 although it's across the street and down the road a 17 little bit, it's still in the same general 18 vicinity. 19 I just want to mention about the 20 standards and guidelines for the Planning Board 21 Commission. Aside from the clearing limits that we 22 are very close to, this development comes with all 23 of the other Planning Board's -- Pine Barrens' 24 Commission's standards and guidelines. Article 6 25 will be complied with by the transfer of the</p>	<p>22</p> <p>1 Residents' standards for the Pine Barrens 2 Commission is actually 70 percent, and we will be 3 well, well under that at our 57. 4 MR. SCULLY: You are here because in 5 order to apply for the project to advance now with 6 the zone change in contemplation, you require 7 relief from the Commission, but if you were coming 8 before us with the zoning in place -- 9 MS. DICKSON: We would not require 10 relief, yes. 11 MR. SCULLY: You need hardship approval? 12 MS. DICKSON: Yes. 13 MR. VORHEES: I think we have some 14 visual aids, if we could try to get that going. 15 MR. SCULLY: Please swear Mr. Vorhees 16 in. 17 Whereupon, 18 CHARLES VORHEES, 19 after having been first duly sworn by 20 the Notary Public, was examined and testified as 21 follows: 22 MR. VORHEES: I am sorry. Excuse my 23 back. I don't want to repeat a lot of what 24 Kathleen has already said. 25 Let me state for the record that my name</p>



<p>1 Charles Vorhees. I am with the firm of Nelson, 2 Pope & Voorhees. We are the environmental 3 consultants for CASCO I. We had done the prior 4 work on this project when it received town 5 subdivision approval under A-1, and also for the 6 Pine Barrens' hardship.</p> <p>7 You are familiar with the property. It 8 has been laid out pretty well. This is the site 9 before construction. It does show that the area 10 was substantially cleared, there was one row of 11 pine trees in the center, the rest was agricultural 12 field. Working very closely with John Turner and 13 the environmental staff, it was determined, as 14 Kathleen stated, the best configuration was to 15 place the development on the west side of the 16 property, and that's what was achieved.</p> <p>17 - This just goes through the background. 18 Kathleen pretty much covered that, but I did want 19 to indicate that there was a negative declaration 20 adopted by the town Planning Board, and that was 21 based on an expanded environmental assessment form 22 that had a good deal of information. Some of which 23 will apply to Julie so that some of her questions 24 are answered.</p> <p>25 This shows the overlay of the process on</p>	25	<p>1 is just one of those facts of the times, they were 2 not able to proceed without some revenues coming 3 in, and three of the models homes were constructed. 4 Kathleen covered these numbers, and I 5 can provide a copy of the PowerPoint presentation 6 for your records and send one electronically, I 7 think that may be helpful, just so that you have it 8 on the record. The numbers that she covered are 9 what we had gotten from the applicant, and they are 10 accurate.</p> <p>11 So 116 straw units and three existing 12 single-family homes. This gives you a little more 13 detail. The first time homebuyer units, which 14 would comprise 30 of the new units, would be 15 offered to first-time home buyers. The first two 16 years of taxes and common charges would be paid for 17 by the development company. This is to provide 18 incentives and to make it affordable.</p> <p>19 The balance of the market rate units are 20 not large units. We are talking 1400 square feet, 21 plus garage; 1800 square feet, plus garage. All of 22 the new units will have geothermal. As Kathleen 23 said, Geothermal will be available for all as an 24 add on. The rec facilities are exactly the same as 25 what was previously proposed.</p>	27
<p>1 the acreage.</p> <p>2 MR. MILAZZO: One second, what was that 3 you are going to supply?</p> <p>4 MR. VORHEES: I will supply any key 5 information that was in the previous environmental 6 assessment, see Julie in response to the staff 7 comments.</p> <p>8 MR. MILAZZO: So you will?</p> <p>9 MR. VORHEES: Yes. One thing I know 10 for sure is I have a copy of the letter from 11 National Heritage.</p> <p>12 This, again, goes through the 13 background. I won't make anybody too dizzy, but 14 this is essentially what has been done to date. 15 The road access has been put in place. There have 16 been improvements to the highland. Kathleen 17 mentioned signals were installed at the applicant's 18 expense.</p> <p>19 The roads were upgraded. The area in 20 the northwest corner of the property was cleared 21 for the alignment of the road. There are two ponds 22 proposed on the property; those have been excavated 23 and upgraded. We are in the process of completing 24 a soil management plan, and would have that 25 completed if construction hadn't been halted. It</p>	26	<p>1 This is an overlay. It's just a new 2 project, but it looks identical. If we put them 3 side by side, they are identical. The road 4 alignment has not changed, improvements have not 5 changed, everything is the same.</p> <p>6 This is the rendered plan. I have a 7 copy with me in hard copy, but it just kind of 8 portrays the layout and the green aspects of it. 9 This is the existing woodlands. This is the 10 reclaim our native grasslands. These are all 11 connected. There is an expansion of a buffer on 12 the north side, because three of the lots that were 13 previously approved would not be constructed. 14 There is open space in the southwest quarter and 15 along the frontage, and the total we have 16 identified -- and I will go into it in a little 17 more detail.</p> <p>18 These items we've pretty much covered. 19 There are three lots that aren't being developed 20 that comprise 1.09 acres. Any environmental impact 21 statement, we have copies of the approved 22 subdivision that shows those exact lots.</p> <p>23 MR. TURNER: Will that 1.09 acres be 24 part of the home owner association?</p> <p>25 MR. VORHEES: Exactly, yes. I can show</p>	28

<p>29</p> <p>1 you where those are. 2 You see benefits, 11 Pine Barrens' credits, 44 sanitary credits, portable aspects are very important. Additional open space. I will walk you through the numbers there was less square footage than the theoretical maximum that could be built on this site. Less children and much greater tax revenue.</p> <p>9 This frames out the density. Let's talk about that for a moment just so there is a clear understanding. Currently approved is 65 lots; there's a rec building, so it's 65 lots plus the rec building. Our calculations were a little less optimistic. It had 144 under the B Resident Zoning, and what is being proposed is 119 lots, 119 units.</p> <p>17 We feel that the site is somewhat unique. You have got Route 27 on the south. You've got County Road 111 and you have County Road 51, and immediately left of us is a development known as Bristol Estates that's out about 4 units per acre. The density that we are talking about for the total number of units is 1.56 units per acre. So you see, this is kind of a transitional parcel in an area that is somewhat isolated. It</p>	<p>31</p> <p>1 This is the compensation for school-age children based on the number of bedrooms, using recognized demographic materials. The finding is, in my opinion, on density, is units is not the most accurate measure. Different types of units must be considered. That floor area, the best measure for comparison and certainly it's not a doubling of density.</p> <p>9 This shows the tax revenue, again, based on the number of units. The existing conditions prior to the commencement of construction, are here. The approved project would have resulted in \$413,000 to the Eastport South Manor School District and a total of almost \$600,000 in taxes. The actual project that we are proposing increases total taxes and it increases taxes to the school district, and these show the additional revenues to additional tax and jurisdictions. So in comparing those, it's 41 less school children, it's 37,000 more in school taxes. When you factor in the cost to educate the school children, this would be deficit that the prior project would have resulted in, minus \$380,000, and the proposed project will result in \$114,900 more in tax revenue. So the total difference between those two numbers is close</p>
<p>30</p> <p>1 was framed out by those major highways in existing higher-density residential developments.</p> <p>3 I want to get away from the notion of units for just a moment and talk about square footage, because you're talking about an 86 percent increase in density and it's not really reflective of what is happening. This shows the approved project minimum square footages that would be achieved based on the 64 homes. The final subdivision approval put a maximum of what those homes could be inside, and it gets up to 313,600 square feet of floor area, based on the Planning Board's approval. The actual project that we are proposing with the additional 55 units, and then making them all smaller, results in 212,000 square feet. So it's actually less than the theoretical maximum by over about 100,000 square feet, and even if you take the maximum, you are only less than 10 percent in terms of an increase.</p> <p>20 We also counted the number of bedrooms, and even under that scenario, we are at about 30 bedrooms more, which is 11.7 bedrooms more than what currently exists. I think this is important. Some of the economic analyses and planning factors really bear this out, why this is beneficial.</p>	<p>32</p> <p>1 to a half a million dollars.</p> <p>2 Traffic was talked about in the staff report and maybe, since I hear comments, it's very important that we understand that the project is currently in a draft environmental impact statement process. Since the prior approval, the town completed the County Road 51 plan. That plan naturally recognizes this property as A-1, because that's what it was when it was approved at that time. So we need to prepare a supplement to the CR 51 land-use plan in order to modify that plan to recognize this project. So that process is underway.</p> <p>14 The town has accepted the draft environmental impact statement. It's posted on the town's website. There will be a public hearing on that document and all of the information that I am presenting to you is in that document. It's been reviewed by the town planning staff, and it has basically been found to be acceptable for the purpose of public dissemination.</p> <p>22 You are welcome to look at those numbers. We would be happy to go over them in more detail. The back-up analysis is available to everyone here.</p>

<p>1 As I said, the DOT approved the access 2 and it's been constructed. A signal has been 3 constructed. Those roads have much more capacity 4 than the projects even that are envisioned through 5 that entire area will ever utilize. There are no 6 access points from this project to County Road 51, 7 CR 111. There's one emergency access just to the 8 east of the main access. All of that is identical 9 and nothing will change.</p> <p>10 We looked at trip generation based on 11 the number of units. There has been a bit of an 12 increase in the A.M. peak-hour trips, the entering 13 trips on the weekday P.M. hours, and a little bit 14 of a decrease on the exiting trips. So this is not 15 a substantial difference, but what that information 16 allows us to do is to perform a capacity analysis 17 of the intersections, and we have got the future no 18 build and the future LIPA projects, and there is 19 virtually no difference between the level of 20 service.</p> <p>21 We did this analysis and included it in 22 the EIS, because it's one of your criteria for 23 determining a development of rebuild significance, 24 and we wanted to ensure that we did not decrease 25 LOS by two levels or below D.</p>	<p>33</p> <p>1 different zone 3 and zone 6 boundaries, because 2 basically, our site is behaving more like a zone 6 3 area than a zone 3 area. This tells me that we 4 won't impact ground water in the Pine Barrens. We 5 are basically on the edge, we are close to a 6 surface water discharge zone, and ground water 7 flows south, according to the Pine Barrens. 8 The Oaks is in the same watershed and 9 both flow into the Moriches Bay. So this is very 10 important when we're beginning to look at nitrogen, 11 which is one of our main elements of concern and 12 the impacts from that.</p> <p>13 We did note in the EIS and we have 14 mappings that there are designated wetlands about 15 700 feet south of the site. Those are across 16 Sunrise Highway, there is no direct connection and 17 that is not necessarily flowing wetlands or a 18 stream flow, that's going to induce a lot of 19 ground-water flow. I think that is probably why, 20 on the minimum side, you have a two-year discharge 21 time period for 700 feet of distance, but it could 22 be as much as 5, because you are probably going to 23 have a longer flow path in the aquifer before 24 ground-water discharges the Seatuck Creek.</p> <p>25 There are certainly principles that are</p>
<p>1 This may look familiar. The County for 2 a long time has had the regional ground-water model 3 that's addressing the KIA system with. We have 4 been researching that. They have some nice detail 5 on the rivers. This just shows basically all of 6 Suffolk County and the areas of ground-water 7 discharge to surface water. It's very difficult to 8 read. Again, this is available on the County's 9 website and it will be in future documents as well 10 as in your staff report.</p> <p>11 This is the general area. The Seatuck 12 Creek, Harts Cove, Moriches Bay area, and the 13 proposed project is right on the green frame. It's 14 roughly in the two-to-five year ground-water 15 contributing area. Interestingly, The Oaks 16 project, which is west of us and outside the Pine 17 Barrens, and also outside of the ground-water, 18 management zone 3, is roughly in that same area. 19 So I think one of the things that interests me 20 greatly is that this is our project right here, 21 this is Seatuck Creek and the cove, Hart's Cove; 22 again, it's difficult to read, but we will provide 23 this information. Here is the zone 3 boundary. If 24 that ground-water model were available when the 25 two-week study was done, you would probably have</p>	<p>34</p> <p>1 being researched all over the country, in terms of 2 natural attenuation; loss of nitrogen in the vegos 3 zone; loss of nitrogen in the aquifer, and 4 transformation of nitrogen as it discharges the 5 surface water to bottom sediments of creeks and 6 streams and rivers. So we know that natural 7 attenuation will occur.</p> <p>8 We looked at the sanitary flow and, 9 clearly, we are increasing the sanitary flow. The 10 staff report makes reference to an increase of 11 16,500 gallons. You have to look at that in terms 12 of concentration of nitrogen. We have run nitrogen 13 budget models. This would be an approved project, 14 and based on accepted practices with, again, 15 information in the EIS, the increase in the 16 concentration of nitrogen recharge is about .09 17 milligrams per liter. It's really not perceptible.</p> <p>18 So in terms of those aspects, and one of 19 the key questions that you'll have is: We meet 20 Article 6, that's one of your standards, through 21 the transfer of development rights principle that 22 the County has recognized, they have a circular 23 policy on it, and that will be required for 24 approval of this project.</p> <p>25 The total of 55 credits, I think, is</p>

1 well balanced, and I know Mr. Shea before asked 2 about could we purchase all the credits from the 3 Pine Barrens? I see this as kind of a balance 4 where we are redeeming Pine Barrens' credits, and I 5 think it's at least the third largest of any 6 redemption that I have seen on the clearing house 7 website, but we are also transferring density from 8 within the same watershed area from The Oaks 9 project, so that kind of allows us to say that we 10 are removing potential development that we haven't 11 even included in our nitrogen model. We are 12 basically taking those 44 units off the table, they 13 won't get charged in Moriches Bay, and we have 14 already learned from this nitrogen budget, we won't 15 impact ground water in the Pine Barrens, based on 16 the flow map. We won't impact ground water because 17 of the low concentration, and certainly there's an 18 insignificant increase. We won't impact surface 19 water because there is a travel distance, there's 20 natural attenuation, and it's again at a low 21 concentration, and there is a significant load 22 reduction of nitrogen by taking 44 sanitary credits 23 outside of that watershed area. 24 One of the criteria for the use of 25 variance, and in this case that you apply under	37	1 the Pine Barrens and is going to the base. 2 We're next to a development that is four 3 units per acre. I think that is important, in 4 terms of precedent. You can weigh that against 5 other projects and use that as part of any 6 decision. Our project is half the density, if you 7 look at units per acre, which I said before is not 8 the best measure, but it's less than half the 9 density of the adjoining property. We are within 10 that triangle of three major highways. You can run 11 that test by any other application and I think you 12 would find that makes this area unique. We are 13 reducing floor area, again, to us that is the best 14 measure.	39
1 your consideration for a hardship, is the 2 appearance, will it affect the community, will it 3 change the essential character? That information 4 Kathleen read from your prior decision, but I just 5 want to tell you that it's only gotten better, 6 because of the preservation of additional open 7 space and buffering on the north side, the height 8 restrictions in the B Resident Zone are identical 9 to those of the A-1 Zone, buildings will not be 10 larger, they won't be taller, and we will increase 11 the open space in buffering. So there won't be any 12 change in that character. 13 Kathleen covered precedent. I want to 14 try to get the points down, some of them are here. 15 I will just go through them quickly. 16 We won't impact ground water in the Pine 17 Barrens. The edge of the CGA is important, it's 18 certainly unique because it's at the perimeter and 19 there's only so many parcels on the perimeter. The 20 project, combined with The Oaks' TDR will reduce 21 nitrogen loading to the bay. I think that's unique 22 in terms of your consideration, certainly the 23 Peconic River is in the Pine Barrens, but there are 24 not too many areas on the south shore, where you 25 have got shallow flow coming from a site that is in	38	1 result from that project. 2 I think that it is important that you be 3 aware, I know they are not directly part of your 4 consideration, all the tax dollars and all of those 5 things, but certainly traffic and aesthetics and I 6 think social conscientiousness is important, and so 7 we have identified those for you.	40
8 If nothing happens, if we don't proceed 9 with this, the only alternative is to wait the 10 market and have the opportunity to build 64- 11 approved units. I would say that this project 12 offers so many benefits over this that in my mind 13 it's really worth considering, for those reasons. 14 Getting close to the end here. I just 15 wanted to hit on a couple of key points of the Pine 16 Barrens' plan: The standard 6.1 is the vegetation 17 clearance limits. This is the breakdown of the 18 acreage, and the total adds up to 51.67 percent of 19 the actual open space preserve. We are adding 1.09 20 acres over and above what was preserved under the 21 prior approval of this Commission. 22 There is a limitation of 15 percent 23 under 6.3. There will be no more than 11.47 acres 24 fertilized, and there is no rare ecology -- we can 25 get you the letter from Natural Heritage -- I think			



<p>41</p> <p>1 that Collin (ph) sed is the only thing that was 2 identified in the area, and we do not believe that 3 the site provides suitable habitat. There were no 4 other unique, vegetative communities or animal life 5 identified in the National Heritage Review, and 6 that was part of the prior Sequa Review.</p> <p>7 Those are really just the main ones, the 8 rest we covered in our application.</p> <p>9 I will just very quickly go through 10 economic charts. First, the hardship criteria. I 11 think we have covered that thoroughly. I listed 12 the 10 points as to why this is unique. I provided 13 the visual on the character of the community and 14 how the project maintains the same character that 15 you found to be acceptable before, and I don't 16 believe it's self-created. This applicant does not 17 want to be in the position that he is in. Nobody 18 would want to be in this position, having just 19 invested that type of money, expected a market; I 20 don't think anybody has a crystal ball. You know 21 me and I am pretty sincere and I would never 22 support a project where this is a bailout of a bad 23 decision on the part of an applicant, but in this 24 case, you don't have a crystal ball, and when 25 things happened that caused this current situation,</p>	<p>43</p> <p>1 I am just looking at the staff report to 2 see if there is anything that I did not cover. I 3 think we talked in detail about density and 4 adjusted for that. I would not encourage 5 considering this a non-contiguous cluster; I think 6 that would be setting poor precedent on behalf of 7 this Commission because it would involve a project 8 outside of the Pine Barrens and, certainly, the 9 same can be achieved through the transfer of 10 development rights under the existing programs. It 11 would complicate things unnecessarily.</p> <p>12 I covered under Number 4 in detail the 13 ground water and surface-water relationship and the 14 lack of a potential significant effort on impact.</p> <p>15 Number 5 talks about traffic, which is 16 covered in detail.</p> <p>17 Number 6 was precedent, which I see hits 18 all of those 10 points that makes this very unique.</p> <p>19 There will not be any change in the lot 20 lines of the subdivisions. So there is no 21 alteration of that covenant, which basically fits 22 those lot lines and says "no further subdivision."</p> <p>23 Everything will take place within the existing 24 lots.</p> <p>25 We certainly would be happy to work with</p>
<p>42</p> <p>1 I think we have come up with balanced and creative 2 solutions that result in numerous benefits, retires 3 the most Pine Barrens' credits of any recent 4 transactions, provides housing for first-time home 5 buyers and really provides the opportunity for this 6 to become a successful project.</p> <p>7 I am not going to go into these, but 8 they're all the same benefits that I indicated 9 before. I think we have covered the fact that if 10 you are interested in Pine Barrens' protection and 11 woodlands protect outside of the Pine Barrens where 12 The Oaks development is, this is a great project. 13 The major redemption of Pine Barrens' credits, this 14 is one of your areas of focus.</p> <p>15 I think we have ensured the integrity of 16 the hardship process by presenting this detailed 17 information. I don't believe we are causing any 18 precedence, and anything that's resulting is 19 certainly beneficial, and we are resulting in many 20 social and economic benefits.</p> <p>21 Those are all the slides that I had. 22 Hopefully, I will submit this for the record today. 23 Is one copy sufficient or electronically I will 24 send the others? That has the information on the 25 financial hardship.</p>	<p>44</p> <p>1 either the Town or the Commission on a management 2 plan if that's appropriate. What we see are 3 vegetative plantings around those ponds. It was 4 part of the town's approval. We did work with John 5 Turner and his group on an open space management 6 plan for the meadow areas. So we can certainly 7 guarantee there won't be pesticides, insecticides, 8 herbicides or grass down to those pond areas.</p> <p>9 I would happy to supply Julie with the 10 Grassland Open Space Management Plan that was 11 prepared as part of the prior approval, and I think 12 I will electronically transmit this plan as well, 13 so that you can get a visual depiction of where the 14 open-space areas are in response to Number 9.</p> <p>15 The National Heritage was -- it is here, 16 and 11 we covered. There would be no opportunity 17 to build out the additional 30 units. Basically, 18 this is what fits on the property, within the 19 footprint of the subdivision, and so I just wanted 20 to cover that last question that the staff had as 21 well.</p> <p>22 That concludes my remarks.</p> <p>23 MR. SCULLY: Are there any questions for 24 Mr. Vorhees.</p> <p>25 MR. SHEA: Mr. Vorhees, when the</p>

<p>1 Commissioner granted the hardship extension in 2 order to enable the waiver from a clearance 3 standard, the Commissioner had required that a 4 Conservation Review be filed, in order to establish 5 and protect a discretionary meadow that's along 111. 6 Since the final approval was granted, it appears 7 that there's been considerable disturbance. Maybe 8 you could speak towards whether or not the 9 disturbance of that area is contrary to the 10 language of the Conservation Review, and if you can 11 see if it requires mitigation.</p> <p>12 MR. VORHEES: I will look at the 13 conservation this week and what I could tell you at 14 this time is that this was an agricultural 15 property, and we did pesticide sampling on the 16 property. We found arsenic in the area in shallow 17 surface soil, and there was a soil management plan 18 devised as part of the original approval. 19 Basically, what that did is it took off the top 20 surface material and isolated this, in part under 21 the pond and in part in areas of burial, covered 22 with green material or pond liners. Basically that 23 has to be completed before we could establish a 24 suitable growing surface for the native grasslands. 25 That is still in progress at this time.</p>	45	<p>1 you say --</p> <p>2 MR. VORHEES: I think that probably 3 the best measure would be, and it's already in the 4 staff report, 43.73 percent has open space, and a 5 converse of that as development area.</p> <p>6 There are other acres that will be non- 7 fertilized vegetation, but that number would be 8 consistent with the prior approval.</p> <p>9 MR. SCULLY: Could we get clarification 10 on that?</p> <p>11 Did you have another question?</p> <p>12 MS. PROSINOWSKI: Yes.</p> <p>13 Mr. Vorhees, you indicated that this 14 project plus The Oaks will reduce the nitrogen 15 level to the bay. Is it your premises or the 16 applicant's premise that this project will take the 17 credits from The Oaks and move them to this site?</p> <p>18 MR. VORHEES: We have a contract with 19 The Oaks. The contract is conditioned upon the 20 conservation of a purchase agreement to buy the 21 balance of The Oaks' property. I think since 2003 22 The Oaks has been listed on the Town's community 23 preservation project plan as a parcel for actual 24 redemption. My understanding is that the buyer and 25 the seller have not been able to come to terms on a</p>	47
<p>1 I would like it if things were proceeding more 2 quickly, but again, I think it's part of the 3 economics of what's taking place.</p> <p>4 If there is anything else that I need to 5 get you on researching the specific conservation 6 review, I will, but there is an open space 7 management plan for the grasslands that will take 8 place once the soil management for arsenic is 9 complete.</p> <p>10 MR. SCULLY: Any other questions?</p> <p>11 MS. PROSINOWSKI: I have a question: 12 Can someone tell me what the clearing limit was, 13 it's not in the resolution.</p> <p>14 MS. HARGRAVE: I was going to ask the 15 same thing, what the final clearing limit was and 16 what the proposed final clearing limit is?</p> <p>17 MR. VORHEES: I have all the prior 18 approved plans. Maybe it would be worth taking 19 them home, maybe not here, but to get a letter back 20 that identifies exactly what was approved before 21 and what I've represented is accurate, that 1.09 22 acres more than what was granted before will be 23 preserved.</p> <p>24 MS. PROSINOWSKI: What is the number you 25 are seeking in terms of a clearing limit? I heard</p>	46	<p>1 price. Basically, what this project allows us to 2 do is to partially subsidize the purchase of the 3 development rights from The Oaks.</p> <p>4 So it's in the package that you have, 5 the contract that we have with The Oaks, and that 6 contract is contingent upon completing the purchase 7 of the balance of the property.</p> <p>8 MR. SCULLY: Is that the entire Oaks' 9 site?</p> <p>10 MR. VORHEES: Yes.</p> <p>11 MS. PROSINOWSKI: I am curious because 12 this contract, which is a part of your application, 13 specifically references 103 sanitary credits and 14 you are mentioning 64 of them. I am very unclear 15 as to what that means to The Oaks' project.</p> <p>16 MR. VORHEES: I don't know. Do you 17 have any more detail on that, Kathleen?</p> <p>18 MS. DICKSON: I believe that there is a 19 subdivision that has been approved that has not yet 20 been filed. When it is filed, it will take the 101 21 lots that are there now, that existed prior to 22 1981, that are single and separate, have been 23 single and separately owned since prior to 1981. 24 The 64-lot subdivision would overlay that.</p> <p>25 In the event that we are able to buy the</p>	48

<p>1 credits in the town or are able to buy the 2 property, the 101 credits will, or the balance of 3 the 101 credits, I would imagine, would go to the 4 purchaser of the property. We will take the 44 5 credits off of that. If it turns out that -- I 6 will tell you the truth I am not part of the 7 contract between The Oaks', the seller, and the 8 county or the town, so I am not sure what their 9 negotiations have been as far as purchase price and 10 what credits would go along with the underlying 11 ownership of the land.</p> <p>12 MR. SCULLY: Can somebody speak in 13 theory as to what the remaining yield would be on 14 the property if those records are transferred? I 15 am trying to understand how the transaction would 16 work. You testified that the property would be 17 preserved as a result of the transaction. I am 18 trying to understand how that would work.</p> <p>19 MS. DICKSON: Because the transaction is 20 contingent on the public ownership of the property. 21 So once we purchase the credits or once the seller 22 comes to terms with the public entity that is going 23 to purchase it, we take the 44 credits off of it 24 and then the property is sold to the town or to the 25 county, whoever ends up purchasing it.</p>	49	<p>1 MR. SCULLY: But they just stated on the 2 record that that cannot happen unless and until The 3 Oaks property is purchased by the county or the 4 town.</p> <p>5 MS. DICKSON: There are other credits 6 out in the town and within the area that can be 7 purchased.</p> <p>8 MR. SCULLY: You have to put that on 9 the record, that there are other credits that can 10 be used.</p> <p>11 MS. DICKSON: There are other ones but 12 we are in contract.</p> <p>13 MR. SCULLY: Other questions?</p> <p>14 MS. DICKSON: A question about the soil 15 management plan. I understand the whole concept of 16 agricultural soils dumping into the hamlets. I 17 guess that the soil management plan has been placed 18 in such a way -- does that mean that the soil on 19 site which had those type of contaminants are 20 retained on site and are placed in such a way that 21 there is no exposure to pathways?</p> <p>22 MR. VORHEES: Yes. They are not moved 23 off the site.</p> <p>24 MR. SCULLY: 76,000 cubic yards was in 25 a remote sitenot a lot</p>
<p>1 MR. SCULLY: Theoretically the 2 purchaser would be paying full fee, the appraised 3 value, and after that the value of the credits 4 would be derived in addition from --</p> <p>5 MR. VORHEES: From our standpoint, we 6 are purchasing 44 credits from Landmarks.</p> <p>7 MR. SCULLY: What we do is of no 8 concern to you.</p> <p>9 MR. VORHEES: That's what we can 10 guarantee, that through this contract we are 11 purchasing 44 credits. The balance would be 12 available. If nothing else, 44 less development 13 rights would exist on that property and it would be 14 our hope and be contracted that that would help a 15 further transaction to take place.</p> <p>16 MR. LESKO: Regardless of whether the 17 property is required for open space, you have a 18 binding contract?</p> <p>19 MS. DICKSON: Our contract is contingent 20 upon it being --</p> <p>21 (Multiple voices.)</p> <p>22 MS. GALLAGHER: It has to be purchased 23 by open space and health services has to approve 24 the 44 -- well, the full amount of the credits, 103 25 credits.</p>	50	<p>1 MR. VORHEES: Yes.</p> <p>2 MR. SCULLY: There is economic data in 3 here on that?</p> <p>4 MR. VORHEES: Quite honestly, there 5 was an excess materials form and review that had to 6 take place. The town does derive a fee from that 7 on a yard basis and that material is moved off site 8 and its conformance includes subdivisions that 9 involve the creation of those ponds.</p> <p>10 As part of the soil management plan, 11 those ponds were over excavated to make room for 12 the surface soils that were buried beneath the 13 pond. Everything has been monitored by the sound. 14 It's all consistent with prior approval and the 15 plan.</p> <p>16 MR. SCULLY: You didn't answer my 17 question. We've heard a lot about hardship and 18 client base. I was speaking to the issues of the 19 economic benefit that he derives from the sale of 20 material; is that a fact?</p> <p>21 MR. VORHEES: I would assume that there 22 was some value to that, yes.</p> <p>23 MR. SCULLY: You do not have that 24 information here?</p> <p>25 MR. VORHEES: No. We can supply that,</p>

<p>1 if you would.</p> <p>2 MR. LESKO: A question. Bear with me</p> <p>3 for a moment, I am trying to understand this as I</p> <p>4 go along: If the town does approve the application</p> <p>5 for a change of zone, the clearing requirements are</p> <p>6 altered, resulting in a situation where you would</p> <p>7 not need to apply for a hardship, yet you are here</p> <p>8 applying, according to you, for a modification of</p> <p>9 the existing hardship waiver, according to others</p> <p>10 for a second hardship application, but all of that</p> <p>11 is unnecessary if the Town Board changes the zone</p> <p>12 on the property; am I wrong?</p> <p>13 MR. VORHEES: I probably wouldn't</p> <p>14 agree with that and I will indicate why. That is</p> <p>15 because I know Kathleen said that when you go to a</p> <p>16 B Residence the clearing goes up to 70 percent, but</p> <p>17 this Commission has had a pretty solid history of</p> <p>18 looking at the zoning that existed at the time of</p> <p>19 the Pine Barrens' plan in 1995. So that is not our</p> <p>20 motivation for being here.</p> <p>21 MR. SCULLY: That's the reason that you</p> <p>22 are here first.</p> <p>23 MR. VORHEES: Wait a minute, for me</p> <p>24 it's clearing, and we did meet with the staff in</p> <p>25 advance of making the application because, quite</p>	<p>53</p> <p>1 approval, conditional approval from the town, with</p> <p>2 a long list of conditions upon which the Pine</p> <p>3 Barrens' credits -- the Commission then decided to</p> <p>4 rescind based on that assertion of jurisdiction,</p> <p>5 which stopped the process by the Commission.</p> <p>6 MR. LESKO: I guess, I mean, is it</p> <p>7 appropriate to consider that by way of comparing</p> <p>8 them? Because it seems like there's a lot more</p> <p>9 significance, more density and many more units.</p> <p>10 Granted, they're age restricted, but I guess I</p> <p>11 don't quite understand that decision in comparison</p> <p>12 to this project.</p> <p>13 MR. CORWIN: We're concerned with</p> <p>14 projects that provide a comparison to projects and</p> <p>15 how they were handled. An assertion project is</p> <p>16 simply one of those powers the Commission has, it's</p> <p>17 only been used seven times in its history.</p> <p>18 MR. LESKO: There is a notion of</p> <p>19 equivalency of treatment. If you have two adjacent</p> <p>20 parcels, my sense is we should be treating both</p> <p>21 consistently, and I just would like to know if the</p> <p>22 staff will provide some more clarification as to</p> <p>23 the history of that parcel, because the density is</p> <p>24 part of much more significance than what is being</p> <p>25 proposed here.</p>
<p>54</p> <p>1 honestly, we weren't clear on whether we needed to</p> <p>2 come back. It was expressed to us, and we could</p> <p>3 understand that the project is different, it's</p> <p>4 changed, it was 64 units and now it's 119 units. I</p> <p>5 think we are here because this project is different</p> <p>6 and it still requires the same relief from the</p> <p>7 clearing.</p> <p>8 MR. LESKO: The other question I have</p> <p>9 for you is Bristol Woods Estates, was that</p> <p>10 constructed prior to the passage of the Pine</p> <p>11 Barrens Act? Did that project receive a hardship?</p> <p>12 MR. VORHEES: It was reviewed by this</p> <p>13 Commission.</p> <p>14 MR. LESKO: The hardship was granted?</p> <p>15 MR. CORWIN: I can answer that. It's</p> <p>16 that the project next door, a senior residence, was</p> <p>17 called out by the Commission and they asserted</p> <p>18 jurisdiction over that, and the Commission was</p> <p>19 informed that they expected 200 credits redeemed on</p> <p>20 that site, along with a number of other conditions,</p> <p>21 other things, but there was no written -- no permit</p> <p>22 was ever given by the Commission.</p> <p>23 They asserted jurisdiction over the</p> <p>24 senior living and in the course of having a hearing</p> <p>25 and processing it, we received a revised proposed</p>	<p>56</p> <p>1 MR. SCULLY: Is it consistent with the</p> <p>2 land-use plan?</p> <p>3 MS. PROSINOWSKI: It's inconsistent.</p> <p>4 MR. LESKO: But the Hampton Club is</p> <p>5 consistent or inconsistent?</p> <p>6 MS. PROSINOWSKI: The approved project</p> <p>7 is consistent.</p> <p>8 MS. GALLAGHER: The approved project is</p> <p>9 consistent.</p> <p>10 MR. SCULLY: I have a couple of other</p> <p>11 questions that speak to the economics: What is the</p> <p>12 claim for the economics, the tax effects and</p> <p>13 assessments? You indicated that the information is</p> <p>14 available, but what is the real basis for</p> <p>15 projecting what the assessed value of the units</p> <p>16 would be versus the cost of the unit? How are</p> <p>17 those figures derived?</p> <p>18 MR. VORHEES: We have a professional</p> <p>19 economist on staff, and he used a market-based</p> <p>20 method. He looked at the value of the project in</p> <p>21 total, applied the equalization rate, much the same</p> <p>22 way as a tax assessor would do it. The portion is</p> <p>23 based on the distribution of taxes on the tax bill.</p> <p>24 There is a free-standing report that is fairly</p> <p>25 detailed because it goes into the methodology, all</p>



<p>57</p> <p>1 the references and I can certainly supply that. 2 MR. SCULLY: The other thing I would 3 like to better understand is the relative value of 4 a Pine Barrens' credit verses sanitary credits, 5 what the difference is between the projects. 6 MS. DICKSON: You are worried about 7 the cost? 8 MR. SCULLY: Yes. 9 MS. DICKSON: Pine Barrens credits are 10 much more expensive. Beyond that, I am not at 11 liberty to discuss the sale and purchase price of 12 them. 13 MR. WALTER: I had two questions: 14 Supervisor Lesko actually solidified one of the 15 questions because I didn't understand why you were 16 here. So my question is a follow-up: Where are 17 you in your change-of-zone process? 18 MR. VORHEES: We have an accepted 19 draft supplemental environmental impact statement. 20 It's in the review process. They're coming up in 21 April. The Town Board is opposed to a public 22 hearing at the meeting, it could be a ten-day open 23 comment period for written comments, after which a 24 final environmental impact statement would be 25 prepared by the town, hopefully accepted, and after</p>	<p>59</p> <p>1 there any thought to doing anything in the Town of 2 Southampton? 3 MR. VORHEES: I think one response would 4 be that Pine Barrens' credits are really at large, 5 in the sense that they comes from the preservation 6 area. Beyond that, typically as a planner, we do 7 keep credits in the same jurisdiction as much as we 8 can, and it gets a little more complicated to bring 9 them across town lines. 10 MS. THRONE-HOLST: You mentioned that 11 you have an economist on staff that measures the 12 impact in terms of taxable income. Do you measure 13 that on the Brookhaven side of the taxpayers as 14 well as the Southampton side. 15 MR. VORHEES: Typically the way it's 16 done is you would analyze within the taxing 17 jurisdiction. The first step is to go out and get 18 tax bills, show us what school district you are in, 19 what special districts gets tax allocutions and 20 base your analysis on that. So it's really a site- 21 specific, where do the taxes go that are generated 22 by that project, where are the children educated, 23 and how does everything balance economically. 24 MS. THRONE-HOIST: But in this case you 25 have two townships that go to the same school. So</p>
<p>58</p> <p>1 that findings could be adopted. That whole process 2 has to be completed first. 3 MR. WALTER: So it seems to me if that 4 were to happen -- I have no idea what the town is 5 going to do, but if that were to happen, then you 6 would be more akin to the other senior community 7 next store, in terms of asserting jurisdiction and 8 maybe not asserting jurisdiction or changing our 9 assertion jurisdiction, because you would have the 10 change of zone, you would have the density, it 11 would almost mirror the situation of the adjoining 12 property. There are similarities -- 13 MR. CORWIN: I can pull the records on 14 that. 15 MR. SCULLY: They're interested in what 16 the differences are. 17 MR. WALTER: My other question for you, 18 and this is more of a selfish Town Supervisor type 19 of question: You are buying 44 credits in the Town 20 of Brookhaven, which are in the Town of Brookhaven, 21 but clearly you have impacted the Town of 22 Southampton. Has any consideration ever occurred 23 to purchasing transfer development rights or 24 credits or something in the Town of Southampton, 25 that the Pine Barrens transcends town lines; is</p>	<p>60</p> <p>1 you have tax ratables that will benefit one town 2 but not the other, but the school that both towns 3 utilize is impacted by this. So I guess I would 4 ask for a similar impact study to be done for a 5 Southampton taxpayer and the school district 6 families. 7 Do you understand what I am saying? 8 MR. VORHEES: I can try and understand 9 it, but I don't know how it would be done, because 10 as I said, the project -- I guess the issue here is 11 that there's some boundaries based on the school 12 district. 13 MS. THRONE-HOIST: Yes, there is. 14 MR. VORHEES: Maybe I will just leave 15 it at this point to say that this project will 16 reduce the number of school-aged children by 41. 17 The original proposed project, the estimate was 18 that you would have 72 children, this should be 41 19 children less. Whatever tax consequences there 20 are, there's greater revenue and less children if 21 this project is allowed to proceed. So it reduces 22 the impact on the school district. 23 MR. LESKO: I think what I am hearing is 24 that the tax impact, whether it's positive or 25 negative, factors in the rate that will accrue to</p>

<p>1 the town and what the Supervisor is saying is that 2 you need to do a separate analysis for Southampton 3 residents within that school district, because you 4 can't offset any positive tax effects for the 5 township because they are not going to receive any 6 of those local property taxes, so there should be a 7 way to do that, that alters that balance.</p> <p>8 MR. VORHEES: The part that I am 9 missing is what is the impact related to this 10 project? In other words --</p> <p>11 MR. WALTER: You're extinguishing 44 12 development rights from the Town of Brookhaven, so 13 that is 44 units or something directly in the Town 14 of Brookhaven that school-aged children for that 15 school district --</p> <p>16 MS. THRONE-HOIST: You are adding. 17 MR. VORHEES: It would lessen --</p> <p>18 MR. MILAZZO: You're adding tax revenue 19 to the Town of Brookhaven, you are not adding tax 20 revenue to the town --</p> <p>21 MR. LESKO: That's across the boundary, 22 but I think the issue is just that, I think it's 23 just as John mentioned, I think that's the 24 question.</p> <p>25 MR. SCULLY: I think the more</p>	<p>61</p> <p>1 it's a more marketable plan than the existing one? 2 MR. VORHEES: I think it's related to 3 the potential sales price of the homes. With the 4 economic situation, the more expensive the home, 5 the more difficult to market. That people wishing 6 to reside in the area, there are a mix of units 7 offered at lower levels. I think it's a sensible 8 thing that they would be sold.</p> <p>9 MS. THRONE-HOIST: With all due 10 respect, you are using the word "think," but have 11 you done any sort of --</p> <p>12 MR. VORHEES: We will check with our 13 client and determine what market testing has been 14 done.</p> <p>15 MR. LESKO: We are done. Out of respect 16 to my colleagues on the Town Board, I think that 17 now that we have a reporter here, I should note for 18 the record that Councilwoman Jane Bonner, 19 representing herself and Councilman Steve 20 Fiori-Rosenfeld, represented to the Commission that 21 they oppose this hardship application, and I 22 believe Councilwoman Bonner also voiced her 23 opposition to even consider holding the hearing, so 24 I think she made that clear. She did not do so on 25 the record, however.</p>
<p>1 accurate --</p> <p>2 MS. THRONE-HOIST: Based on what our 3 tax rate is compared to what a Brookhaven school 4 family tax rate is, with the increased impact to 5 the school.</p> <p>6 MR. SCULLY: Assuming that the credits 7 are from The Oaks' credits. What we have heard -- 8 well, what we have heard is that probably we should 9 use the word "may," but the occasion has been that 10 we left them until that property is acquired by the 11 town or county; those credits may not be available 12 to the client.</p> <p>13 MR. LESKO: Could I suggest also, 14 addressing the issue of the contingent nature of 15 that sanitary credit acquisition related to The 16 Oaks, have you explored an alternative, a Plan B, 17 where you would redeem an additional number of Pine 18 Barrens' credits that will be a somewhat equivalent 19 amount, as compared to the same credits? Because 20 that seems to have a lot of contingencies 21 associated with it; so have you explored that 22 option, and if you haven't, I would suggest that 23 you do explore that option.</p> <p>24 MS. GALLAGHER: I second that.</p> <p>25 MS. THRONE-HOIST: How do you determine</p>	<p>62</p> <p>1 Out of courtesy to my colleagues I ask 2 that that be made part of this record.</p> <p>3 MR. SCULLY: Any other questions for the 4 applicant?</p> <p>5 If not, we will now hear from the 6 public; does anybody want to be heard on the 7 application?</p> <p>8 Ma'am?</p> <p>9 Joyce Kelley, I live on Seatuck Avenue 10 in Eastport.</p> <p>11 MR. SCULLY: The Reporter will swear you 12 in.</p> <p>13 Whereupon,</p> <p>14 JOYCE KELLEY, 15 after having been first duly sworn by 16 the Notary Public, was examined and testified as 17 follows:</p> <p>18 MS. KELLER: My name Joyce Kelley, E.Y. 19 I live on Seatuck Avenue in Eastport, which is in 20 the Brookhaven part of Eastport. Some of you may 21 not know that Eastport is divided.</p> <p>22 I would like to go on record against the 23 second hardship variance to be given to this 24 developer. I am concerned mostly about the impact 25 on the Fire Department, Police, traffic services,</p>



1 ambulance and other emergency services and, 2 definitely, its impact to the school district. 3 Unless they can guarantee that young couples 4 purchasing these units will actually not have 5 children, there will be an impact to the Eastport 6 South Spanish School District. 7 As for seniors purchasing these units, 8 which is mentioned, we already have many new condos 9 not yet occupied on Seatuck Avenue, for seniors, as 10 well as the Anchor Development for seniors, which 11 is right next door. 12 MR. SCULLY: Anybody else wish to be 13 heard? 14 Whereupon, 15 SHELLY KORMAN, 16 after having been first duly sworn by 17 the Notary Public, was examined and testified as 18 follows: 19 MS. KORMAN: My name is Shelly Korman. 20 I am the Chairperson of the Political Action 21 Committee of Anchor Atlantic Shores, that the two 22 representatives from CASCO keep referring to as 23 Bristol Estates. We are Anchor Atlantic Shores, 24 and we have been since 2004, when people started 25 moving into the community.	65 1 don't recall saying it was scientifically proven 2 anywhere. I referred to the study, the Rutgers 3 study that indicates -- 4 MS. KORMAN: Saying that this type of 5 community -- yes, study, that's what you said, not 6 "scientifically proven." 7 MR. LESKO: -- that in the small, more 8 affordable units, in theory, percentage wise, it's 9 been established you get less children out of 10 developments of that type. I never said 11 "scientific." 12 MS. KORMAN: Right, not scientific, 13 study. A study, I think, doesn't seem scientific, 14 that's the teacher in me. 15 In reference to the traffic being 16 studied when they did the environmental study, I 17 know they, Mr. Voorhees, mentioned there would not 18 be access to Route 111 and County Road 51, but when 19 everybody goes in and comes out on the north 20 service road of Sunrise Highway, the only way for 21 them to go is to make a right and they end up at 22 County Road 55. 23 County Road 55 has the stoplight, which 24 I understand you purchased, and if you make a 25 right, maybe 10 cars can fit between that light and	67
66 1 I, as well as many members of the 2 community, are opposed to the rezoning of that 3 particular property with the Hampton Club. We have 4 many members of our community here today in support 5 of that. We really don't want it to happen. The 6 fact that it was already brought before the board 7 and it was changed from agricultural to A-1 and 8 this is a second chance, they decided they wanted 9 to build million dollar homes, 64 million dollar 10 homes, and they couldn't move them; now they want 11 to build 119, and what could possibly be 149 units. 12 Mr. Voorhees would like us to count 13 square feet. I would like to count units, because 14 when you count units, there are people living in 15 those units, and we could probably concede there's 16 two in each of those units and possibly more 17 people. 18 In addition, I want to bring up the fact 19 that Mr. Vorhees and also Mr. Lesko are convinced 20 that there will be fewer children with this type of 21 community. I remember when we had a meeting with 22 you, you said it was scientifically proven, but 23 unless birth control is given out with the purchase 24 of the house -- 25 MR. LESKO: I will have to stop you. I	68 1 County Road 51's light. With the increase to 119 2 homes, you are going to have that many more cars, 3 and I don't see how we are not going to have more 4 environmental pollution with that happening. 5 I don't remember if this was mentioned, 6 but septic tanks are proposed for these homes that 7 are being built. When there were 64 homes, there 8 were individual septic tanks at each one of those 9 homes; now there's 119, possibly 149. Some of 10 those are duplexes, duplex means two families using 11 one septic tank. Now, I had a septic tank when I 12 lived in Massapequa, and after a number of years 13 that septic tank started leaking. It cracked, the 14 lawn dropped one day, and we knew something was 15 wrong with the septic tank. 16 I don't see how that will not affect the 17 Town of Eastport, the water table, the water that 18 we get into our homes. It's got to affect them 19 into the next generation and the generations 20 afterwards. 21 So all of these things are problems that 22 I see coming up with the increase in the density of 23 people coming into that community. It was said 24 that we have 240 homes that were built in the 25 Anchor Atlantic Shores community, and we were	68

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<p>1 equated that we should in parity in some way and 2 give them the same benefit. When our community was 3 being built, I believe we went to the board once 4 and said we would like to build so many homes, and 5 it wasn't changed afterwards because of the fact 6 that these homes would cost X amount of dollars. 7 So 64 homes, yes. 119 is really too 8 much for the area, and I hope that this board does 9 recommend to the Town Board, Mr. Lesko and his 10 colleagues, that this is something that should not 11 be happening. I thank you.</p> <p>12 MR. LESKO: Are there septic tanks or 13 is there a sewer treatment plant at the moment?</p> <p>14 MS. KORMAN: We have a sewerage 15 treatment plant.</p> <p>16 MR. LESKO: Where is it located? Is it 17 north --</p> <p>18 MS. KORMAN: On the north service road. 19 There's a span of trees and then the sewerage 20 treatment plant is for the north.</p> <p>21 MR. SCULLY: Thank you.</p> <p>22 Does anybody wish to address the 23 Commission on this matter?</p> <p>24 Ms. Johnson?</p> <p>25 Whereupon,</p>	<p>1 built, because no one has said "done deal." 2 86 percent increase in density is not 3 marginal, it's not. You have 43 three-bedroom 4 units. I don't know how many offices the average 5 single couple needs. You need a master bedroom, an 6 office, a guest room. You put kids in bedrooms, 7 that's what happens with 43 bedrooms as opposed to 8 64. 64 units, three-bedroom units, this's 43 9 bedrooms in this three-bedroom unit, 43 out of 119 10 are three-bedroom units. The transfer of this 11 density to the Pine Barrens is not the purpose of 12 the Pine Barrens Act. We transferred density out 13 of the Pine Barrens, out of this compatible growth, 14 not into it. That seems strange to me.</p> <p>15 I see no evidence presented by Mr. 16 Vorhees whatsoever that there is a market for this 17 project any more than there was a market for the 18 last project. Every two years he is going to come 19 and change the covenant? The covenants are barely 20 two years old here, February 18, 2008, we 21 covenanted no further subdivision on this site. 22 So, things changed, so his assurance that he will 23 not come back and build 149 units? Ask him in two 24 years.</p> <p>25 This is a completely different plan, it</p>
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<p>1 so. A footprint changes. The footprint at the 2 World Trade Center is 16 acres. 16 acres there and 3 16 acres here have a different impact on the land, 4 the character of the community and on our ground 5 water.</p> <p>6 To say it won't affect Seatuck Creek is 7 basically absurd. He said 2.3 years, the flow 8 that goes into the ground from these 119 units will 9 end up in the surface waters of the wetland and 10 Seatuck Creek. That's unacceptable. It is an 11 enantherma for the purpose of this Commission to 12 provide that that doesn't happen.</p> <p>13 You can't allow it. If he wants to put 14 a project in, he needs to bring in adequate 15 sewerage treatment, otherwise he needs to go home. 16 Thank you.</p> <p>17 MR. SCULLY: Anybody else wish to 18 address the Commission?</p> <p>19 Whereupon,</p> <p>20 ANDREA SILICA, 21 after having been first duly sworn by 22 the Notary Public, was examined and testified as 23 follows:</p> <p>24 MS. SILICA: My name is Andrea Silica. 25 I live in Eastport. I set up sort of a coalition</p>	<p>1 been 50 units that are in the process of being 2 built, they are senior homes on Seatuck Avenue, 3 they have not been built. I don't know how many 4 units have been sold. That is all in Eastport, all 5 going into the South Manor School District.</p> <p>6 In addition, you have what is going on 7 here on the East Moriches side, which is Heritage 8 Square, 408 units, which I believe is in 9 litigation, and again The Oaks that everyone keeps 10 talking about for 62 units.</p> <p>11 Eastport has about 3500 residents. We 12 are talking about a tremendous increase in --</p> <p>13 MR. SCULLY: I'm sorry, did you swear 14 her in?</p> <p>15 THE REPORTER: Yes.</p> <p>16 MS. SILICA: We are talking about a 17 tremendous increase. I have met with Mark Masero, 18 who the Superintendent of schools for Eastport- 19 South Manor. They have just passed, thankfully, a 20 58 million dollar budget, a bond act, and I said, 21 "This is what is about to happen." I showed him 22 the map and I said, "Are you ready? Will any of 23 that money will be available for this?"</p> <p>24 He said, "Are you kidding? Absolutely 25 not." The money that has been raised goes to take</p>
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<p>1 of residents in Eastport and, as a result, we stood 2 in front for just about three weeks and off times 3 in front of the supermarket we put a couple of 4 petitions. We talk to the community, and as 5 Supervisor Lesko knows, we turned into the Town of 6 Brookhaven, I have a copy for you, 1,500 signatures 7 from area residents who said they are absolutely 8 concerned about over development in the area.</p> <p>9 Today we are talking about the Hampton 10 Club, which I am asking you to deny the hardship, 11 but in addition to this, we have several 12 developments in the area. The 240 homes that they 13 keep talking about are right here, they have 14 already been built. This is where the Hampton Club 15 119, would be. Yes, there are four additional 16 units that could be built here, however, I think 17 it's important to know that there were just 70 18 units approved, as of right, in Brookhaven, just 19 down the street, and I talked to the Eastport Manor 20 road problem of traffic, all of this development 21 goes out on to Port Manor Road sooner or later; 22 that's County Road 55, as was mentioned before.</p> <p>23 In addition, you have a proposed 24 development of 90 units, again a half, a block or 25 so away, also on Eastport Manor Road. There have</p>	<p>1 kids out of trailers or whatever they were being 2 housed in for their classes. They are not prepared 3 for this increase in students. Certainly, they are 4 now talking about potentially having to lay off or 5 to excess some teachers, because you are talking 6 about less money coming from the state. So, 7 obviously, from the school district's standpoint, 8 there is a problem.</p> <p>9 I understand that the economist who 10 works for the developer is insisting that there 11 will be fewer children. We don't know that. Any 12 additional school children really would have a 13 negative impact, but I think it's very important to 14 consider; you don't know with this economy, when 15 you are talking about three-bedroom units, you 16 don't know when you are talking about additional 17 units.</p> <p>18 Secondly, the potential for this down 19 zone being used as a mandate for additional and a 20 precedent for additional units in another area -- 21 we have a lot of vacant land in my area -- the last 22 thing we want is for there to be more development 23 and for a precedent for down zoning to be set up.</p> <p>24 I do want to add a couple of things. 25 Obviously, I agree with all of the speakers before</p>

<p>1 where they talked about the fact that it's an 2 environmentally sensitive area. I believe it's on 3 a flood zone. They talk, there is a concern about 4 pollution. Obviously, we had the Forge River, we 5 don't want Seatuck Creek winding up in the same 6 situation.</p> <p>7 The truth is, my biggest concern besides 8 the school district and emergency service, the 9 traffic on Eastport Manor Road is significant 10 because I believe adding this traffic, if I 11 remember correctly, Chic, you talked about, when 12 you met with us, a two-car garage for every unit. 13 Right away, that is not no traffic. No matter how 14 it works out, a two-car garage for 119 units is a 15 lot more traffic.</p> <p>16 I think there is something else that 17 needs to be talked about, because I know affordable 18 units always sound very appealing and having 30 19 additional affordable units is very nice. However, 20 the experience I've had when I've worked on the 21 Southampton side, there's a Westhampton side, for 22 example, that I always give, when you have a 23 condominium and you are talking about affordable 24 units within a condominium, the truth is that in 25 order for those units to be affordable, because of</p>	77	<p>1 and I understand that is a real goal, but 2 transferring more children into a more dense 3 population in Eastport may not be the answer. 4 Lastly, I want to reiterate what I heard 5 before about revitalizing existing housing. The 6 price point they are talking about, \$300,000 for 7 the affordable units, I think it's 400 -- am I 8 correct -- 400 to 500 for the other units, that's 9 what had been talked about, is not necessarily more 10 affordable than what is available in my community 11 right now. Thank you very much.</p> <p>12 MR. LESKO: I have asked that -- we've 13 met, obviously, and it's good to see you again. 14 So I just wanted a clear sense from the 15 community, as represented by the property owners 16 associations, and frankly, I would like to hear the 17 same question answered by the Pine Barrens 18 Association. Are you saying, in representing your 19 community, that up to two options, the proposed 20 development and the existing permitted development, 21 which is the 64 units, how many bedrooms per house 22 roughly in the 64 --</p> <p>23 MR. VORHEES: It's a mix of three, four 24 and five bedrooms.</p> <p>25 MR. LESKO: The community would prefer</p>	79
<p>1 the maintenance cost for the project, you are 2 talking about a pool, you are talking about a 3 community house, they needed to have \$800,000 in 4 assets. Sadly, very few young couples, you know, 5 the target group for affordable housing, would be 6 able to buy into Westhampton Pines. That's 7 potentially the same kind of a situation you would 8 be having here.</p> <p>9 In closing, I want to say, I understand 10 they are asking for hardship. I am asking you to 11 consider the hardship on this community. From the 12 community standpoint, 1500 people from the area -- 13 we probably could have gotten more if we just stood 14 out there a little bit longer -- consider the 15 hardship on the community. Underlying zoning 16 should only be changed if there is a community 17 benefit; there is no community benefit.</p> <p>18 In addition, we say that, if possible, 19 we would like you to require the town to look at 20 the cumulative impact -- we have in the past, and I 21 think you know that, Supervisor Lesko, but to look 22 at the cumulative impact of all of these projects 23 on the Pine Barrens and the compatible growth area. 24 I am hoping that the Town of Brookhaven can work 25 out another less harmful way to preserve The Oaks,</p>	78	<p>1 the original plan, because that's what they have a 2 right to develop, the plan that exists and you have 3 a right to develop that. I just want to know what 4 your position is. The community prefers the 64, 5 three-to-five bedroom MacMansion or whatever you 6 want to call it, the larger home development over 7 the proposed a hundred and whatever it is, 119 to 8 140 units, duplex.</p> <p>9 MS. JOHNSON: I am not technically 10 authorized speak for the community, so I am not --</p> <p>11 MR. SCULLY: But you all are opposing 12 it.</p> <p>13 MS. JOHNSON: I understand, but let me 14 give you my answer. I just wanted to make that 15 part clear, but the truth is, in terms of setting a 16 precedent here, the answer is yes, we would prefer 17 the 64 units -- tell me if I am wrong guys -- we 18 prefer the 64 units?</p> <p>19 Secondly, when you are talking about a 20 development, the original decision was to market 21 these homes at the million dollars range. It may 22 be that they will be marketed at a lower range. I 23 can't -- it's not our job, frankly, as I see it, to 24 market the homes, but I think in the long run, the 25 more development that we have, the more exemptions</p>	80

<p style="text-align: right;">81</p> <p>1 that we give in the long run, without getting real 2 community benefit, I am not seeing any community 3 benefits that are tangible to our community, so, 4 yes. The short answer is yes.</p> <p>5 MR. LESKO: The only reason I ask this 6 is that obviously there are multiple parts of this 7 new proposal that needs to be evaluated, but it 8 seems to me there is a consensus among the 9 community within the town generally that we support 10 the notion of creating more affordable housing 11 options, particularly for the next generation of 12 workers and young people and so forth. We are 13 getting that message from all quarters, and this is 14 a choice that brings that issue into play directly, 15 because, let's talk straight, the 64 homes that 16 they could build at the right price are not 17 affordable for the average person. They are going 18 to be priced out of a range for first-time home 19 buyers, and the new work force is going to be able 20 to purchase.</p> <p>21 The proposal has a new, affordable 22 housing component as part of it. So I just want to 23 understand from the community perspective: You are 24 asking policy makers to make a choice to not 25 support affordable housing on this parcel and to</p>	<p>1 make the pitch, and I thank you for coming, this is 2 an honor for all of us -- if I could make the 3 pitch, we need affordable housing, but I think a 4 better way to do it is to revitalize existing 5 homes. We have so many homes, we have talked about 6 mortgage assistance programs and other ways, to 7 take existing housing, where we have so many people 8 who are having trouble keeping their homes or 9 selling their homes, to do it another way.</p> <p>10 I guess I am saying under these 11 circumstances, Supervisor Lesko, I would say "no," 12 I would pick the 64 units.</p> <p>13 MR. LESKO: I appreciate your answer.</p> <p>14 MR. SCULLY: Are there others who want 15 to speak?</p> <p>16 Whereupon,</p> <p>17 JIM GLEASON, 18 after having been first duly sworn by 19 the Notary Public, was examined and testified as 20 follows:</p> <p>21 MR. GLEASON: I am Jim Gleason with the 22 Eastport Property Owners Association. We e-mailed 23 a letter with attachments, perhaps some of you have 24 that. I would like to hand at least one copy up 25 for inclusion in the record, and to the extent</p>
<p style="text-align: right;">82</p> <p>1 support housing that is priced at a certain level 2 that leaves new workers, new employees, young 3 people, kind of out of that place.</p> <p>4 MS. JOHNSON: I think I would have to 5 answer you this way: If I had my druthers we would 6 all be building only affordable housing right now, 7 and I mean that and 100 percent of the current 8 developers could do that. I wish that there was 9 some way these 64 units would be affordable, that 10 the developer would say, instead of making a 400 11 percent profit on the land, for example, or 12 whatever, that he would make less of a profit and 13 build affordable units on the 64.</p> <p>14 My concern, frankly, with what I am 15 being presented with is that when you mix 16 affordable and not affordable in a condominium 17 setting, the end result is that those units are not 18 affordable and that's the predicament. So my 19 answer is, under these circumstances, I can't say 20 in every case, I think I would rather take it on a 21 case-by-case basis, but in this particular, case, I 22 believe that the end result would not be the kind 23 of affordable housing that we are looking for.</p> <p>24 That's really where I am hoping that all 25 of you -- I have all three of you here, if I can</p>	<p>1 anyone does not have a copy, I would be happy to -- 2 The second copy had an attachment to the 3 letter in it. If I may, Madam Reporter, I am going 4 to sit so I can refer to my laptop. If I stood up 5 I wouldn't have a lap.</p> <p>6 East Moriches Property Owners 7 Association represents 500 member families in the 8 NG area. I think what I am going to say though I 9 am saying not only on behalf of the member families 10 but on behalf of the 1500 people who signed the 11 petition that Andrea spoke of earlier.</p> <p>12 The opposition that we have is coming 13 not only from any of the technicalities that are 14 before this board today, but rather from the fact 15 that the proposal is for near double density on 16 this site, for B Residential usage of the site, and 17 that is a community trying to be, for other 18 reasons, compatible with the rural and residential 19 character of the community. When I say 20 "community," I include the Town of Southampton 21 because it's about 900 feet from the site of this 22 proposed project.</p> <p>23 The precedent that down zoning would 24 result in has risks that none of the residents want 25 to face. Mention was made of the Eastport Meadows</p>
	<p style="text-align: right;">84</p>

<p>85</p> <p>1 project, which is about two-thirds of a mile away 2 from this particular site. 70 units were approved 3 for a single-family development, which is a 4 preliminary approval, not final yet, but it's 5 located between Sunrise Highway and the Old Montauk 6 Highway. It's got PERC's near it; it has an 7 airport near it. It doesn't go with one family per 8 unit, two families per unit; Ladies and Gentlemen, 9 that is not what we want.</p> <p>10 I am going to focus more on the 11 technicalities of the application, that's the 12 reason why we are here. In looking at what this 13 board can do, I looked at the ECL and it says that 14 an applicant comes before the board and the 15 applicant that can do that has received all 16 necessary local and state approvals. This 17 applicant has not received all necessary state and 18 local approvals. It hasn't certainly received the 19 B Resident change of zone that it's seeking and, 20 very importantly, has not gotten approval from the 21 county to review for the sanitary arrangement that 22 it's looking for and the approvals that are needed 23 on The Oaks' right there.</p> <p>24 So, my first question is, isn't this a 25 premature application at this point? Why is it</p>	<p>87</p> <p>1 MR. GLEASON: Because the economic 2 hardship for the exemption is an economic hardship 3 arising from the variance or from the change that 4 is being sought. In this case, they are saying 5 that they have problems with two standards, at 6 least. They have a problem with the clearing 7 standard; they have a problem with the sanitary 8 standard, but the hardship coming from that is not 9 a hardship. Their hardship is coming from the fact 10 that they made a bad business decision. Their 11 hardship is coming from a change in the economy. 12 The change in the economy is not unique. In order 13 for there to be an exemption, they have to be 14 suffering something unique.</p> <p>15 MR. LESKO: From the land.</p> <p>16 MR. GLEASON: But the change in the 17 economy isn't it.</p> <p>18 So their situation isn't unique. They 19 have self-created hardships because the property 20 was bought in 2002, well after the Pine Barrens Act 21 was in effect. They bought with over clearing 22 there. When they bought they took on the 23 obligation to correct that problem so they would 24 meet, seek and eat the standards. By seeking to 25 double the density or nearly double the density</p>
<p>86</p> <p>1 being heard?</p> <p>2 I have to keep talking, so I will move 3 on from that question. The applicant would like to 4 use the 2006 exemption and somewhat modify it, 5 somehow take it forward somehow, and also keeps 6 comparing the 2006 project with the current 7 project. I would submit to you that the 2006 8 project is dead. The applicant has told us that is 9 it. It is not viable. It's not going forward. If 10 it's going forward, it's going to be 25 years from 11 now. We don't have to consider it. In fact, in 12 making comparisons between what is and what might 13 be, the comparison isn't between the project as 14 approved and the project that is proposed, the 15 right comparison is between not doing anything and 16 the project which is proposed.</p> <p>17 If you look at it that way, if you 18 compare apples and apples, which is not what this 19 board has been doing, you would have to come to the 20 conclusion that this particular project is going to 21 have a serious environmental impact upon the area 22 and certainly on the compatible area in the Pine 23 Barrens.</p> <p>24 MR. LESKO: Jim, if it's dead, then why 25 doesn't that constitute an economic hardship?</p>	<p>88</p> <p>1 they have created another problem, because now they 2 don't meet the sanitary standards.</p> <p>3 So are they entitled to an exemption 4 because of a hardship? No, they haven't met the 5 basic tests. You hear many things about their 6 hardships, but they are not hardships that fit 7 within the Section 26070 of the town law.</p> <p>8 I was saying that the 2006 hardship 9 really can't be used, and why is that? Because 10 it's a very, very different project. I mean, the 11 footprint is more or less the same, you've got that 12 part, but with double density and notwithstanding 13 the brilliant numbers that we have heard from Chic, 14 common sense tells everybody that the effects of 15 doubling the density are going to be serious.</p> <p>16 You can't look at the earlier project 17 and this project and say, if you use common sense, 18 that it's going to be the same traffic effects, or 19 there's going to be the same sanitary effects, 20 there's going to be the same effect on school 21 taxes, indeed Chic even says things will get 22 better. It just doesn't make sense.</p> <p>23 Maybe with respect to the difference is 24 something that has been mentioned, is the pos debt 25 that the Town Board issued; there was a neg debt</p>



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<p>1 previously on the 2006 project; now there is a pos 2 debt. The Town Board has found that there are all 3 sorts of potential adverse environmental impacts 4 that could come from this project.</p> <p>5 So looking at the two projects, trying 6 to compare one against the other is not the right 7 way to go, it doesn't make sense. This has to be 8 treated as a new application because it's a 9 different project.</p> <p>10 There are some other differences in the 11 land as well. The fact that what is supposed to be 12 a successional farm field was totally cleared. If 13 you look at Attachment 6 to the packages that we 14 submitted, you will see that it was totally 15 cleared. Nothing, nothing, nothing was left on the 16 parcel. If you look at Attachment 8, you will see 17 that currently it's still not a successional farm 18 field. So, again, it's a difference in the two 19 situations faced by the board in 2005 and now.</p> <p>20 According to the 2006 decision, there 21 was natural vegetation that might be saved, where 22 possible, it says that; but as you see in the 23 attachments that have been submitted, 6 and 7, 24 barely, it was stripped clear, so you are working 25 with a different situation.</p>	<p>1 county acquire the property. The town and county 2 are authorized by resolutions to acquire the 3 property. Those resolutions are attachments 1 and 4 2.</p> <p>5 MS. GALLAGHER: We are not asking to 6 authorize the file we are asking to investigate --</p> <p>7 MR. GLEASON: That is correct. There 8 is one more resolution from the county, and the 9 negotiations can take place and what is needed to 10 be negotiated is set out in the county.</p> <p>11 Those resolutions authorized acquisition 12 of the parcels, unencumbered title. They do not 13 mention sanitary credits; they do not mention 14 selling off any sort of rights; they only authorize 15 acquisition of the parcels. So if you put those 16 resolutions together with the contract, they don't 17 fit because the contract has as a condition the 18 acquisition by the town and county of The Oaks 19 without the sanitary credits.</p> <p>20 MR. SCULLY: We established that earlier 21 in the hearing, I think. We get that, and with the 22 understanding that everything you submitted is to 23 be made part of the record, we have other folks 24 waiting that have been waiting a long time.</p> <p>25 MR. GLEASON: Yes, I realize that, and</p>
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<p>1 One thing I am not sure about, if you 2 look at the plan, there is a section of the 3 proposed plan that jets out to the west. Looking 4 at it from the road, which was all I could do, I am 5 not sure that has been cleared yet. It just 6 doesn't look to me as if it has been. Maybe it's a 7 little thinner, I don't know. I mention that 8 because it's a difference in the situation then and 9 now, and possibly it would be a way of helping 10 improve this particular project. But because of 11 the various differences in what was proposed then 12 and what is being proposed now, we submit that the 13 application being submitted should be considered a 14 new application, and that it's just not logical to 15 compare what would happen under the debt 16 application to what is going to happen under this 17 application.</p> <p>18 Now, there has been considerable 19 discussion with respect to the credits to be 20 obtained from The Oaks. Attachment 3 that we 21 submitted is, in fact, the contract that has been 22 referred to. It's all of two pages long, it's very 23 simple to read, it was not prepared by a lawyer, I 24 should say, it has very significant conditions in 25 it. One of those conditions is that the town and</p>	<p>1 I don't expect to be terribly much longer, but I 2 appreciate your mentioning it as I will try and 3 move faster.</p> <p>4 I wasn't aware that the record had 5 established so far that, in fact --</p> <p>6 MR. SCULLY: There is uncertainty with 7 regard to the use of credits; that the use of the 8 credits for this project is contingent at times on 9 public acquisition of fees for the property. We 10 have established that on the record.</p> <p>11 MR. GLEASON: My point is that the 12 contract, the condition in the contract is 13 different because it's conditioned upon acquisition 14 of the property without the sanitary credits. 15 That's a major difference. So unless there is a 16 new resolution from the town and a new resolution 17 from the county.</p> <p>18 MS. GALLAGHER: Right. Which would 19 require appraisal, evaluation, et cetera, et cetera.</p> <p>20 MR. GLEASON: If you had to have a new 21 appraisal, one would assume that the price, the 22 value of the property, would turn out to be less 23 because it would be without the sanitary credits.</p> <p>24 MS. GALLAGHER: Without the sanitary 25 credits it's essentially, the property is</p>

1 undeveloped. The property is undeveloped. 2 MR. LESKO: The first point you raised, 3 Jim, that it's your argument that the application 4 is premature, and I heard some people say "yes," 5 including, I think -- 6 MR. MILAZZO: I think in reference to 7 671.19 refers to the interim period from the 8 adoption of the law, prior to the adoption of the 9 plan. I think the place the applicant has to look 10 after the land was adopted is 57123A and 2A, and 11 that says: Any person that -- it doesn't require 12 all of the permits being had before you come to the 13 Commission. That requirement was a discrete moment 14 in time between the adoption of law and the 15 adoption. Today, an application can come to the 16 Commission without other approvals. That's not a 17 Commission precedent to make an application to this 18 entity. 19 What happens is, and what gets 20 confusing, I understand the start of the confusion, 21 but the law then refers, when it says you can make 22 an application to the Commission and you don't need 23 all of your approvals, then it refers back to 1.1 24 and it says: Here are the elements that you need 25 to demonstrate.	93	1 decision if zoning is changed, subsequent to any 2 hardship waiver that we would grant? 3 MR. SCULLY: He's a lawyer, but tell me 4 if I am wrong. 5 I think the answer is no, because as 6 things stand, we will be holding him to the more 7 restrictive standard as the zoning that was in 8 place in 1995. 9 MR. MILAZZO: For a clearing, one 10 standard for clearing. 11 MR. LESKO: The reason I have raised 12 this is, let's assume that the Town Board denies 13 the change of zone application; then what we are 14 engaging in here is an academic exercise that would 15 set precedent that would be unnecessary because the 16 change of zone would not be effectuated, and let's 17 assume there is no Plan B for the sanitary credit 18 issue in The Oaks, then that would render moot 19 whatever we do here. 20 So as interesting as this issue may be, 21 it seems to me that we are putting the cart before 22 the horse a bit, and I am all for educating myself 23 on process and issues, but my sense is that before 24 we create a robust record on a difficult issue and 25 put ourselves in a place where we are compelled to	95
1 So it's very understandable, but it's 2 incorrect. 3 MR. LESKO: Do we know the answer to 4 the question, if the Brookhaven Town Board changes 5 the zone of the parcel to B Residential, would the 6 applicants then have to still make some type of 7 hardship or modification of a hardship application? 8 MR. MILAZZO: That is an issue that Chic 9 has talked to, the Commission staff has looked at, 10 we are not sure. I don't know that there is a 11 definitive policy statement from this board, and 12 there are arguments on either side. That's 13 something, if you wanted to discuss in a closed 14 session, we could, or to date applicants have been 15 required to show -- some applicants have shown 16 compliance with the zoning as it occurred in 1995, 17 and there were other cases where changes of zoning 18 had been proposed and the Commission has made 19 recommendations and comments on the proposed zone. 20 Correct me if I am wrong, but I think 21 that it's an open area. It's a question. We don't 22 have to address that today because the zoning is 23 A-1. So the zoning is on the property and it 24 hasn't changed. 25 MR. LESKO: Would we need to revisit our	94	1 make a decision, I would urge us to consider 2 whether or not we are acting prematurely. Whether 3 legally we are acting prematurely is one thing, but 4 as a de facto matter are we acting prematurely, 5 because we are heading down a road that we might 6 not have to head down. 7 Kathleen, you -- well, the chair 8 recognizes the speaker, so I will refer to the 9 chair on that comment. 10 MS. DICKSON: I can address it at the 11 end, but as the Supervisor is asking the question 12 now I do have an opinion, as you may imagine, on 13 everything that has been said. 14 MR. SCULLY: I am sure of that, but 15 let's see if we can get through the public portion. 16 Let's get down there, and with regard to why you 17 are here, there was an issue, I query both you and 18 Mr. Vorhees. There seemed to be some disagreement 19 with regards to whether or not you really needed to 20 be here, by virtue of the fact that the B zoning 21 were approved, whether or not a hardship would be 22 required. Mr. Vorhees has tremendous experience in 23 appearing before the Commission, offered that it 24 has been the Commission's practice that the 1995 25 zones apply.	96



<p>97</p> <p>1 It's the reason he is here, first. We 2 have been discussing aside why they are here; 3 that's the reason. He made that clear. He appears 4 to need a little bit more information with regard 5 to why he is here, then you go.</p> <p>6 With all due respect, we can get back to 7 you afterwards.</p> <p>8 MR. GLEASON: Mr. Chair, could I just 9 ask one question?</p> <p>10 MR. WALTER: Mr. Gleason, if everything 11 you are saying is in this written record, we have 12 been here a long time, it would be easier for us to 13 read it than to have you read it to us.</p> <p>14 MR. GLEASON: I haven't been reading it.</p> <p>15 MR. WALTER: But the points you are 16 making seem to be in this written record.</p> <p>17 MR. GLEASON: That is true, but I have 18 found at the various boards that it is useful to 19 makes points orally because people focus on them. 20 Things that are in the written record sometimes end 21 up in the middle of a very big pile.</p> <p>22 MR. LESKO: You can assume that we have 23 read your submission.</p> <p>24 MR. SCULLY: Can you finish up in 25 three minutes?</p>	<p>99</p> <p>1 end up with 59 sanitary credits to use somewhere. 2 All of that could happen under this particular 3 agreement. It would mean that there would be 4 absolutely no benefit, no environmental benefit, 5 and I would call it an environmental disaster. 6 That is what the applicant is putting before you. 7 With respect to the hardship exemption, 8 in response to Supervisor Lesko's questions, I have 9 already responded, commented on a number of aspects 10 of that, but I do want to mention two which I have 11 not mentioned before. 12 One is that there is simply no evidence 13 for determining what the financial impact is that 14 justifies this particular hardship. We don't know 15 what it is that would be -- we don't know how much 16 this applicant might lose. We don't know if it's a 17 big amount, a small amount; we have heard some 18 numbers but we really don't know what the financial 19 return would be on this project. That ties into 20 another one of the conditions, that the minimum 21 necessary be granted with respect to a hardship 22 exemption. If you don't know what the financial 23 return is, it's constituting the hardship, you 24 can't figure out what the minimum is. 25 So for all of the reasons I mentioned</p>
<p>98</p> <p>1 MR. GLEASON: I will give it a try. 2 MR. AMPER: I object. Richard Amper, A 3 M P E R. 4 MR. SCULLY: Mr. Amper, your objection 5 is noted. 6 Please continue. 7 MR. GLEASON: Where I was, and hopefully 8 all that time won't be held against me, but where I 9 was with respect to the agreement, it has 10 conditions in it that can't be met at the present 11 time. Additionally, the applicant has not taken 12 steps to try to get Board of Review approval, as 13 mentioned in the letter, the FOIL, and they have 14 not made any applications, nothing has been done. 15 The bottom line is that we submit to you 16 that the agreement that is being relied on the 17 applicant, because it is so contingent, ought to be 18 substantially disregarded for the purposes of 19 making this decision. 20 There is one scenario which I believe I 21 need to mention orally. It could happen that they 22 would go for a quarter review approval, get 23 approval of 103 sanitary credits, waive the 24 conditions that the town had to acquire -- county 25 had to acquire -- then the owner of The Oaks would</p>	<p>100</p> <p>1 before, and for those additional two reasons which 2 are basically the lack of any evidence from the 3 applicant, the hardship should be denied. Thank 4 you. 5 MR. SCULLY: Thank you for the 6 documentation that you submitted. 7 Is there anybody else who wishes to 8 address the Commission? 9 I want to make sure we have, for the 10 stenographer, we have Mr. Gleason's statement and 11 his exhibits. 12 THE REPORTER: I don't have that. 13 MR. GLEASON: I have it. 14 MR. SCULLY: And we also have the 15 signed petition, which is everything that was in. 16 Thank you. 17 Whereupon, 18 RICHARD AMPER, 19 after having been first duly sworn by 20 the Notary Public, was examined and testified as 21 follows: 22 THE REPORTER: Please state your name 23 again for the record. 24 MR. AMPER: It's Richard Amper, A M P E 25 R. I am Executive Director of the Long Island Pine</p>

<p style="text-align: right;">101</p> <p>1 Barrens Society. I need a laptop as he does. 2 On the procedural matter of sequencing, 3 this is the chicken and egg question. The 4 applicant is here with a proposal dealing with 5 current zoning, I would argue that the town may not 6 approve a rezoning that is inconsistent with the 7 Pine Barrens Act. So it's not clear that this 8 matter has been resolved beforehand, and my 9 recommendation to the Commission is that you should 10 address all of the eventualities and, clearly, how 11 this gets determined is going to be determined on 12 the basis of how you approve or decline the 13 application. If you decline it for a reason having 14 nothing to do with the zoning, that is another 15 matter all together.</p> <p>16 I don't want to repeat myself in detail, 17 but there is a problem, a chicken and egg problem, 18 Mr. Lesko. There is an argument that the town may 19 not legally approve of a rezoning if it is not 20 consistent with the Pine Barrens Act, so it's hard 21 to say what has to get done first, but whatever 22 they do should address the eventuality if the town 23 either does or does not approve the exemption.</p> <p>24 MR. WALTER: If I could ask a question: 25 So does that mean that the town would have to apply</p>	<p style="text-align: right;">103</p> <p>1 need to review The Oaks project and I think there 2 has to be a cumulative assessment for this 3 proceeding and for any future rezoning, because 4 these things now are inescapably interlocked. The 5 water impacts have not been impacted.</p> <p>6 I am concerned about the nearby 7 precedential implications because there are a 8 whole bunch of other projects that have been 9 identified with you, and if they don't make enough 10 money and they then come back and say they want 11 more, it's a can of worms. It's not that we have 12 never, ever or that this Commission has never, ever 13 considered a project or a new project or an old 14 project again; it's that if the Commission were to 15 grant this application, it would be hard to say 16 "no" to a whole bunch of other people, especially 17 if their reasons for coming is that they did not 18 make very much money with the last project. That 19 really goes to the heart of it.</p> <p>20 I am terribly concerned, as the report 21 indicates, that we would be transferring, if we 22 approve this, we would be transferring density from 23 out of the Pine Barrens into the Pine Barrens. 24 Now, I remember we were trying to project the core 25 and we are willing to redirect a certain amount of</p>
<p style="text-align: right;">102</p> <p>1 to the Pine Barrens Commission for rezoning; is 2 that what you are suggesting?</p> <p>3 MR. AMPER: No, the town would be 4 proscribed from granting the rezoning if it's not 5 consistent with the Act.</p> <p>6 I want to summarize the things I heard 7 and if there is disagreement among the other people 8 in this room, we should discuss it, because if it's 9 as I heard it, this is a lot clearer than it 10 sounded.</p> <p>11 There has been some criticism of the 12 applicant's representative, I thought that he did a 13 marvelous job of trying to encourage you to do 14 something that you can't. Very good. Very good 15 work for your client.</p> <p>16 The supposedly 55 credits to be 17 obtained, we don't know how. I'm dealing here now 18 with items that came in the staff report. The 19 staff report suggests that we probably need a 20 review for a cumulative impact, because it does 21 seem related --</p> <p>22 MR. SCULLY: We have some technical 23 difficulty.</p> <p>24 (Pause.)</p> <p>25 MR. AMPER: I think Article 6, we do</p>	<p style="text-align: right;">104</p> <p>1 development to the compatible growth area, and the 2 notion that we are trying to bring it from some 3 place and put it in a compatible growth area, I 4 think, is not part of the concept. We do talk 5 about the goals and purposes of the Act. This 6 would seem antithetical to the goals and purposes 7 of the Act.</p> <p>8 It clearly represents above 20 percent 9 increase in density, as established, and it 10 obviously then represents an increase of density of 11 use.</p> <p>12 On top of that, some of the things I 13 thought I heard from the applicant, I think that 14 the attorney acknowledged that the economy has 15 changed; that is not this Commission's business. 16 It's clear that the business plan did not work out 17 and they have not sold these units; not the 18 Commission's problem. Yes, the economics are 19 considered in a waiver, economic hardship is 20 considered in a waiver, but that economic hardship 21 has to come from the nature of the land, not from 22 how good a business person somebody is or when they 23 chose to start their project.</p> <p>24 I urge the Commission not to go down 25 this road, because we will be reading the Dow Jones</p>



<p style="text-align: right;">105</p> <p>1 average and looking at interest rates to calculate 2 who can build what in the Pine Barrens, and it's 3 just not part of the equation.</p> <p>4 She indicated that there is a changed 5 nature of the development, and I would argue yes, 6 it's very different. The comparison of the two is 7 convenient, but not useful to this Commission. 8 It's a very different project that's being 9 proposed. I don't think it could make money when 10 the other project didn't make money. It's a very 11 different project and I think they are looking at a 12 second application.</p> <p>13 They talked about the enormous carrying 14 costs of the development; that is not the concern 15 of this Commission. That's not what economic 16 hardship is. The attorney said if this were a 17 second bite at the apple, it wouldn't be 18 appropriate. The consultant said that this is a 19 different project. How do we reconcile those two? 20 It can't be both. It's a different project or it's 21 the same, slightly tweaked.</p> <p>22 When this Commission granted the 23 preliminary waiver, the applicant received and 24 acknowledged beneficial use of the property. How 25 much more beneficial is the Commission obliged to</p>	<p style="text-align: right;">107</p> <p>1 growth. What Long Island is getting invariably, 2 and we are seeing it all over Long Island and in 3 Brookhaven is an epicenter for it, is higher 4 density. What we are not seeing is much affordable 5 housing, and the definition of that affordable 6 housing is something very conveniently presented in 7 everything from projects we hear at meetings of the 8 Brookhaven Town Board presentations and the Suffolk 9 County Legislature about Legacy Village; something 10 that is affordable to somebody making 130 percent 11 of the main income isn't Fannie Maes or my 12 definition of affordable housing, so when we are 13 asked to decide on the affordable housing grounds, 14 what we prefer, this project or another project, 15 the answer is, the project failed because it was 16 unaffordable and it doesn't get resolved by 17 building something nobody else can afford.</p> <p>18 MR. LESKO: What is your assessment of 19 this proposal? Do they have enough affordable 20 housing component?</p> <p>21 MR. AMPER: I have yet to see an 22 affordable housing project. I shouldn't say I have 23 yet to see it. Most of the projects that I see, 24 including Legacy Village and including this one, 25 are not representing that it is available to those</p>
<p style="text-align: right;">106</p> <p>1 give them? It's not the Commission's role to bail 2 out an unsuccessful development, and that is a 3 precedential problem as well.</p> <p>4 The counsel for the applicant said that 5 she was not at liberty to discuss the economics of 6 the credit purchases. If this is about the cost 7 and it shouldn't be, then there is a conflict in 8 that concept too. I want to argue that this a 9 self-created hardship for two reasons: First, 10 because the property was acquired subsequent to 11 June 30, 1993, which is the prescribed date when 12 all of this stuff takes effect. Yes, the project, 13 the grand project, they received approvals before 14 that. Anybody who bought a parcel of land after 15 that in the Pine Barrens knew what the rules were. 16 Anything that had resulted should have been common 17 played and it is not the responsibility of this 18 Commission.</p> <p>19 The economic hardship that we are 20 talking about here doesn't flow from the nature of 21 the land, but it was produced by an unsalable 22 project, not something that the Commission is 23 entitled to address. The excuse for high-density 24 development is always affordable housing. It's 25 like everybody puts the smart label on the dumb</p>	<p style="text-align: right;">108</p> <p>1 who, by federal calculations, are able to afford 2 this housing on the basis of incomes that represent 3 80 percent of the main.</p> <p>4 No, I don't think that, but as long as 5 you have raised the question, I did want to get to 6 your question that you posed to Andrea about the 7 Pine Barrens. Clearly, the Pine Barrens Society 8 would rather see -- what we would rather see is no 9 development, which is what we have seen up to this 10 point, than the development that has been proposed. 11 But apart from that, we would prefer to see less 12 impact to ground water, less impact to surface 13 water, less traffic, and less an increase in 14 intensity of views. Those are the things that this 15 Commission has to make this decision upon.</p> <p>16 There's not a lot of the other things 17 which I think are important to the community, 18 schools, taxes, I think traffic the Commission has 19 to take into consideration, but we sort of got 20 mixed up as to what would be nice and what the 21 community would like, and what this Commission has 22 to make its decision on at different points in this 23 process, and I think the Commission, at the end of 24 the day, is going to have to make a decision on the 25 basis of Pine Barrens' law, but I would suggest</p>

<p style="text-align: right;">109</p> <p>1 that if this plan was so darn swell for the 2 community, how come we don't find any support for 3 it?</p> <p>4 Apart from whether or not we get 5 affordable housing, the Commission is not in the 6 business of promoting affordable housing. That is 7 not in your purview. That's up to the town. I 8 think we need more of it and I don't think we are 9 getting nearly as much of it. If I was doing this, 10 that's what I would be working on, I'd like to see 11 that done, but delivering high-density 12 developments, if it's not providing affordable 13 housing and other community benefits is a 14 give-away. I think it represents the gifting of 15 public wealth and worth to private individuals 16 without community benefit, and I think it's against 17 the law.</p> <p>18 The consultant said he would never 19 support a bailout of a project because it didn't 20 succeed economically, that's why he is here. 21 That's what this would be. The previous proposal 22 was consistent with a land-use plan, this one 23 isn't. The previous proposal didn't require an 24 environmental impact statement, this one does.</p> <p>25 MR. LESKO: Did you agree with that</p>	<p style="text-align: right;">111</p> <p>1 the original hardship?</p> <p>2 MR. AMPER: The answer is we didn't. 3 Our arguments did not prevail. We would like to 4 believe that the town government is getting better 5 so we are hoping there will be some consensus on 6 this as we go along.</p> <p>7 The answer is it has pos deck this time 8 around, that is appropriate. All I am saying is 9 that the applicant seems to want to compare the 10 projects, making the one that we are looking at now 11 seem more favorable, when in fact it was deemed 12 non-EIS. We did not require an EIS report, and now 13 it does, and we see all of these other increases 14 and intensity of views and numbers and we are to 15 believe that somehow a project that has only 30 16 affordable units will somehow be better for the 17 school district when they're comprised of two and 18 three-bedroom units, and that does not add up.</p> <p>19 We hear that they have consultants that 20 can calculate the tax impact on Brookhaven, and I 21 would assume those experts would do equally well 22 with Southampton, but nobody is really buying that 23 this project is less intense. In fact, it does 24 seem on the basis of the argument that they need to 25 do a different project and the project has to have</p>
<p style="text-align: right;">110</p> <p>1 decision, the prior application.</p> <p>2 MR. AMPER: No, but I'm not winning 3 them.</p> <p>4 MR. LESKO: Do you know why that 5 decision was made? It seems odd to me, that with 6 the 64 units, development of ponds and so forth, 7 that it doesn't make sense.</p> <p>8 MR. AMPER: I couldn't agree with you 9 more fully, but I think you need to direct our 10 question to the Commission that made the 11 determination. They have done some things we 12 haven't always agreed with. No, I don't know. It 13 was the town that made that decision not the town.</p> <p>14 MR. SCULLY: It was the town that made 15 that decision.</p> <p>16 SPEAKER: The Town Planning Board.</p> <p>17 MR. AMPER: The town people made that 18 decision, not the Commission. We assume that the 19 current government --</p> <p>20 MR. LESKO: When was that decision made?</p> <p>21 MR. AMPER: 2006.</p> <p>22 MR. SCULLY: In 2006 the town approved 23 of the change. The town approved the project in 24 2007, the Town Planning Board.</p> <p>25 MS. THRONE-HOIST: Did you agree with</p>	<p style="text-align: right;">112</p> <p>1 higher density and lower prices in order to be 2 successful, that we can't escape the impact of 3 density and, from the Commission's standpoint, 4 intensity abuse.</p> <p>5 I would argue that the hardship is 6 needed whether or not the town approves a zone 7 change. With respect to the development issue, I 8 think the development credit issue, I think we all 9 understand the problem here, but I can't say it any 10 more articulately than I don't want development 11 credits purchased from land that isn't going to be 12 developed anyway because it's being preserved. Buy 13 the land and leave us alone. Do not ask us -- why 14 is the request always that the government 15 represented to the town, or at the State Commission 16 level, is supposed to do something for a developer 17 at the expense of the community, and there is no 18 basis for that.</p> <p>19 MS. GALLAGHER: Just clarifying that 20 point, the program under which the town has money 21 to purchase open space with required that we strip 22 the workforce housing credits from the land, so 23 there would be no credits left anyway. I mean 24 there is still some possibility for subsidies.</p> <p>25 MR. AMPER: Good. So the staff report</p>



<p style="text-align: center;">113</p> <p>1 says they don't conform with Article 6 and we don't 2 have a plan in front of the Commission that says 3 how they are going to do that. This is altogether 4 more simple to me than it appears to be to the 5 applicant and I hope not to the members of this 6 Commission, but let me conclude rather than 7 continue.</p> <p>8 I don't know how more land can be 9 preserved if the site was already over developed 10 prior to the original project. We cannot be 11 getting more land preserved in the new project if 12 the thing was already over cleared in the first 13 place. These people are geniuses. I thought it 14 was an excellent presentation, absolutely amazing. 15 If this Commission gives a George Orwell award for 16 anything, this is just fabulous.</p> <p>17 Residential development increases taxes. 18 Higher density residential development increases 19 taxes more. It's been established, we don't need 20 any other study, it's already established. That's 21 why we are paying two-and-a-half times the actual 22 average in taxes, because residential development 23 has got us on our knees.</p> <p>24 I think we can't get fewer school 25 children out of three and four bedroom or two and</p>	<p style="text-align: center;">115</p> <p>1 MS. DICKSON: I would like to address 2 two of the comments, just to clarify some things 3 for the record. 4 I would like to acknowledge my 5 consultant's superior knowledge of the Planning 6 Commission's policy, but I am an attorney and Mr. 7 Vorhees is not, and I read the ECL and I read the 8 regulations and there is nothing in either one of 9 those that says that the zoning in the clearance 10 limit chart is the zoning as of 1993 or 1995 or any 11 other such date. 12 MR. VORHEES: It's just a practice. 13 MS. DICKSON: It's just a practice. 14 So, admittedly, there is a difference of opinion in 15 our camp. He won because he knows this Commission 16 better and here we are. 17 MR. LESKO: I am going to suggest that 18 we not close this hearing. Can we leave it open to 19 an undetermined date because I think we do have 20 quite a few questions that need to be answered that 21 we are not going to be able to answer today. 22 We probably, I think, need to make a 23 decision as to whether or not we prefer that the 24 town move forward with a change-of-zone 25 application, but before we take any action, we may</p>
<p style="text-align: center;">114</p> <p>1 three-bedroom apartments, if they are the 2 overwhelming majority of the project, and I don't 3 think we should expect that. 4 For all of above reasons, but mostly 5 because we know why the applicant's here. He set 6 out to build a playground for millionaires and 7 couldn't find any takers, and now he is back 8 telling you that he has reformed and that he thinks 9 the solution is to build affordable housing. If you 10 believe that, I have a car to sell you. 11 MR. SCULLY: Anybody else wish to 12 address the Commission? 13 MR. LESKO: Dick is coming out in favor 14 of the Crosstown Bridge. 15 MR. WALTER: I apologize to the 16 Commission but I have to pick my son up at one of 17 the last Long Island Railroad trains coming into 18 Yaphank at 5:40. I don't think there's too much 19 left to be said. 20 MR. AMPER: Thank you to all of the 21 supervisors for coming. We've never seen this 22 before. 23 MR. SCULLY: Anybody else wish to 24 address the Commission? If not, I will close the 25 hearing.</p>	<p style="text-align: center;">116</p> <p>1 need to go into executive session to have that 2 discussion. It brings into play a lot of issues 3 that aren't particular to your application, but are 4 precedent setting and that type of thing. 5 I am more than willing to hear your 6 rebuttal, but it may be better to leave this open 7 and let you do all that at one shot a later date. 8 It's just a discussion, but I think it's the best 9 way to go. 10 MS. DICKSON: We may not have the same 11 audience, so I promise I will be very, very brief. 12 Mr. Amper used the word "chicken and 13 egg," or maybe it was Mr. Gleason. I can't agree 14 more that there are chicken and egg situations here 15 with the board of review, with the Town Board, with 16 this Commission. I believe that historically they 17 have referenced one another and they're conditioned 18 upon one another. I don't know which decision 19 should be made first or will be made first, but I 20 would venture to guess that any decision of one 21 body would be contingent upon the other one 22 approving it. 23 I do want to clarify the issue of the 55 24 or the 44 sanitary sewer credits. We have a 25 contract with the owner of The Oaks. If that</p>

<p style="text-align: right;">117</p> <p>1 contract is not something that is going to be 2 consummated or can be closed upon, we will go and 3 buy the credits somewhere else. Somebody said that 4 this development is contingent on us buying credits 5 from The Oaks, it's not. It's contingent upon us 6 buying credits. We need 44 sanitary sewer credits. 7 We need 55 credits. We chose to purchase 11 Pine 8 Barrens' credit rather than 55 sanitary sewer 9 credits, because that's just the way that the deal 10 presented itself. We have to buy those credits 11 somewhere else if we cannot buy them from The Oaks. 12 That, I will go on the record saying 13 that if I am being told right now that The Oaks is 14 a pipe dream, I will call up the seller tomorrow 15 and tell them, "I am sorry. It looks like we have 16 a problem with our contract, we are going to have 17 to go elsewhere." The fact is that the credits are 18 necessary. The Oaks are something that we have in 19 hand, but if we don't have it in hand, then we 20 don't, and we will acknowledge that when that 21 becomes apparent. 22 Apparently it's more apparent to some 23 than others. But I do want to clarify that, that 24 The Oaks is a good solution to a lot of problems, 25 but if it's not the solution to our problem, then</p>	<p>1 would like to point out, it's very important. The 2 applicant has asserted to this board that he tried 3 to market this project. I want you to look at the 4 exhibit, which is attachment 6 to Mr. Gleason's 5 thing, no one can market three model homes with a 6 mud road. No one. 7 MR. SCULLY: Thank you. 8 Anything else? 9 Counselor, something else for the 10 record? 11 MR. MILAZZO: If you are going to keep 12 the hearing open, the deadline for the decision is 13 in May, so I think you had asked the applicant to 14 extent that, just the time frame. It seems there a 15 lot of stuff on the record, we are going to have to 16 look at in light of the -- 17 MR. LESKO: What is the hearing date? 18 MR. SCULLY: The hearing date is -- 19 MR. VORHEES: The board is April 20th. 20 There is one thing we didn't really talk about, 21 that's the SEQUA process, which is supposed to take 22 care of this chicken and the egg thing. So, you 23 know, once the EIS is complete, and there have been 24 cases where the town has sought consensus from the 25 Commission -- you know, there are ways to work that</p>
<p style="text-align: right;">118</p> <p>1 we will find the solution elsewhere. 2 So there are other things that I will 3 leave to the later date, but I did want to say 4 those three things on the record right now while I 5 have this audience. I don't know if Chic has 6 anything else that he feels he should add? 7 MR. VORHEES: No. I will only say that 8 a lot of questions about the analyses, and we stand 9 by the research and the references that we have 10 used for those analyses. 11 MR. SCULLY: Is there anybody else who 12 wishes to be heard? 13 MR. AMPER: The only reference I made 14 to June 30th of 1993, pertained to what date after 15 which you made a purchase, you were considered to 16 have taken an action about which you knew and, 17 therefore, that could contribute to a self-created 18 hardship. It's not the zoning issue, it's that you 19 have created the hardship yourself if in knowing 20 the provisions of the Pine Barrens Act you make a 21 purchase subsequent to when it takes effect. 22 MR. SCULLY: Thank you. 23 Anybody else wish to be heard? 24 Ms. Johnson? 25 MS. JOHNSON: I have one item that I</p>	<p>120</p> <p>1 out, but all of that has to be kept a secret. 2 MR. LESKO: This all brings up the issue 3 of, did the mechanic review this? 4 MS. PROSINOWSKI: We have gotten that 5 as well. 6 MR. LESKO: Why don't we extend the 7 date. 8 MR. VORHEES: Chic let's say May. 9 MR. SCULLY: It's May 19th. 10 MR. VORHEES: Can we talk it up at that 11 time. 12 MR. AMPER: It would be difficult for 13 this Commission to make a decision to keep the 14 hearing open if you don't know whether you are 15 going to be granted an extension of time. 16 MS. DICKSON: What is the next date this 17 Commission meets? If you are going holding the 18 hearing open to continue it, we will not review on 19 the 21st? 20 MR. LESKO: I would request May 19th 21 because I believe we have a Town Board meeting 22 before then in May, May 4th. We have an April 23 board meeting. We believe we are having the 24 hearing on changes of zone. We then have an 25 intervening Town Board meeting before the May 19th.</p>



<p>121</p> <p>1 Commission meeting, so it might give us an 2 opportunity to -- 3 MR. SCULLY: Is the May 19th date the 4 Commission's meeting date? 5 We would want 60 days past May if we are 6 going to hold the hearing on May 19th. 7 MS. DICKSON: I would have to check with 8 my client. 9 MR. SCULLY: The Commission has a secret 10 issue. We cannot do that issue until it's 11 complete. 12 MR. AMPER: For the record, we take -- 13 MS. DICKSON: Could we submit it and 14 make the June meeting and comply with the 15 Commission's constraints, but please understand I 16 have a client who is under a lot of financial 17 pressure. 18 MR. SCULLY: You will agree right now to 19 an extension through June. 20 MS. DICKSON: Yes, I can do that. 21 MR. AMPER: For the record, the Pine 22 Barrens Society does not take exception to the 23 Commission's deciding to close the hearing. 24 MR. SCULLY: We are going to recess it 25 until a future date.</p>	<p>123</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">CERTIFICATION</p> <p>I, MONIQUE CABRERA, a Shorthand Reporter and Notary Public, within and for the State of New York, do hereby certify that I reported the proceedings in the within-entitled matter, on May 17, 2010, at Brookhaven Town Hall, One Independence Hill, Farmingville, New York, and that to the best of my ability, the above proceedings are an accurate transcription of what transpired at that time and place.</p> <p>IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2010.</p> <p style="text-align: right;">MONIQUE CABRERA, Shorthand Reporter</p>
<p>122</p> <p>1 Anything further? 2 The hearing will remain open until a 3 date to be determined. 4 (Time noted: 5:40 p.m.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	

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