

CENTRAL PINE BARRENS COMMISSION

COPY

COUNTY OF SUFFOLK: STATE OF NEW YORK

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In the Matter of the Application of  
FKK, INC.

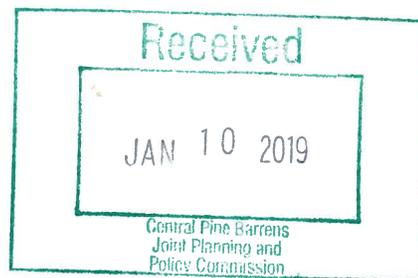
For a Hardship Exemption, Pursuant to  
Environmental Conservation Law Article 57  
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Public Hearing

Southaven County Park  
Victory Avenue  
Yaphank, New York 11980  
December 19, 2018  
3:00 p.m.

A P P E A R A N C E S:

John Milazzo, ESQ.  
Daniel P. McCormick  
Julie Hargrave  
Ed Romaine  
Janet Long  
Andrew Frelong  
Carrie Gallagher, Chair  
Laura Jens-Smith  
Kyle Collins  
Kevin Papasian  
James Egan  
Eugene DeNicola  
Richard Amper



## 1 PUBLIC HEARING

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

13 The name of the project is FKK Inc.  
14 Core Preservation Area Hardship Waiver  
15 Application.

16 Okay, so, you may start.

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

## 1 PUBLIC HEARING

2 So, you are probably familiar with  
3 this site and it contains a gas station  
4 and an existing convenience store.

5 This was built in 1973. The  
6 convenience store was developed or  
7 there was a service station converted  
8 to a convenience store in 2000.

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

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

## 1 PUBLIC HEARING

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

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

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

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

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

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

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

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

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

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

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

## 1 PUBLIC HEARING

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

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

15 MR. FRELONG: Does that mean it's  
16 within a mile, half mile, do we know  
17 what the buffer is?

18 MS. HARGRAVE: It's completely  
19 within that boundary. It's very close  
20 to the river.

21 MR. ROMAINE: It's very close to  
22 the river.

23 MS. HARGRAVE: You can see --

24 MR. ROMAINE: There is the gas  
25 station, there is Mill Road, and then

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2 there is the river. That is  
3 essentially the configuration of the  
4 land.

5 MR. FRELONG: I know where the site  
6 was, I was just looking for a distance  
7 for the record.

8 MS. HARGRAVE: I don't have the  
9 exact distance from the river, from the  
10 surface water of the river, but it is  
11 within the boundaries, I know that, and  
12 you are aware of that too.

13 MR. DENICOLA: Well, we know the  
14 river runs on the other side of Mill  
15 Road and Mill Road is just slightly to  
16 the east.

17 MR. MILAZZO: Why don't you  
18 introduce yourself, for the record.

19 MR. DENICOLA: Oh, I'm sorry.

20 Eugene DeNicola, D-E-N-I-C-O-L-A,  
21 200 Rail Road Avenue, Sayville, New  
22 York.

23 (Whereupon Mr. DeNicola was sworn  
24 in.)

25 MS. HARGRAVE: I am just going to

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2 go through the exhibits and then the  
3 applicant will speak.

4 The Staff Report is Exhibit A.

5 You can see the site in Exhibit B  
6 in an aerial, it's almost at the corner  
7 of South River Road and to the north is  
8 the Peconic River.

9 Exhibit C contains pictures of the  
10 site, it's an existing operating gas  
11 station and convenience store. There  
12 was a fire in the convenience store,  
13 electrical fire earlier this year, but  
14 that is reopened and continuing to  
15 operate, and you will see some of the  
16 existing vegetation that remains on the  
17 site and the rear fence boundary.

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

25 The site plan is in Exhibit E,

## 1 PUBLIC HEARING

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

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

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

25 MR. ROMAINE: Also known as Mill.

1 PUBLIC HEARING

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

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

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

12 MR. COLLINS: I just have a quick  
13 question on your summary and discussion  
14 of Item 4 of the Staff Report, it talks  
15 about Covenants and Restrictions that  
16 are on there, how were those obtained?  
17 Were they private, between the Town of  
18 Brookhaven on a previous approval, and  
19 how is that relevant to what the  
20 commission is looking at?

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

## 1 PUBLIC HEARING

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

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

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

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

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## PUBLIC HEARING

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

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

MS. HARGRAVE: We just found that the site is 537 feet to the surface water of the river, so, just so you know.

MS. GALLAGHER: Any other questions for Julie before we have the applicant?

(No responses given.)

MR. MILAZZO: We have marked as our commission's exhibit that one report and it includes Staff A through H, and we gave a copy of that to Mr. DeNicola?

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2 MS. HARGRAVE: I did.

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

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

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

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

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1  
2 handled, Exxon versus the Town of  
3 Brookhaven, and in both instances the  
4 Town was determined to supersede the  
5 jurisdiction and the restriction was  
6 determined to be null and void.

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

12 MS. GALLAGHER: Exhibit H.

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

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

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

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

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

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

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1  
2 site has existed in it's currents  
3 location, shape, and dimensions since  
4 at least 1973. The applicant's  
5 proposal will not change the size,  
6 shape, and dimensions of the subject  
7 parcel, nor expand beyond it's current  
8 size, shape, and dimension. So, this  
9 is the site, we are not going into any  
10 other Pine Barrens forest or any of the  
11 Pine Barrens habitat whatsoever.

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

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1  
2 very familiar with.

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

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

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

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

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

12 The engineer will discuss an issue  
13 that was raised in the report of why  
14 you are changing the site, an engineer  
15 will discuss that issue with the  
16 commission.

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

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1  
2 property separating the site from the  
3 Pine Barrens. As indicated, if you go  
4 around the corner, I will call it no  
5 more than 500 feet, is the Peconic  
6 River.

7 MR. ROMAINE: Can I ask a question?

8 MR. DENICOLA: Yes.

9 MR. ROMAINE: The original  
10 convenience store that the Town  
11 approved back in 2000, about 1,500  
12 square feet?

13 MR. DENICOLA: Yes, a little over,  
14 correct.

15 MR. ROMAINE: They are now looking  
16 to expand it to 2,900 and change?

17 MR. DENICOLA: 2,950 square feet,  
18 and this site is open 24 hours a day,  
19 seven days a week.

20 MR. ROMAINE: I got that. The only  
21 question I had is, are you going to be  
22 burning Pine Barrens credits if this is  
23 approved?

24 MR. DENICOLA: I think we have to.

25 MR. ROMAINE: I want to get ahead,

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1  
2 because I know you have to come to us.

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

15 MR. FRELONG: Quick question.

16 The change of use that was done 18  
17 years ago, did this board or commission  
18 make a determination on that change of  
19 use?

20 MR. DENICOLA: I did not represent  
21 the owner at that time. I do not know.

22 MR. COLLINS: Do we know that,  
23 John?

24 MS. HARGRAVE: No, no.

25 Just so you know, this is the deed

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2 and it talks about the special  
3 exception that the Town granted, but  
4 no, we don't have anything in the file.  
5 I can check, but we don't have that  
6 decision or there was no decision.

7 MR. ROMAINE: They didn't change  
8 the foot print?

9 MS. HARGRAVE: No, no. It was just  
10 a conversion, but still, it didn't come  
11 to a decision.

12 MS. JENS-SMITH: It started out as  
13 two gas bays or four gas bays?

14 MR. DENICOLA: Are you talking  
15 about the bays or the pumps?

16 MS. JENS-SMITH: The pumps.

17 MR. DENICOLA: Four dispensers.

18 MS. JENS-SMITH: That's what it  
19 always was back in '73?

20 MR. DENICOLA: That's, to the best  
21 of my knowledge, that is what it always  
22 was. It was four dispensers and a two  
23 bay station.

24 MS. JENS-SMITH: I thought you had  
25 said two bay station.

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## PUBLIC HEARING

MR. DENICOLA: No. The bays where they repaired cars was an office and two bays.

MR. COLLINS: Did that change in use require determination from this board whether that was development or not?

MR. MILAZZO: Did they change it under town codes, as change of use?

MS. HARGRAVE: It was a special exception.

MR. MILAZZO: We would have to research it.

MR. DENICOLA: Well, it was approved by the Town of Brookhaven and a certificate of occupancy was issued.

So, I indicated that there would be no disturbance of the Pine Barrens forest or the Pine Barrens habitat by this project. As I indicated, the subject site has no surface water and the proposed improvements will have no adverse effect or impact on the Pine Barrens habitat or forest, whatsoever.

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

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

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2 to it's location. Although in the Core  
3 area, it's location in the intersection  
4 of two heavily traveled roadways, as I  
5 mentioned the intersection of County  
6 Route 24, also known as Edwards Avenue,  
7 and the north service road of the Long  
8 Island Expressway, as I indicated,  
9 which is also the entrance to the  
10 westbound lanes of the expressway, also  
11 known as Interstate 495. Each roadway  
12 carries thousands of vehicles per day,  
13 so this is really not a pristine area  
14 that we are speaking about, in terms of  
15 the site and the road system upon which  
16 it fronts. The uses have operated on  
17 the site for 45 years with no adverse  
18 affect or impact to the Pine Barrens.  
19 The proposed improvements will be  
20 consistent, not only with the current,  
21 but long-term integrity of the Pine  
22 Barrens ecosystem.

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

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convenience store use did not.

MR. DENICOLA: My apologies.

You're right.

The gasoline filling station has been there for 45 years from 1973 to 2000. They did repairs in the site, which is for 27 years, and for the last 18 years it has been a convenience store.

Thank you, sir.

The site is located at the entrance service road to the Long Island Expressway and it serves a public need and benefit, it provides gasoline and food at that access point.

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

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2 just east slightly east of Edwards  
3 Avenue --

4 MR. ROMAINÉ: They built that multi  
5 one.

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

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

12 MR. DENICOLA: That's toward  
13 Riverhead, but up toward Route 25, and  
14 then the other way there is a Hess  
15 station.

16 MR. ROMAINÉ: Plus there is one  
17 going west on the expressway, you would  
18 have to get off at 70 and there is a  
19 Mobil gas station there on the south  
20 side.

21 MR. DENICOLA: Yes, so, there is  
22 really not that much in the area for  
23 the residents, and there are residences  
24 in the area. I know I went along River  
25 Road --

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2 MR. ROMAINE: Calverton Hills has  
3 250 plus condos there.

4 MR. DENICOLA: And, this is a  
5 public benefit, to have this station at  
6 this location, without having any  
7 adverse affect on the Pine Barrens.

8 MR. MILAZZO: Are you proposing,  
9 are you seeking relief under the  
10 hardship standard for a compelling  
11 public need, when you say public  
12 benefit several times?

13 MR. DENICOLA: Yes, this is part of  
14 a compelling public need, because there  
15 is no other service like it for a  
16 substantial distance in all directions,  
17 and it is at the entrance to the  
18 service road, and there is a transfer  
19 station in the event that we have  
20 another serious storm event. It has  
21 been fitted with a transfer switch for  
22 emergency use of a generator. That was  
23 done, as I indicated, in 2014, so, in  
24 the event of another serious storm  
25 event, this location will be able to

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2 provide gasoline for the health and  
3 safety of the public at this critical  
4 and unique location, and I think we  
5 have to admit that it is at a critical  
6 and unique location on two highly and  
7 heavily traveled roads.

8 The addition of a new underground  
9 fuel storage tank, the applicant is  
10 proposing, right now there is 28,000  
11 gallons of fuel available and I think  
12 we are proposing another 10.

13 Is that correct?

14 MS. GALLAGHER: Is this both  
15 gasoline and diesel?

16 MS. JENS-SMITH: It says multiple.

17 MS. HARGRAVE: I'm sorry, I think  
18 existing is 28,000 and you are adding  
19 another 10.

20 MR. MILAZZO: So, 38,000?

21 MR. PAPASIAN: It would be 38,000  
22 total.

23 The Suffolk County Department of  
24 Health allows up to 40,000. You need a  
25 variance over 40,000.

## 1 PUBLIC HEARING

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

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PUBLIC HEARING

MS. GALLAGHER: Well, not that had it's system working correctly, just to be very clear.

MR. DENICOLA: We are talking about the tank itself failing. I am unaware of any that has occurred, and I have represented several gasoline companies. That is why I said to the best of my knowledge, and as much as the fuel storage tanks are under ground there is no danger of fire, since there is no oxygen, and the fuel tanks are securely sealed.

With regard to the dispenser pumps, they are located under the canopy, in which the fire suppression system is located. In the event of a fire at the dispenser pumps, sodium bicarbonate will be sprayed on all dispensers and the dispenser pumps are automatically shut down. There will be no increase in the danger of fire if the waiver is well requested by this commission. The waiver granted in the instant case will

## 1 PUBLIC HEARING

2 not be inconsistent with the purposes  
3 and intent of the Environmental  
4 Conservation Law.

5 Even though we are preserving the  
6 Pain Barrens, this is at the  
7 intersection of two major roadways,  
8 entering an interstate highway and has  
9 been in existence for 45 years, it is  
10 not affecting the Pine Barrens at all  
11 and yet is serving the people in this  
12 area where this is no similar service  
13 and I dare say that there will be no  
14 other gas stations permitted in this  
15 area in the distant future.

16 MR. MILAZZO: I'm sorry, Mr.  
17 DeNicola, when you say area, we spend a  
18 lot of time talking about 537 --

19 MR. DENICOLA: No, we are talking a  
20 lot more than 500, Mr. Milazzo.

21 MR. MILAZZO: So, what is area in  
22 your statement?

23 Does that include the gas station  
24 on Edwards and 25, is that in the area?

25 MR. DENICOLA: Up to that, sure,

## PUBLIC HEARING

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

12 The applicant's request is the  
13 minimum relief necessary for a modern  
14 facility to accommodate the demand to  
15 properly serve the public and it's need  
16 for fuel and food availability, just in  
17 summary.

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

## 1 PUBLIC HEARING

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

25 The site is open 24 hours a day,

## 1 PUBLIC HEARING

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

6 Now, I was told that there is a  
7 ferry that comes to Orient from  
8 Connecticut and it comes after 10:00 at  
9 night, and there is absolutely no  
10 service station open from Orient to  
11 this site. My client tells me that  
12 when people are going wherever they are  
13 going, they come in to the site to use  
14 the bathroom, to buy food, to fill up  
15 their cars with gasoline, so, it is a  
16 critical use at a critical location and  
17 I thank the commission for their  
18 attention.

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

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

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

## 1 PUBLIC HEARING

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

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

## 1 PUBLIC HEARING

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

8 Now, the location of the building,  
9 why are we moving the building? If you  
10 look at the pamphlet, I think you guys  
11 have the survey, on the survey it shows  
12 the current building and the current  
13 islands. They are kind of crunched  
14 together right next to each other, kind  
15 of in the middle of the site, right  
16 about here (indicating).

17 MS. HARGRAVE: It's in D.

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

## 1 PUBLIC HEARING

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

## 1 PUBLIC HEARING

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

11 We are going to maintain the  
12 existing curb cuts the way they are.  
13 As Mr. Romaine mentioned, it is a  
14 divided highway on Edwards Avenue, and  
15 this is obviously one-way, so the big  
16 concern of traffic is people making  
17 left turns, but we don't have that  
18 problem here, there is no left turn to  
19 be had, so we don't have that problem.

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

## PUBLIC HEARING

1  
2 is, 50 years old, so has to be  
3 upgraded.

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

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

## 1 PUBLIC HEARING

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

17 With regard to location, the one  
18 thing that is key, if anyone gets gas,  
19 no body gets up and gets gas, you do it  
20 as a convenience. This is the next  
21 station going eastbound on the LIE, on  
22 the LIE going eastbound is the one just  
23 built, the Bolla on the LIE. There is  
24 no other gas station where you get off  
25 the road and it's right on the corner

## 1 PUBLIC HEARING

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

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

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

20 MR. ROMAINE: Not going forward.

21 MR. PAPASIAN: I don't know.

22 Permits expired, so, they would have to  
23 go back to the Town of Brookhaven and  
24 get all new approvals, so, I mean this  
25 site does have a need and I think

## 1 PUBLIC HEARING

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

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

12 We have this, a building look that  
13 Town of Brookhaven has approved in the  
14 past, with a nice rooftop on it, and  
15 when it's all said and done, it will  
16 look like this (indicating).

17 MS. JENS-SMITH: There is no  
18 seating going in the convenience store,  
19 correct?

20 MR. PAPASIAN: There is no seating  
21 and no food preparation. That is  
22 required by the Town of Brookhaven, you  
23 can't do that.

24 The Town of Brookhaven requirements  
25 for special permit for a gas station is

PUBLIC HEARING

1  
2 probably Zone J5, so, it is in the  
3 correct zoning for a gas station and  
4 convenience store.

5 Overall, this site would definitely  
6 be an improvement upon what is there  
7 now.

8 Any questions or concerns?

9 MR. FRELONG: I have a question.

10 Just for the record, you are  
11 familiar, Mr. DeNicola, with ECL570121?

12 MR. DENICOLA: Well, somewhat, yes.

13 MR. FRELONG: And, for the record,  
14 I did see it in your petition, but for  
15 the record, you are applying for this  
16 hardship under compelling public need?

17 MR. DENICOLA: Well, I think there  
18 is a compelling public need for this  
19 station, because there is no other  
20 provision for gasoline within a  
21 substantial area, and it is at a very  
22 unique location, as I indicated, at 24  
23 and the LIE entrance.

24 MR. FRELONG: Just for the record,  
25 you are familiar with the requirements

PUBLIC HEARING

1  
2 for compelling public need, pursuant to  
3 the law?

4 MR. DENICOLA: I have read the  
5 ordinance, as best as you can comply  
6 with that ordinance, which is virtually  
7 impossible to comply with.

8 MR. FRELONG: One more line of  
9 though then, the existing tanks, I am  
10 interested in the underground  
11 infrastructure.

12 The existing underground tanks on  
13 site, they were put in in '73?

14 MR. PAPASIAN: No.

15 The tanks were put in, I don't know  
16 the exact year, I probably have the  
17 registration that will say it, but I  
18 assume they were put in around the year  
19 2000.

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

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

1 PUBLIC HEARING

2 meets it every time.

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

9 MR. FRELONG: Steel tanks?

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

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

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

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

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

## PUBLIC HEARING

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

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

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

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

15 MR. PAPASIAN: Yes. Well, this  
16 will be modernized.

17 MR. FRELONG: And, you are not  
18 being compelled by the Health  
19 Department to do anything --

20 MR. PAPASIAN: Right now, by  
21 itself, no.

22 MR. FRELONG: Okay. Thank you.

23 MR. COLLINS: Just to follow-up on  
24 that, Health Department, have they or  
25 you considered an IA system, an

PUBLIC HEARING

1  
2 Alternative Innovated System?

3 MR. PAPASIAN: Right now, we have  
4 not.

5 The process of how we do this is, I  
6 am going to go through your board, then  
7 we go to Brookhaven, and we have  
8 discussions with the County at that  
9 point, so, because we know it's going  
10 to become an Exxon, and our client is  
11 not Exxon, so we need to make sure we  
12 do it step by step.

13 MS. GALLAGHER: There is also no  
14 approved commercial systems.

15 MR. ROMAINE: I don't believe the  
16 Health Department has requirements for  
17 new construction in residential or  
18 commercial.

19 MS. GALLAGHER: Well, they would  
20 encourage us.

21 MR. ROMAINE: Encourage or require  
22 are two different requirements.

23 MS. GALLAGHER: Do they have an  
24 approved commercial system because the  
25 last conversations we had, they still

## 1 PUBLIC HEARING

2 didn't have approved system for  
3 commercial use.

4 MR. COLLINS: Absolutely. I sit on  
5 the subcommittee.

6 MR. PAPASIAN: I will follow-up on  
7 that.

8 When we get to that bridge, we will  
9 discuss with the Town what the best  
10 mode of action is to put in a system  
11 that meets their requirements and also  
12 fulfills the needs of the store's  
13 requirements.

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

## 1 PUBLIC HEARING

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

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

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

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

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

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

## 1 PUBLIC HEARING

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

3 Think about it, you go get your  
4 gas, if you can't get into the site  
5 quick, you don't go there. Except for  
6 this site, there are not gas stations  
7 everywhere. We are in a unique spot  
8 where there is not much out there, but  
9 a second story would not make sense.  
10 Especially considering the existing  
11 building is so old, if you are familiar  
12 with these types of buildings,  
13 especially that there were originally  
14 bay stations, there are no foundations.  
15 There is basically nothing on them. I  
16 have done a lot of these and I know  
17 when a lot of applicants try rebuilding  
18 these bay stations into convenience  
19 stores, they think that they are saving  
20 money by using the existing structure  
21 and then they realize they have to  
22 basically rip the entire structure out  
23 and put new footings everywhere, so,  
24 it's really not feasible from a  
25 structural standpoint or from an actual

## 1 PUBLIC HEARING

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

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

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

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

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

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

1 PUBLIC HEARING

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

5 MR. ROMAINE: The Mobil and 711.

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

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

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

## 1 PUBLIC HEARING

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

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

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

9 (Whereupon Mr. Amper was sworn in.)

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

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

## PUBLIC HEARING

1  
2 govern what constitutes the  
3 qualifications for hardship, they have  
4 public health, restoring preservation,  
5 it's enumerated and laid out in 102110  
6 and 10B and they say, and this is what  
7 I have not heard anything in the whole  
8 presentation, so, how does this conform  
9 of the compelling public need  
10 requirement?

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

## 1 PUBLIC HEARING

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

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

12 MR. EGAN: Yes, I do.

13 (Whereupon Mr. Egan was sworn in.)

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

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

21 I had an issue, I was vacationing.

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

25 MR. EGAN: I was vacationing in the

## PUBLIC HEARING

1  
2 middle of the winter and I needed  
3 aspirin for my son. His temperature  
4 was 106 degrees, and I went to, I was  
5 staying at a nice place, winter rates,  
6 it was beautiful. I had to drive  
7 10-miles to a gas station to get what I  
8 needed in the snow. That is a  
9 compelling public need, if I have ever  
10 seen one.

11 I realize their expansion is a  
12 question of why expand. Now, if you  
13 look at the Pine Barrens act, it's  
14 supposed to preserve the Core of the  
15 Pine Barrens. Well, it's preserved,  
16 that property is there. I don't see  
17 any reason why somebody can't take  
18 something and make a better product for  
19 the community. That is a public  
20 compelling need.

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

25 MS. GALLAGHER: Westhampton

## 1 PUBLIC HEARING

2 Properties.

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

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

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

## 1 PUBLIC HEARING

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

7 Mr. Amper, you are going too far.

8 Okay.

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

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

## PUBLIC HEARING

1  
2 never invite me to Christmas. I didn't  
3 get an invitation this year or last  
4 year.

5 Thank you very much.

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

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

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

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

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

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

## 1 PUBLIC HEARING

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

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

9 MR. EGAN: The Federal Court judges  
10 offer life. These State Supreme  
11 Judges, number one, Judge Rouse  
12 (phonetic) made a decision against me,  
13 he is a highway superintendent, he does  
14 not know the law.

15 Best of luck to you, you deserve  
16 your application. Have a good day.

17 MR. DENICOLA: Thank you, sir.

18 MS. GALLAGHER: Would anybody else  
19 like to make any public comments?

20 MR. DENICOLA: If I may?

21 With regard to the standards, I  
22 believe, now I did not read my petition  
23 into the record, I assume it's a part  
24 of the record, and I assume the  
25 commission has read it. My petition

## 1 PUBLIC HEARING

2 covers a great deal of ground more than  
3 my comments.

4 MS. GALLAGHER: It's included in  
5 the record, as an exhibit.

6 MR. DENICOLA: The granting of the  
7 permit by this commission will not be  
8 materially detrimental to other  
9 property or improvements in the area in  
10 which the subject property is located.  
11 It will not increase the danger of  
12 fire, endanger public safety, or result  
13 in substantial impairment of resources  
14 of the Core Preservation Area. It will  
15 not.

16 The waiver will not be inconsistent  
17 with the purposes, objectives, or the  
18 general spirit intent of this article,  
19 meaning, the Environmental Conservation  
20 Law.

21 This service station has been there  
22 for 45 years. It is being updated,  
23 improved to the current codes and to  
24 meet the current demands of the  
25 increase in population and traffic.

## 1 PUBLIC HEARING

2 Stand at that corner and tell me  
3 that you would not know that you are in  
4 the Core Preservation Area of the Pine  
5 Barrens, that much I can assure  
6 Mr. Amper.

7 The waiver is the minimum relief  
8 necessary to relieve the extraordinary  
9 hardship. You need something to serve  
10 the public. You have to have a service  
11 station. That was a station with the  
12 pumps in front, if you recall, the bay  
13 station and the pumps in front, it is  
14 no longer designed for that purpose.  
15 The traffic has increased 100 fold  
16 since 1973 and maybe more, maybe a  
17 thousand fold.

18 I believe those are your  
19 standards --

20 MR. MILAZZO: Mr. DeNicola, you  
21 read the Section C part of the  
22 hardship, so, there is Section A, "the  
23 property has no beneficial use, if it's  
24 used for it's present purpose, and it's  
25 lack of beneficial use results from A,

## 1 PUBLIC HEARING

2 B, and C or 1, 2, and 3."

3 So, that is also part of the  
4 criteria, and I think what you were  
5 hearing from Mr. Frelong is, did you  
6 address those as well?

7 Like you said, it is in your  
8 petition. I am just making sure you  
9 have everything on the record that you  
10 want and you are addressing the  
11 commission.

12 I am just a traffic cop, telling  
13 people to slow down.

14 MR. DENICOLA: I addressed it in my  
15 petition and I am hoping the commission  
16 has --

17 MR. MILAZZO: They have it.

18 MR. DENICOLA: -- and I am saying  
19 this respectfully, common sense for  
20 what we are asking.

21 We are not adversely affecting the  
22 Pine Barrens, no matter what Mr. Amper  
23 says. I understand he would like to  
24 lock us in on a technicality to stop  
25 anything, except a tree growing and a

PUBLIC HEARING

1  
2 little bunny rabbit running around.

3 Thank you very much.

4 MS. GALLAGHER: Mr. Amper, you have  
5 additional comments to make?

6 MR. AMPER: This is the Core  
7 Preservation Area of the Pine Barrens  
8 Act. It's a little more than 50,000  
9 acres, and it's land that was never  
10 intended to be developed at all.

11 MR. DENICOLA: But, people are  
12 there.

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

## 1 PUBLIC HEARING

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

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

19 MR. EGAN: I would like to respond.

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

## 1 PUBLIC HEARING

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

6 If this man's gas station were to  
7 burn to the ground, as houses have  
8 burned to the ground, or been torn down  
9 in the Core, if you had a thousand  
10 square foot house, on Shultz Street  
11 alone (phonetic), right across from the  
12 Greek church, it is literally on a  
13 tigered salamander breeding ground, the  
14 house was torn down, it was 1,200  
15 square feet, under non-development  
16 piece, they had a previous home there,  
17 they now have a 5,000 square foot home,  
18 that is non-development, under  
19 extraordinary hardship.

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

25 If you are increasing your delivery

## 1 PUBLIC HEARING

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

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

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

## 1 PUBLIC HEARING

2 and if you want to talk about how the  
3 Core was designed, Mr. Amper, it was  
4 with you and Mr. Breslin who sat down  
5 because Mr. Breslin won in court  
6 initially, and do you know how you  
7 decided on what was going to be in the  
8 Core and what was going to be in the  
9 compatible growth, was based on mutual  
10 agreement, not that one area was  
11 anymore significant or sensitive than  
12 the other. So, the people in the  
13 compatible growth got all of their  
14 rights if the met zoning. This man  
15 needs zoning. He is in the Core, so he  
16 has to jump through a hoop, which he  
17 has, which has no real definition, and  
18 he is in no way detrimental to this  
19 Core.

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

23 MR. MILAZZO: Traffic cop.

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

## 1 PUBLIC HEARING

2 to expand existing use.

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

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

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

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

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

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

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

PUBLIC HEARING

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nothing here.

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

MR. MILAZZO: One at a time.

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

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

MR. ROMAINE: I think we have made  
a complete record, so.

MR. DENICOLA: Thank you.

I believe the applicant has  
established, I don't want to say a  
right, but his conditions for a grant  
by this commission.

This is, to me, this is not a hard  
case to understand, based on the  
situation of the site. It is not  
hurting this Pine Barrens in any shape,  
manner, or form, and it is serving a

## 1 PUBLIC HEARING

2 serious public purpose. You are  
3 reducing tanker truck deliveries,  
4 reducing box trucks, and the way it's  
5 laid out, you have cars that can move  
6 in and out much more easily, no cues,  
7 no back ups, and this station is  
8 designed for current vehicle  
9 maneuvering.

10 I don't want to take up anymore of  
11 your time. Thank you so much for your  
12 time.

13 MR. ROMAINE: Thank you for  
14 presenting your case.

15 MS. GALLAGHER: Are there any  
16 questions for the applicants or his  
17 representatives?

18 MS. JENS-SMITH: I would like to  
19 note, you know, they keep stating that  
20 there are no other gas stations open at  
21 all, but I believe there are.

22 MR. PAPASIAN: If you take the  
23 North Road, which most people do from  
24 the ferry, because it takes 25 minutes  
25 with the lights, there are no gas

## 1 PUBLIC HEARING

2 stations on the North Road coming back,  
3 there are none that are open at 10:00,  
4 even on Route 25.

5 You live out east, east of  
6 Riverhead, there is nothing open that  
7 late at night.

8 MS. JENS-SMITH: There is.

9 Valero.

10 MR. PAPASIAN: Okay, so, one, but  
11 most people wont come this way because  
12 if you know you can't get off the LIE  
13 to get here.

14 MR. ROMAINE: The ferry route is  
15 they are taking the North Road from the  
16 ferry and then shooting down to the  
17 Expressway.

18 MR. MILAZZO: Is there a feasible  
19 alternative for a person to get fuel  
20 coming off the ferry?

21 MS. JENS-SMITH: Yes.

22 MR. PAPASIAN: What do you mean?

23 MR. MILAZZO: If they are coming  
24 off the ferry.

25 MR. PAPASIAN: That late at night,

## 1 PUBLIC HEARING

2 they would have to know. If they are  
3 from the area, like Laura mentioned,  
4 you know where to go, but we are not  
5 talking about that. We are talking  
6 about the North Fork, people coming  
7 from Nassau County, the City, late at  
8 night, going to the wineries or the  
9 breweries, or Greenport, they don't  
10 know anything. They just know they are  
11 on a road looking for a gas station.

12 MR. COLLINS: I just wanted to  
13 point out, and it should be addressed,  
14 and I am not sure prior to this  
15 hearing, is about the change of the use  
16 that happened in 2000, and if so, that  
17 did need some determination and  
18 probably should be included as part of  
19 this record, and as part of the  
20 application.

21 MR. ROMAINE: It's hard to go back  
22 and try to undo what should have been  
23 done then legally.

24 MR. COLLINS: But, just from  
25 getting an approval from one

## 1 PUBLIC HEARING

2 municipality regulatory agency, does  
3 not eliminate the need to get whatever  
4 necessary approvals that are from  
5 another agency.

6 MR. ROMAINE: I don't disagree, but  
7 I am sure there is a statute of  
8 limitations somewhere.

9 MR. COLLINS: I would disagree with  
10 that.

11 MR. MILAZZO: I would suggest you  
12 close the hearing today and then have  
13 them address it.

14 MS. GALLAGHER: Keep the record  
15 open.

16 MR. MILAZZO: The commission may  
17 need a showing on the hardship that  
18 would have been required to change the  
19 use in post-Pine Barrens Act.

20 MR. DENICOLA: I don't know if I  
21 would consent to that, Mr. Milazzo,  
22 quite frankly, because 18 years have  
23 gone by and there is a waiver  
24 provision, there are latches, and other  
25 things that I would not have my client

PUBLIC HEARING

re-apply on that.

MR. MILAZZO: So, that is your position and it is on the record.

MR. DENICOLA: Thank you. That's correct.

MR. ROMAINE: Should we make a motion to close the public hearing?

MS. GALLAGHER: Let me just, are there any other, I see there may be additional public comments and I don't want to cut off public comments at a public hearing.

MR. AMPER: Just for the record, since we all promised to speak the truth, Mr. Breslin had nothing, whatsoever, to do with the design of the Pine Barrens Core Area map and disagreed with it's final result.

There was no conspiracy with the developers to do favors for friends. It was done by a scientist, an environmentalist, and approved by the New York State Legislature, and I would like to keep playing by the rules.

PUBLIC HEARING

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MR. EGAN: One more thing.

MS. GALLAGHER: Mr. Egan, just to remind you, address the commission, not Mr. Amper.

MR. EGAN: I have documentation I would like to submit that Mr. Breslin's property, which is on, right next to -- what is that -- American Physiology Society --

MR. ROMAINE: William Floyd Parkway.

MR. EGAN: They made a deal. Mr. Breslin made a deal, the developers made a deal, and they sold the public out. He got his 2,000 acres. I would like to submit that into this record, and every one else in the Core, matter of fact, he got A1 zoning for his property for A5 and this commission created documentation that said it wasn't. I would like to submit that to this record.

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

PUBLIC HEARING

1  
2 approved, based on who you know. I  
3 don't know anyone.

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

8 It's untrue, Mr. Amper.

9 Thank you very much.

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

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

14 MR. FRELONG: Second.

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

17 MS. HARGRAVE: February 22nd.

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

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

## 1 PUBLIC HEARING

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

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

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

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

12 Mr. Egan you have 30 days for you  
13 to submit your documents, and then the  
14 commission reserves the right to just  
15 respond to those, so, we would do those  
16 responses in two weeks, and that would  
17 put us at the beginning of February,  
18 which would all be in time for the  
19 February meeting, and we will give you  
20 a copy of everything that we have.

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

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

## PUBLIC HEARING

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

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

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

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

PUBLIC HEARING

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need a vote on that.

MR. COLLINS: Second.

MS. GALLAGHER: All in favor?

(Chorus of ayes.)

MS. GALLAGHER: Any opposed?

(No verbal responses.)

MS. GALLAGHER: Any abstentions?

(No verbal responses.)

MS. GALLAGHER: Public hearing is closed.

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

{Upon reviewing of the audio, the verbiage contained in the transcript is correct and is an accurate record of the hearing.}

C E R T I F I C A T E

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I, ALEXA PELLIZZI, a Shorthand Reporter and  
Notary Public of the State of New York, do  
hereby certify:

THAT the foregoing is a true and accurate  
transcript of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 19th day of December, 2018.



A handwritten signature in cursive script, reading "Alexa Pellizzi", is written over a horizontal line.

ALEXA PELLIZZI

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