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ARMAND GUSTAVE c/o PETER BARON, LLC

CORE PRESERVATION AREA HARDSHIP WAIVER APPLICATION

116 Hampton Road, Southampton, New York 11968

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March 16, 2016
3:12 p.m.

PRESENT:

CARRIE MEEK GALLAGHER, Chairwoman

JAY SCHNEIDERMAN, Member

SEAN WALTER, Member

EDWARD P. ROMAIN, Member

BRENDA PRUSINOWSKI, Member

ANDREW FRELENG, Member

JOHN PAVACIC, Member

JULIE HARGRAVE, Commission Staff

JOHN MILAZZO, Commission Staff

CAROL SHOLL, Commission Staff

SARAH LANSDALE, Representative

DON MCCORMICK, Representative

KYLE COLLINS, Representative

1 MS. GALLAGHER: Pursuant to the
2 New York State Environmental
3 Conservation Law Article 57-0121(10)
4 and the Central Pine Barrens
5 Comprehensive Land Use Plan, notice is
6 hereby given that the Central Pine
7 Barrens Joint Planning and Policy
8 Commission will hold a Public Hearing
9 on Wednesday, March 16, 2016 at 3 p.m.
10 on the matter of a Core Preservation
11 Area Extraordinary Hardship Waiver.

12 Name of the project: Armand Gustave
13 c/o Peter Baron, LLC, Core Preservation
14 Area Hardship Waiver Application. The
15 applicant is Peter Baron, the
16 applicant's agent is Richard Scheyer,
17 Attorney at Law. The project site
18 location is the west side of Wading
19 River Road, north of North Street,
20 Manorville, Town of Brookhaven.

21 MS. HARGRAVE: I will just go
22 through the staff report and exhibits
23 briefly to highlight the materials that
24 you received.

25 The draft staff report is Exhibit A

1 and Exhibit B is an aerial photograph
2 of the property. Again, this is in
3 Manorville. It's a wooded property on
4 a paper street. It's 6,000 square feet
5 on a paper road called First Street.
6 Exhibit C is photographs of the project
7 site. It's wooded and contains natural
8 Pine Barrens vegetation. Exhibit D is
9 a copy of the survey and plan that the
10 applicant submitted to construct a
11 dwelling on the property and also
12 construct the paper road First Street.
13 Exhibit E is a copy of the tax map
14 showing the parcel and surrounding
15 parcels. Exhibit F is a copy of the
16 deed that was recorded on January 28,
17 2014 by the owner Armand Gustave.
18 Exhibit G is a copy of the Natural
19 Heritage Program letter that identified
20 potential rare threatening endangered
21 species on or in the vicinity of the
22 property. Exhibit H is a copy of an
23 aerial of the property with a radius
24 showing the surrounded land uses
25 including undeveloped land,

1 agricultural land, a church on the
2 corner of North Street and Schultz Road
3 and a significant amount of open space
4 opened by a public agency Peconic River
5 to the north and Exhibit I is a copy of
6 the hardship waiver petition submitted
7 by the applicant including their
8 affidavit and also their environmental
9 assessment form.

10 Just to briefly go through the
11 staff report, this is a 6,000 square
12 foot project site in the 5-acre zoning
13 district in the Town of Brookhaven.
14 The applicant requested to build a
15 single-family dwelling and also build
16 out the roads since they don't
17 currently have access on a developed
18 road. That would be to access Schultz
19 Road and this project is a development
20 under the Pine Barrens Act.

21 It appears to be developmentally
22 constituted of material increase and
23 intensity of the land use and
24 commencement of the removal of
25 vegetation and excavation on the

1 project site. This is required to
2 obtain other permits and approvals from
3 the Town of Brookhaven, New York State
4 DEC and it's a Type II Action under
5 SEQRA. Again, it's wooded currently
6 and there doesn't appear to be any
7 wetlands mapped on the project site, at
8 least according to the survey. So
9 again, some of the surrounding land
10 uses, the property is surrounded by
11 undeveloped land in the immediate area
12 and there is a dwelling to the south of
13 the site and also to the north.

14 There are approximately -- there
15 are a number of conservation's in the
16 area too and they are listed in the
17 staff report and the Peconic River,
18 again, is to the north about 1,000 feet
19 and this area is generally low density,
20 again, agricultural land, low density
21 residential land and it's in the 5-acre
22 and 10-acre zoning district in that
23 area.

24 This project would require
25 installation of a sanitary system,

1 individual sanitation system, and we
2 listed some of the health department
3 regulations and that might be a topic
4 that you want to address as far as how
5 this property could get approval from
6 the health department to build on a
7 6,000 square foot parcel.

8 This property has been the subject
9 of other applications before you. It
10 has been proposed to be developed on
11 its own and that application was
12 withdrawn under the application name
13 of Trocchio and another application,
14 Armand Gustave, was denied without
15 prejudice to build on this property and
16 it's also been combined with one other
17 parcel that is to the north surrounded
18 on three sides that is shown on the tax
19 map that is in Exhibit E. That was
20 proposed to be a three-lot subdivision
21 with this parcel and a two-lot
22 subdivision and currently the applicant
23 is pursuing development of this parcel
24 on its own.

25 MS. PRUSINOWSKI: What was the

1 proposed position?

2 MS. HARGRAVE: There was a
3 three-lot subdivision that was denied
4 without prejudice on January 21, 2015
5 and a two-lot subdivision under Eagan
6 Environmental Solutions that was given
7 its development determination by the
8 Commission on October 21, 2015.

9 MS. PRUSINOWSKI: But we are not
10 seeing all those smaller lots in
11 Exhibit E, correct, or am I mistaken?

12 MS. HARGRAVE: Right. The only
13 other lot that was previously combined
14 with this lot to be developed was --
15 it's the adjacent lot 11.5, but it's
16 not currently part of this proposal.
17 It's this one that's surrounded on
18 three sides. It's 2.1 acres.

19 I will just go to the questions that
20 we have. If you would like to have the
21 applicant address the hardship criteria
22 on the record to discuss the
23 conformance with Article 6, the
24 sanitary code, and any other pending
25 permits and approvals.

1 This property did receive health
2 department approval. That has been
3 suspended until your Commission --

4 MR. ROMAIN: So the applicant
5 can't apply to the health department
6 until the Commission rules?

7 MS. HARGRAVE: Right. Well, they
8 can't get approval, I believe, until
9 your decision is made or they couldn't
10 get a decision from the health
11 department until your decision is
12 made. Whether they are going to an
13 issue approval or denial, I don't
14 know.

15 Confirm the presence of any of the
16 species that the Natural Heritage
17 Program identified and if they could
18 discuss the development of the road
19 because I don't know. It's not clear
20 who owns the road and how it would be
21 developed if that's feasible, if they
22 have explored actual development of
23 that paper road.

24 MR. ROMAIN: Can we ask who
25 actually owns the paper road? Would

1 that be appropriate at this time?

2 MR. MILAZZO: Is that all you have?

3 MS. HARGRAVE: That's all I have.

4 We can open it up to the applicant
5 for the presentation and we can go from
6 there.

7 MR. WALTER: I just have a
8 question. Taking this permit, I can't
9 even believe I am saying this, but some
10 of those same species we have
11 identified at EPCAL and we are required
12 to have the takings from that and I
13 don't think the DEC discriminates on
14 anything like that with the takings
15 permit. Do we know whether it needs a
16 takings permit for construction over
17 here?

18 MS. HARGRAVE: Well, I don't think
19 we know that yet because it's not clear
20 if that species exists on this property
21 and that is something that maybe they
22 need to do a survey to determine.

23 MR. ROMAINE: At this point, we
24 should hear from the applicant.

25 MS. GALLAGHER: Yes, Mr. Scheyer.

1 MR. SCHEYER: Good afternoon. With
2 that last comment, I don't believe --

3 MR. MILAZZO: Can you introduce
4 yourself for the record, Mr. Scheyer?

5 MR. SCHEYER: Yes, Richard Scheyer,
6 S-C-H-E-Y-E-R, 110 Lake Avenue South,
7 Nesconset, New York 11767.

8 To the comment, I don't believe
9 there's any wetlands on the property or
10 even close to it. It hadn't come up
11 before, but there isn't.

12 On the board of health issue, I
13 have here copies of the approval on
14 this parcel, which you received
15 together with surveys and she put in
16 her packet the single and separate
17 search and I will put another one in
18 the surveys and a list of cases I'm
19 going to refer to for precedent
20 purposes, but they are all here
21 together with the decisions and the
22 aerial photographs and the decisions of
23 this board. I have seven copies. I
24 hope that's enough.

25 MR. ROMAINE: While you distribute

1 them, can I ask two questions?

2 MR. SCHEYER: Can I just submit
3 those?

4 MR. ROMAINE: Sure, absolutely.

5 MR. SCHEYER: I also have a bunch
6 of radius maps and marked on the maps
7 with circles are all the improved
8 properties that surround the parcel,
9 the radius maps, the health department
10 surveys and this is the list of cases.

11 MR. MILAZZO: Mr. Scheyer, I think
12 you should mark your exhibits.

13 MS. HARGRAVE: I am going to mark
14 this one.

15 MR. SCHEYER: Actually, there's
16 only three or four. We can mark the
17 pamphlet with all the prior cases as A,
18 the radius maps as B, health department
19 approval as C.

20 MR. MILAZZO: Do I have the health
21 department approval?

22 MR. SCHEYER: It's here.

23 MR. MILAZZO: Never mind. Just so
24 we have a good record.

25 MR. SCHEYER: You have it in your

1 packet so I don't think we need to mark
2 it again, the single and separate
3 search and the survey.

4 MR. MILAZZO: Okay. Proceed.

5 MR. SCHEYER: Armand Gustave, LLC
6 is the owner of a parcel property, 60
7 by 100 on a paper street, First Street
8 in Manorville roughly 100 feet off the
9 main road, which has been single and
10 separately owned before the town code
11 division, which would prohibit its use
12 and it would be buildable under the
13 Brookhaven building ordinance if it
14 wasn't for the fact that it was in the
15 Pine Barrens. It would fall under the
16 Small Lot Ordinance 85-883B of the Town
17 of Brookhaven code. It's a lot 60 by
18 6,000 feet owned separately prior to
19 1953 as the single and separate search
20 would show.

21 The A-5 zoning was later placed on
22 the property after it had been built.
23 The applicant is now seeking to build a
24 one-family residential home parcel
25 that's in conformance with all the Town

1 of Brookhaven codes for a residential
2 home.

3 The prior owner had applied to the
4 Pine Barrens Credit Clearinghouse, was
5 offered a tenth of a credit, the value
6 of which is obviously a whole lot less
7 that the value of the building lot.

8 The applicant declined to claim it. He
9 had a building lot when the Pine
10 Barrens was created and under the code,
11 he lost the use of it by virtue of the
12 Pine Barrens. Under the Pine Barrens
13 Act and the United States Constitution,
14 you can't take property commutatively
15 without some kind of just compensation.
16 We are arguing that in today's market,
17 which is not any kind of compensation
18 at all, maybe worth 4 or \$5,000, he
19 declined it and now which is the
20 alternative to develop the land. If
21 you can't let the owner buy it, let
22 him build it.

23 The New York State Office of Parks,
24 Recreation and Historic Preservation
25 has indicated this application has no

1 impact on cultural resources, it's not
2 within the scenic portion of the
3 Peconic River corridor and does not
4 fall under the 4 acres 666413 of the
5 code.

6 It should be noted the parcel is
7 wooded and sits on a paper street on a
8 file map, which is First Street, which
9 the petition would have to pave
10 approximately 100 feet to get to this
11 site. Precedent-wise, and I have
12 submitted these cases and I am going to
13 read through them, is a copy of the
14 radius map showing the survey parcel is
15 lot 4. Lots 1, 5, 11, 21, 26, 27, 28,
16 29 and 30 are all developed as
17 residential homes on this radius map,
18 currently improved family homes. I put
19 a little square box on the radius map
20 to show where there's a house. It
21 should be noted that there's
22 development on three sides of this
23 property, north, south and west. All
24 of those parcels have been approved by
25 the Pine Barrens Commission.

1 Three of the adjoining lots are the
2 Pine Barrens Commission approval, one
3 of which is on the core roadside
4 exemption list, which is cited in the
5 core law exemption list criteria as
6 being a substantially developed area
7 by the criteria set forth in this
8 Commission.

9 Now, in the case of Marshall that
10 was submitted -- I'm going to be brief
11 with these. I submitted the cases with
12 aerial photographs and surveys of every
13 one of them on that pamphlet.

14 Marshall is on the east side of
15 Barlett Road, which is significant
16 because it's also an application of a
17 paper street. It's not a finished
18 road, it was approved by the
19 Commission. It was on a 3.9-acre site
20 in an A-5 Zone at its end core. It was
21 my opinion that it was on the same and
22 separate parcels. I know it's an
23 opinion. Prior to the Pine Barrens
24 creation in 1993, they are single and
25 separate and should be

1 non-developmental. The parcel goes
2 back before 1993 in this case, which
3 exempts it from local codes but not the
4 Pine Barrens.

5 The application of Czarnecki was one
6 hardship granted on .9 of an acre, also
7 on North Street in the Scenic and
8 Recreational Rivers corridor and the
9 application was granted. It should be
10 noted this parcel had a health
11 department approval to build a
12 one-family residential home also on
13 North Street. There is also on North
14 Street and Wading River Road an L shape
15 parcel on .92 of an acre, which is also
16 approved.

17 In the Screven case, which you have
18 there too, the Commission allowed the
19 building of a single-family home on
20 three acres of an A-5 District and
21 attached are aerial photographs showing
22 that the Screven property is completely
23 cleared not in keeping with any Pine
24 Barrens regulations or codes.

25 In the application of Manor Pines, a

1 15-lot subdivision in Manorville given
2 the Commission to build 15 homes on 1
3 acre in an A-5 Zone. All the property
4 was surrounded by a nature preserve
5 and/or recently owned property. That
6 is attached also.

7 In the application of MTK, the
8 daycare center, split zoning, J to an A
9 in residential, which needed both CPA
10 and Pine Barrens Commission and
11 received both, allowed the construction
12 of a 7,200 square foot building on 1
13 acre to be used as a daycare center.
14 The application -- by the way, the
15 applicant bought the property long
16 after the act was in effect.

17 In the application of Biata in
18 Manorville, that property was on a
19 scenic trail, no development on either
20 side and located in a nature preserve.
21 More interesting, it was a 2.5-acre
22 parcel on an A-5 residential zone and
23 it was approved by a Hardship Exemption
24 by this board.

25 In the Goldstein application,

1 another granted hardship, A-5 Zoning,
2 undeveloped area, located in a nature
3 preserve on both sides, almost within
4 a mile of a property, given the
5 commission to build a 7,500 square foot
6 lot, which was not on the Core
7 Exemption list.

8 In the application of Dolores Blake
9 in the Core Area Hardship, she was
10 allowed to divide a 5-acre parcel in an
11 A-2 Zoning area in Ridge. She did not
12 meet zoning in any way, which would
13 require variances to build on it. When
14 you look at the aerial on this one,
15 it's a long thin parcel land. How it
16 was approved, I don't know.

17 In the application of
18 Kristiansen -- we only have two more --
19 is a parcel in Calverton, received a
20 hardship to build a single-family on .2
21 of an acre with trenches under the
22 Peconic River. Looking at the survey,
23 large portions of the property cannot
24 be built and cleared leaving the
25 building emperor so small, smaller than

1 the request in our case, which is not
2 on a river. It was admitted also to be
3 a known breeding ground of the tiger
4 salamanders in that case.

5 In the application of Cox, a 2-lot
6 subdivision, which did not meet the
7 zoning, it would need nothing but
8 variances.

9 Then there is the application of
10 Morgan. This is a subdivision of a
11 parcel into two parts, which are
12 actually separated by a nature trail
13 and the second parcel is landlocked,
14 which subdivision is approved for core
15 area of hardship. In addition to being
16 on a nature trail, having no access was
17 split into two parcels, had wetlands on
18 them and they were approved.

19 We are asking the Commission to
20 either grant a hardship on a single
21 house or a single and separate parcel,
22 which is the building lot in the Town
23 of Brookhaven, which existed before the
24 Pine Barrens was created. It's on a
25 paper street and needs only a small bit

1 of road on the file map to improve it.
2 It's not on a wetland, it's not in a
3 scenic corridor. It has development on
4 all three sides and it's development
5 radius you can see up and down the
6 block.

7 If this applicant can't use the
8 property, perhaps, if you can't get any
9 compensation or any value for it, it
10 would be condonation and it would be
11 under the Coon's case, which came down
12 to the Supreme Court of the United
13 States in 2015 as to whether or not the
14 regulations as to use of the property
15 that no longer has any value.

16 I want to mention one other case,
17 but not because it's particularly
18 important, Carvalho. That's a parcel
19 of property on the boundary line of the
20 core and in a comparative growth zone,
21 but in the application, they built
22 two-single family residences in an A-1
23 and it was indicated through the
24 breeding pond for tiger salamanders
25 and it was granted.

1 The town issued a negative
2 declaration of the SEQRA. The
3 application was approved through the
4 division of 10,000 square foot lots and
5 two 5,000 square foot lots in a 1-acre
6 zone. In addition, they were relieved
7 from the clearing limits of 52 percent
8 to 75 percent. That probably had
9 wetlands, tiger salamanders substandard
10 size, everything you can possibly think
11 of. It's on the boundary line of the
12 core and approved by the Commission.

13 MR. MILAZZO: That parcel was on a
14 CGA, comparative growth area?

15 MR. SCHEYER: Yes. I said it's on
16 the border of the comparative growth
17 area.

18 MR. MILAZZO: It was in the
19 comparative growth area?

20 MR. SCHEYER: Yes. It bordered --
21 I mentioned that. I said that in the
22 beginning.

23 MR. MILAZZO: I didn't know if --
24 that's fine. It was in the CGA. I'm
25 sorry to interrupt.

1 MR. SCHEYER: As it was indicated
2 before by the prior submission, the
3 owners here tried to join with other
4 owners to combine the property into a
5 bigger property. It was denied, they
6 only --

7 MR. MILAZZO: I'm sorry to
8 interrupt again. It wasn't denied. It
9 was denied without prejudice because
10 the application was never formally
11 submitted and you delayed and then at
12 one point between the calendars, it was
13 denied without prejudice; is that
14 correct?

15 MR. SCHEYER: It was denied without
16 prejudice.

17 MR. MILAZZO: Okay. Good.

18 MR. SCHEYER: I'm not arguing.

19 MR. MILAZZO: You just said it was
20 denied and that's not true.

21 MR. SCHEYER: Well, okay, it was
22 denied without prejudice, but the
23 concept was turned down to make it
24 easier.

25 MR. MILAZZO: I am not sure the

1 concept was turned down. I am not
2 going to concede that either. It was
3 denied without prejudice. We will
4 agree on that?

5 MR. SCHEYER: Right. We have an
6 individual parcel. Individually owned
7 way back to, I think, '51 and the
8 people actually owned this.

9 MR. ROMAIN: Can I ask a question?
10 I'm not an attorney and therefore do
11 not have the knowledge of the law that
12 you do, but I do want to say this.
13 That land was zoned 5-acre residential
14 by the town as part of a land use plan
15 and the only thing that would accept
16 the zoning from being 5 acres is that
17 it was held single and separately; is
18 that correct?

19 MR. SCHEYER: Yes, but that zoning
20 came in long after the parties owned
21 the property.

22 MR. ROMAIN: It doesn't matter.
23 As you know, if it's part of a land use
24 plan, the only exception to that is a
25 single and separate. Under the law, my

1 understanding of single and separate is
2 that it has to be maintained as a
3 single and separate parcel from the
4 advent of zoning; is that correct?

5 MR. SCHEYER: No. The advent of
6 zoning which would prohibit its present
7 use. That would have been, in your
8 case, 1953. This thing was single and
9 separate long before that and it has
10 been held single and separate as early
11 as '51 and probably earlier than that.

12 MR. ROMAINE: And it has been held
13 single and separate?

14 MR. SCHEYER: Single and separate.
15 We submitted a single and separate
16 search from the title company. It's in
17 the book. I turned it in.

18 MR. ROMAINE: Counsel, if you can
19 let me see that at some point.

20 MR. MILAZZO: It's in the book. If
21 I can direct the applicant's attention
22 to the single and separate search. It
23 seems to me that --

24 MS. PRUSINOWSKI: I have questions
25 as well. You start.

1 MR. MILAZZO: I'm confused. The
2 record is not clear. Who owns the
3 property?

4 MR. SCHEYER: Presently?

5 MR. MILAZZO: Today.

6 MR. SCHEYER: Armand Gustave and
7 Mr. --

8 MS. GALLAGHER: Baron was listed on
9 the notice.

10 MR. MILAZZO: That's right, he was
11 listed on the notice. Is it Gustave,
12 LLC and Baron?

13 THE WITNESS: Yes.

14 MR. MILAZZO: When did they acquire
15 the property?

16 MR. SCHEYER: I don't know. You
17 have the search.

18 MR. MILAZZO: Well, my search
19 indicates that the last date of records
20 for the property was in the County of
21 Suffolk to Antro Realty Corp. in 2013.

22 MR. SCHEYER: If the lot itself is
23 held as a separate lot prior to the
24 code --

25 MR. MILAZZO: I'm sorry. You

1 represented that you provided a single
2 and separate search indicating that
3 this property is owned by your client,
4 Gustave, single and separately, and I
5 have a search here that doesn't say
6 that. I'm just trying to make sure
7 that I understand what you are telling
8 me.

9 MR. SCHEYER: You are holding it.
10 I'm not.

11 MS. PRUSINOWSKI: You are also
12 providing us with a survey which
13 indicates that all of the surrounds is
14 held by Eagan Environmental Solutions,
15 LLC and one of your title searches on
16 the subject indicates that Eagan
17 Environmental Solutions has a 35
18 percent interest in the subject
19 parcel.

20 MR. SCHEYER: Not to my knowledge.

21 MS. PRUSINOWSKI: That's what
22 Ms. Anstett has affixed a signature
23 thereto.

24 MR. SCHEYER: I would have to
25 check. To the best of my knowledge,

1 that I have seen is the only two
2 owners -- well, the actual owner is
3 Armand Gustave, LLC and that's
4 Mr. Gustave and Baron.

5 MR. MILAZZO: Who are the
6 principals of Armand Gustave, LLC?

7 MR. SCHEYER: Baron and Gustave.

8 MR. MILAZZO: That's it?

9 MR. SCHEYER: That's it. I know
10 what you are saying. You are looking
11 at Mr. Eagan and he has no interest in
12 it.

13 MS. PRUSINOWSKI: But that
14 contradicts some of the documents that
15 we have here.

16 MR. SCHEYER: However, if you look
17 at the certification on this, which is
18 signed by Peconic Abstract, it says
19 that the property is, in fact, held in
20 single and separate ownership as it
21 appears from the chains of title
22 annexed hereto and that the effective
23 date of the applicable zoning ordinance
24 is 1/1 of '54. That's in the
25 certification by the office manager

1 at the time I got this. If you are
2 saying they are wrong, I will get a
3 new one.

4 MR. MILAZZO: I'm not saying
5 anything. I'm trying to -- we are just
6 trying to get a clean record with
7 respect to the ownership of this
8 property. As Ms. Prusinowski pointed
9 out, the subject premises under the
10 title report says Eagan Environmental
11 Solutions, LLC. The adjoining property
12 to the -- you may need to address that.

13 MR. SCHEYER: This piece, this one
14 piece that we are talking about?

15 MR. MILAZZO: Yes.

16 MR. SCHEYER: We have the search in
17 the certification. If you want to get
18 an explanation and a further
19 certification from the title company, I
20 will be happy to get it for you, but
21 all you can ask for from any attorney's
22 point of view is that the title company
23 certified it. They are certifying that
24 it's single and separate prior to 1954
25 under the penalty of paying a \$25,000

1 fine and signed by the manager of
2 Peconic Abstract. If you think they
3 are lying, I will get another one.

4 MR. MILAZZO: I think it's not up
5 to them. That's what I think. You are
6 submitting it saying one thing and
7 it's --

8 MR. WALTER: We are going to ask
9 for your legal opinion as to whether
10 it's single and separate. I don't
11 think the Commission expects you to do
12 that today.

13 MR. ROMAINE: I would ask that you
14 meet with the staff at the county
15 clerk's office, specifically the
16 official examiner of title,
17 Chris Cuomo, and ask for the clerk's
18 office, which doesn't have an interest
19 in this, to carefully examine the
20 records to ensure the single and
21 separate description that we have been
22 confronted with is, in fact, legally
23 correct.

24 MR. SCHEYER: That's perfectly
25 acceptable to me. If you want another

1 certification from the title company, I
2 will get that too.

3 MR. ROMAIN: We are asking counsel
4 to meet with the official examiner of
5 title Chris Cuomo and to take a look at
6 the chain of title for this specific
7 property and the surrounding properties
8 to ensure that it meets the definition
9 of single and separate. I think that's
10 a fair request.

11 MR. WALTER: It either is or it
12 isn't and we can't do that here.

13 MR. ROMAIN: Right, right.

14 MR. SCHEYER: I didn't think that
15 you could. I figured the certification
16 from the title company's office manager
17 is enough, but I have no problem with
18 getting any type of further search you
19 need.

20 MR. WALTER: Just to verify.

21 MS. PRUSINOWSKI: We also have a
22 SEQRA form, core environmental
23 assessment form, which speaks to a
24 2-lot land division.

25 MR. SCHEYER: That's what we were

1 talking about prior. That's not this
2 application.

3 MS. PRUSINOWSKI: Do you have the
4 current SEQRA form on you?

5 MR. SCHEYER: That one we had
6 brought it in and without prejudice,
7 they denied it.

8 MS. PRUSINOWSKI: We don't have a
9 complete application.

10 MR. SCHEYER: That's why they are
11 bringing it up, but that's not this
12 application.

13 MR. MILAZZO: So the Commission has
14 not been provided a copy of a SEQRA
15 core environmental assessment, even a
16 Short Environmental Assessment Form.

17 MS. HARGRAVE: No, but it's a Type
18 II.

19 MR. SCHEYER: Well, it's a Type II.
20 It's a single-family home on a single
21 lot.

22 MR. MILAZZO: But the granting of
23 the Commission's approval or denial
24 might not be a Type II Action, but we
25 have to check into that. I just want

1 to understand if we have that.

2 MS. HARGRAVE: You don't have the
3 form. We have an old form because of
4 all the past applications that have
5 been submitted. What you have in the
6 last exhibit, in this document, is that
7 we want to go ahead with just this one
8 and you have all the stuff we submitted
9 in the past, so use that. We had to
10 piecemeal together this application and
11 that includes the Environmental
12 Assessment Form from another
13 application that included this parcel.

14 We also don't have the -- the
15 petition from the applicant is on the
16 other application and I wanted to add
17 that to the exhibits because it's not
18 currently in there because it was in
19 another application file and they
20 didn't submit one specifically -- a
21 complete package of information
22 specifically for this application.

23 MR. ROMAIN: I think maybe at this
24 point, we should see if the applicant
25 has anything to add, see if any of the

1 members have any questions and then
2 move to direct counsel to report back
3 to us at the next meeting after meeting
4 with the county clerk's office to
5 determine whether, in fact, the single
6 and separate description holds up
7 legally.

8 MR. MILAZZO: That's fine.

9 MR. SCHNEIDERMAN: I want to make
10 sure the attorney for the applicant has
11 finished his presentation. If you
12 have, then I do have a question. Your
13 basic hardship you are claiming is an
14 economic hardship? The amount that you
15 were offered from the credit system
16 wasn't sufficient or your prior one?

17 MR. SCHEYER: No. I put it in the
18 history to indicate that if you have a
19 building lot, which we claim we did,
20 single and separate from before, if
21 it's going to be taken by virtue of
22 regulations under the Coon's theory,
23 you are supposed to get reasonable
24 compensation. We are just saying that
25 along the line, they didn't even offer

1 reasonable compensation, but we are not
2 looking for compensation. We are
3 looking to build on the property.
4 That's the history.

5 MR. SCHNEIDERMAN: Your client
6 bought it as a developable lot?

7 MR. SCHEYER: Yes.

8 MR. SCHNEIDERMAN: When did that
9 happen?

10 MS. HARGRAVE: 2014.

11 MR. SCHNEIDERMAN: What was the
12 price that was paid for the developable
13 lot?

14 MR. SCHEYER: I have no idea. I
15 don't think that has anything to do
16 with it.

17 MS. HARGRAVE: 12,000.

18 MR. SCHNEIDERMAN: Well, you are
19 claiming an economic hardship.

20 MR. SCHEYER: We are not claiming
21 an economic hardship.

22 MR. SCHNEIDERMAN: What is the
23 hardship you are claiming?

24 MR. SCHEYER: We are claiming that
25 we owned a buildable parcel land and

1 that we are not being allowed to build
2 it when many others with similar
3 situations have been on a single and
4 separate parcel. That's what we are
5 claiming. The other part is all
6 history. We are telling you what
7 happened. We did this, we did that.
8 Not this application.

9 MR. SCHNEIDERMAN: In terms of
10 exhausting other remedies, is there a
11 mechanism if you are not satisfied with
12 the offer that's made in terms of the
13 amount of credits? Is there a way to
14 challenge that?

15 MR. SCHEYER: We don't want credit.
16 We want to build it.

17 MR. SCHNEIDERMAN: Was it ever
18 appealed by the prior owner?

19 MS. HARGRAVE: No.

20 MR. SCHEYER: No. We didn't want
21 to. I put it in to tell you that that
22 happened so I'm not hiding anything
23 from you. That was something that
24 occurred, but that is not the issue.

25 MR. SCHNEIDERMAN: Maybe somebody

1 on the support staff -- what typically
2 occurs in defining a hardship?

3 MR. MILAZZO: There are elements in
4 the law.

5 MR. SCHNEIDERMAN: Are there things
6 other than economic hardship?

7 MR. MILAZZO: Yes, there's criteria
8 that --

9 MR. SCHNEIDERMAN: I'm the new guy.
10 I just want to make sure I understand
11 the context by which it's reviewed
12 under the law.

13 MR. SCHEYER: If you want me to
14 submit another application, I will send
15 another one in to you. We have what
16 you have.

17 MR. MILAZZO: We have what we have.

18 MS. HARGRAVE: Do you want to go
19 through the criteria from the Trocchio
20 application?

21 MR. MILAZZO: I just want to mark
22 for an exhibit, which will be
23 Commission J, a letter dated June 19,
24 2014 from the health department to
25 John Pavacic and it's discussing

1 permits that were issued without the
2 normal coordination with the Pine
3 Barrens Commission. Please be advised
4 that we have suspended the permits in
5 question until such time that the
6 applicant provides us proof that they
7 have been granted a Hardship Exemption
8 from your agency. I'm not sure of the
9 date of your health department
10 approval.

11 MR. SCHEYER: I haven't seen what
12 you are holding.

13 MR. MILAZZO: I will give you a
14 copy. The map you have stamped as
15 2/24/14 to the health department so
16 this was subsequent to that.

17 MR. SCHEYER: How subsequent?

18 MR. MILAZZO: June, four months.
19 Your application from the health
20 department may be, in their words,
21 suspended.

22 MR. SCHEYER: Until we get approval
23 from you it's suspended. If you
24 approve it, then it's not suspended.
25 We will still have health department

1 approval, it's just subject to you.

2 MR. MILAZZO: We will make a copy
3 of this and send it to you. So the
4 applicant is Armand Gustave?

5 MR. SCHEYER: LLC.

6 MR. MILAZZO: Did you have an
7 owner's consent from Mr. Gustave or
8 whoever Gustave is?

9 MS. PRUSINOWSKI: Or Baron?

10 MR. SCHEYER: Baron is an attorney.

11 MR. MILAZZO: Do we have an owner's
12 consent from anybody in this
13 application? Do we have something in
14 writing saying that --

15 MR. SCHEYER: Well, if he's a
16 member of an LLC, he's the only one
17 that has the consent. Not every single
18 member of it.

19 MR. MILAZZO: Who is the member?

20 MR. SCHEYER: Armand Gustave and
21 Baron.

22 MR. MILAZZO: Those are the only
23 two members?

24 MR. SCHEYER: That I know of, yes.

25 MS. PRUSINOWSKI: But we don't have

1 a search that indicates they are the
2 owners.

3 MR. MILAZZO: We don't have
4 anything from them.

5 MR. PAVACIC: John, one question.
6 Those two members, are they
7 individually filed for an LLC?

8 MR. ROMAIN: LLC is also filed in
9 the county clerk's office so you may
10 want to check on that as well.

11 MR. SCHEYER: If you want the
12 filing certificate for the LLC, I can
13 provide it.

14 MR. ROMAIN: You are going to go
15 visit Chris Cuomo anyway.

16 MR. WALTER: I think in the end,
17 you can provide an owner consent to
18 file the application. You are
19 representing on the record that you
20 represent this LLC. That should be
21 sufficient for this. Let me ask you a
22 question: Who owns the road, the paper
23 street?

24 MR. SCHEYER: The paper street and
25 the file map.

1 MR. WALTER: Have you submitted
2 proof that this lot was part of the
3 original filed map subdivision?

4 MR. SCHEYER: Well, the original
5 map was filed. Proof other than the
6 original map shows it?

7 MR. WALTER: Well, only owners on
8 the original filed map subdivision can
9 open the road. So what proof have you
10 shown that this is an original lot on
11 the original filed map?

12 MR. SCHEYER: I think we have shown
13 the original map, but if necessary, I
14 will get the original map and show that
15 it's there. This lot was on the map
16 when the map was filed.

17 MR. WALTER: Well, that would be
18 the only way you can open this road,
19 that you are the original filed map
20 owner of the original filed map
21 subdivision.

22 MR. ROMAINE: That's another thing
23 that counsel can check out with the
24 county clerk's office.

25 MR. SCHEYER: It was on the map

1 when it was filed.

2 MR. WALTER: If you can provide a
3 copy.

4 MR. SCHEYER: I will provide a
5 copy.

6 MS. GALLAGHER: Any other questions
7 from Commission members? Mr. Scheyer,
8 do you have anything else to add?

9 MR. SCHEYER: No. I think we all
10 got it. If Mr. Milazzo needs anything
11 from me.

12 MR. MILAZZO: Off the record.

13 (Discussion held off the record.)

14 MR. WALTER: What I would like to
15 do is, with your consent, make a motion
16 with the Chairman's consent to close
17 the public comments portion and leave
18 it open for written comments for two
19 months so we can sort through all this.
20 Is that acceptable?

21 MR. SCHEYER: Acceptable.

22 MR. WALTER: I will make that
23 motion.

24 MR. MILAZZO: And then an extension
25 for a month following that.

1 MR. SCHEYER: We already agreed to
2 that, yes.

3 MR. WALTER: And then we would need
4 an extension following a month
5 following the two months. We are going
6 to leave it open for a two-month
7 written comment so we can sort through
8 this and you can provide the
9 documentation that I requested and then
10 the approval date will be extended a
11 month.

12 MS. GALLAGHER: Decision date.

13 MR. WALTER: Decision date.

14 MR. SCHEYER: If Mr. Milazzo needs
15 anything, I will call him.

16 MR. MILAZZO: We can work it out.

17 MR. SCHEYER: We can work it out.
18 I think like the map documents -- I
19 will get all that stuff to you.

20 MR. WALTER: My motion is on the
21 floor. Is there a second?

22 MR. ROMAINE: Second.

23 MS. GALLAGHER: All in favor?

24 (Whereupon, there was a unanimous
25 affirmative vote of the Board.)

1 MS. GALLAGHER: Opposed? Motion
2 carried.

3 Thank you.

4 (Whereupon, this hearing was
5 adjourned at 4:00 p.m.)
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C E R T I F I C A T I O N

STATE OF NEW YORK)
) SS
COUNTY OF SUFFOLK)

I, CHARISSA SCHWAB, a Shorthand Reporter
and Notary Public within and for the State of New York,
do hereby certify:

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

IN WITNESS WHEREOF, I have hereunto set my
hand this 16th day of March, 2016.



CHARISSA SCHWAB