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## 2 C E N T R A L P I N E B A R R E N S

# 3 | C O M M I S S I O N M E E T I N G

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## CLANCY STREET FOOD COURT

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7 April 17, 2024  
3:00 p.m.

9 116 Hampton Road  
Southampton, New York

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TRANSCRIPT OF PROCEEDINGS

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1 April 17, 2024 2

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

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4 ROBERT T. CALARCO, Governor's Representative

5 SARAH LANSDALE, Suffolk County Representative

6 TIMOTHY C. HUBBARD, Riverhead Supervisor

7 MICHELLE DI BRITA, Brookhaven Representative

8 JANICE SCHERER, Southampton Representative

9 MATTHEW CHARTERS, Riverhead Representative

0 MARIA Z. MOORE, Southampton Town Supervisor

11 JUDITH E. JAKOBSEN Executive Director

12 JULIE HARGRAVE Joint Planning and Rel

13 JOHN G. MILAZZO, Commissioner, Counsel

14 ANGELA BROWN-WATSON *Journal of Health Politics, Policy and Law*

11. *What is the primary purpose of the following statement?*

11. *What is the primary purpose of the following statement?*

— 3

20 PUBLIC SPEAKERS.

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MR. CALARCO: This is the Clancy

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Street Food Court Core Preservation Area

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Hardship Waiver Application. Please note the

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public hearing notice has been posted and

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provided to the stenographer.

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Ms. Hargrave.

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MS. HARGRAVE: Thank you. It's a

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smaller site, a little less involved.

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This is a Clancy Street Food Court

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Core Hardship Waiver Application. Everyone

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should have a staff report. It was posted on

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the website, the applicant has it as well.

14

"Chick" Voorhis represents the applicant.

15

The owner is David Kepner, and he has owned

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site for a long time. I think I'll explain

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more later.

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The project site is located on the

19

southeast corner of County Road 111 in

20

Manorville and the LIE eastbound ramp in

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Brookhaven Town, Core Preservation Area. The

22

site is 1.167 acres in the J Business 2

23

Zoning District. It's undeveloped and

24

naturally vegetated. The proposal is the

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development of 3,293 square foot restaurant

2 with 54 indoor seats and 32 outdoor seats.

3 Other development is parking for 29 vehicles,  
4 two curb cuts, landscaping and construction  
5 of an on site innovative sanitary system.

6 There is some history with the site  
7 and the Commission. The project site was the  
8 subject of a core hardship waiver with the  
9 same name in 1995 to develop a 5,915 square  
10 foot restaurant. That decision is still  
11 valid. The project was never built and the  
12 site remains undeveloped today. Ownership is  
13 the same as it was in 1995.

14 The study area contains open space to  
15 the north and commercial uses to the east.  
16 Opposite the site on County Road 111 is the  
17 compatible growth area. There are large  
18 retail shopping complexes on that side of  
19 County Road 111, the grocery store, a medical  
20 office and drive-thru restaurants. There's a  
21 farm present a little further south on  
22 Chapman Boulevard and County Road 111, and  
23 residential development to the west of that  
24 area, the farm and commercial development on  
25 the west side of County Road 111.

21                   There's questions at the end of the  
22 staff report. Again, they include the issue  
23 of excess flow that is an increase of the  
24 intensity of use in the core and not to use  
25 Pine Barrens Credits.

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13                   It's a difficult site to get in and  
14                   out of; it would be turning south. Turning  
15                   south would probably be prohibited, since  
16                   it's a four lane highway essentially. So,  
17                   there could be some difficulty there with the  
18                   access, but that's not really something we're  
19                   discussing today.

2 has continuously been owned by the current  
3 owner since 1980. Obviously, they're been  
4 paying taxes but they never built the project  
5 that was the subject of the waiver in 1995.

6 The site is impacted visually.  
7 Specifically, the applicant has set their  
8 application from a major highway and the  
9 prior disturbance and, obviously, they have  
10 explained that basic work. The Commission  
11 supports renewing the hardship based on minor  
12 changes in the project.

13 Again, this is a new project. The  
14 site is undeveloped. The waiver is still  
15 valid, but they are not pursuing that  
16 project, they have changed the project. It  
17 is, essentially, a vacant, undeveloped site  
18 today. There is some information in the  
19 staff report for precedent on site that had  
20 prior development such an animal shelter, the  
21 Mangogna restaurant that is nearby -- near  
22 the site, which was last year proposed to be  
23 potentially a Taco Bell restaurant, and also  
24 Starbucks that is next door to site. When  
25 they needed a change of zone, that site was

2 also developed. So, a lot of sites -- some  
3 sites have received hardships in the past,  
4 but there was development there on some of  
5 those project sites.

6 That's all I have for now. If you  
7 have any questions.

8 MR. CALARCO: Any questions for  
9 Ms. Hargrave?

10 Seeing none.

11 MR. VOORHIS: Mr. Kepner is here. He  
12 is going to start.

13 MR. CALARCO: Just state your name  
14 for the record.

15 MR. KEPNER: My name is David Kepner.  
16 I'm the owner of the property. I think Julie  
17 said just about all you need to know. What's  
18 important to me is she mentioned the waiver  
19 granted in 1995 is still valid. I think it's  
20 worthy to point out that what I am seeking to  
21 do now is way less intrusive than what was --  
22 the project for which I got a waiver in 1995.  
23 The building footprint is 3,900 square feet  
24 that I'm looking for. The one that received  
25 a waiver was 5,900 square feet. There's less

2 parking. We're improving the sanitary system  
3 to the current AI. Natural vegetation will  
4 be the same with no irrigation, no  
5 fertilization.

6 So, I'm hoping you will give me  
7 permission to go ahead with the project.  
8 That's it.

9 MR. CALARCO: Thank you, sir.

10 MR. VOORHIS: Thank you, David. For  
11 the record, "Chick" Voorhis with Nelson Pope  
12 Voorhis for the applicant.

13 David and I processed this  
14 application before this body in 1995. So,  
15 we're very familiar with the history. It was  
16 not able to be built at that time, based on  
17 market conditions. Mr. Kepner has identified  
18 a market that this can serve at this time.

19 It was a little difficult to explain why we  
20 did have to come before the Comission, based  
21 on the prior approval, but this Commission  
22 does have a precedent and track record for  
23 looking at minor changes to site plans and  
24 updating approvals where appropriate. I  
25 think Julie covered that in the staff report.

2 So, I'll go through a couple of the  
3 facts, supplement what Mr. Kepner has  
4 indicated, and basically summarize some of  
5 the points from our application. I will also  
6 mention that Tim Shea from Certilman Balin,  
7 and Yuliya Viola, are the attorneys on the  
8 project that are assisting with processing in  
9 the town and review of the application  
10 materials that we submitted. And Chris  
11 Labate of Lab Crew is the engineer. They are  
12 not here today, I don't expect we'll need  
13 their presence, but if there are follow up  
14 items, we can certainly address that. I will  
15 be addressing the staff comments that I  
16 received midday yesterday, because I think we  
17 can really make a lot of progress today on  
18 this application by clarifying some of these  
19 items.

20 So, today is the hearing. Our  
21 application was submitted February 9th. 1.17  
22 acre site. It is completely within the Core  
23 Preservation area. These are the boundaries.  
24 It's basically CGA south of the Expressway  
25 and southwest of CR 111, Core Preservation

2 Area CPA to the north. The site is and has  
3 been zone J2 Business, which as you know is a  
4 general business category in the Town of  
5 Brookhaven.

6 The site was historically developed.  
7 I'll go through a couple of items that show  
8 that graphically. Mr. Kepner indicated he  
9 has owned the site since 1984, ten years  
10 prior to the Comprehensive Land Use Plan,  
11 nine years prior to the Act. It remains  
12 undeveloped, but it was developed from about  
13 1961 to at least 1994 with a single family  
14 residence. It shows the alteration on the  
15 site based on that previous domestic use.

16 These were the conditions of the  
17 original hardship exemption. The use was to  
18 be limited to retail sale of food and food  
19 services and/or sale of retail dry goods. We  
20 remain consistent with food service use.  
21 Development shall be in accordance with  
22 Commission standards for land use set forth  
23 in the CLUP. Based on the CGA criteria, we  
24 continue to meet that parameter. It's kind  
25 of a metric. It's not directly applicable,

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2                   but it was referenced in the prior decision,  
3                   even though we're in the Core Preservation  
4                   Area.

5                   The height of the ground sign shall  
6                   not exceed the height of the ground sign  
7                   found at the gas station across the street.  
8                   The intent is to comply with each of those  
9                   conditions within the site.

10                  You have the site plan. This is just  
11                  a quick summary. It is a smaller building,  
12                  over 2,500 square feet smaller than what was  
13                  previously approved by the Commission. It  
14                  has indoor/outdoor seats, it has parking.  
15                  There is no drive-thru, which had been  
16                  previously contemplated. There are two  
17                  driveways, just as there were before; they  
18                  align with areas that were disturbed on the  
19                  site based on the prior use. There is a  
20                  concrete walk along County Road 111.

21                  We are proposing an on-site  
22                  innovative alternative, on-site waste water  
23                  treatment system. This is interesting,  
24                  because it came through in Julie's staff  
25                  report. The Health Department requires us to

2 obtain the Pine Barrens Credits. It's  
3 actually in the last and most recent notice  
4 of incomplete. We need the SEQRA  
5 determination from the town for the Health  
6 Department and we need credit.

7 So, as David indicated -- actually,  
8 as Julie indicated, we will be seeking  
9 alternative ways to comply with Article 6 of  
10 the sanitary code. I don't have the concrete  
11 answer to that today. We believe there are  
12 some options, and we will come back with that  
13 information, as well as other responses to  
14 the staff report. But Suffolk County sits on  
15 this Commission. Sarah is representing  
16 Suffolk County Executive Ed Romaine. It is  
17 basically a requirement of the Health  
18 Department. We'll look to get those two  
19 things synced up, but I completely understand  
20 the concept that it's a sending area, not a  
21 receiving area for the purpose of the Pine  
22 Barrens Credits. We'll get back to you.

23 There was landscaping proposed  
24 previously. We're not proposing any  
25 fertilizer dependent vegetation on the

2 property. That will be compatible with the  
3 use going forward: No landscaping. 37  
4 percent of the site will retain the existing  
5 natural vegetation; more than would be  
6 required in the compatible growth area.

7 This is the current site plan. I'm  
8 going to do a couple of side-by-side with the  
9 original site plan. You'll see how  
10 consistent they are. You know the site.  
11 When we came in, in 1995, I don't think any  
12 of you guys were here at the time, but  
13 Grace's Hotdogs was next door. It's become  
14 the Starbucks.

15 As we know, there's a large parking  
16 lot. There's all kinds of transportation  
17 linkages through that parking lot. We're  
18 between that site and the South Service Road  
19 of the Expressway and County Road 111. So,  
20 it's on the very edge of the Core  
21 Preservation Area. Even in 1995, I recall  
22 vividly we were told not to pursue a Core  
23 Preservation Area boundary change, and that  
24 we should come in for a Core Preservation  
25 Hardship, which we did at that time and

2 obtained it. But I think you'll understand  
3 that the nature of this site is a little bit  
4 hard to understand how it is core, other than  
5 that it is designated core and that's why  
6 we're here.

7 This is a line drawing of that same  
8 site plan. This is the prior approved site  
9 plan from 1995. Now, these are line  
10 drawings. I don't have full renderings of  
11 these. I had to dig back in the file. This  
12 may help a little bit. It's a side-by-side  
13 comparison.

14 The one on the left is the currently  
15 proposed plan. It shows the configuration of  
16 open space in that dark shaded area. Open  
17 space across the driveway to the South  
18 Service Road and a small area just to the  
19 east of the driveway off County Road 111.  
20 Very similarly is the 1995 plan where there's  
21 a polygon that shows the area of natural open  
22 space with, again, two small detached areas  
23 of open space north of the Service Road  
24 driveway and southeast of the CR 111  
25 driveway.

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I know that the staff report asked if we could move the access point closer to the property lines. Chris Labate of Lab Crew said that was originally proposed and the DOT asked us to move the curb cuts to where they are shown. But this shows the similarity of the two plans side-by-side.

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So, previously you recognized that we met with the requirements for an extraordinary hardship. I talked about the use to the east, which was Grace's, now it's Starbucks; that has not changed. We're at the fringe of the CPA; that has not changed. The site is at the apex of two major highways; that's the same. The interior of the property is disturbed; perhaps a little less disturbed than it was years ago, but there is remnants and obvious signs of disturbance on the property. The site is the same zoning that it was in 1995. The use is essentially the same, it's a food service use. And the building is placed within the interior of site and the previous cleared areas in the center of the site, and the

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2 fringe of the site, the outer continuous open  
3 space has remained in very much the same  
4 configuration. We don't clear more tan 65  
5 percent. The building is smaller. We're  
6 consistent with the original curb cuts. It's  
7 a 44 percent decrease in the size of the  
8 building. There are 30 parking stalls.  
9 There were 26 previously approved along with  
10 stacking for drive-thru. There's no  
11 drive-thru with this proposal. It has the  
12 added benefit of no fertilizer dependent  
13 vegetation or irrigation areas, as well as  
14 the added benefit of a IA system.

24 So, the site has been continuously  
25 owned. The Expressway was installed in the



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So, the site was previously

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disturbed. It's been continuously owned.

4

The disturbance predated the Article 57 and

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the CLUP. The site's been heavily impacted,

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just based on the two major highways and

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disturbance. It's at the fringe of the Core

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Preservation Area. Again, items that we

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covered as part of our application.

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I know that staff looks for updates

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on the status of approvals. We are working

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through all of the approvals. Town site plan

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has been filed and is pending. We are

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expecting a hearing. As you know, the Town

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of Brookhaven modified their procedures, so

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we'll be going to the Town Board for that

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site plan approval, and obtaining any other

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special permits that are needed.

19

Health Department. As I said, there

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are just those two items on the last NOI:

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SEQRA and credit. The DOT, as I said, has

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reviewed the plans, asked us to modify those

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plan, and we're working through those

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approvals, as we are with Suffolk County DPW.

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Do have consultation from the Natural



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2 because we located the files from 1995. We  
3 did to work in that regard. There is a  
4 recharge basin south of the Expressway  
5 between the Service Road and the Expressway  
6 and west of County Road 111. It is a  
7 documented tiger salamander breeding habitat.  
8 It goes back to the John Cryan report from  
9 1984. The State, under Article 11, looks to  
10 protect any habitat where the species was  
11 identified previously.

12 So, we were able to get a no take  
13 determination previously. We're looking to  
14 reactivate that, update it, whatever is  
15 needed with the DEC. We are within the 1,000  
16 foot radius. But with the presence of the  
17 two major highways and the disturbance of the  
18 site, it's our expectation -- as well as  
19 preservation of a large part of the site,  
20 it's our expectation that will be approved as  
21 a no take determination.

22                   We do feel that we're protective of  
23                   the character of the Core Preservation Area  
24                   and the Central Pine Barrens. We're  
25                   protecting the larger trees on the property

2 through the buffer. As you can see, other  
3 parts where we're developing were disturbed  
4 more recently.

5 The signage will be minimal and will  
6 be consistent with Pine Barrens landscape.

7 There is a comment regarding sign variance,  
8 seeking a sign variance. We will commit to  
9 not seeking a sign variance. We'll provide  
10 additional information on signage after this  
11 meeting, just to be responsive to the staff  
12 report, but we can make that commitment  
13 today. We're also completely consistent with  
14 the Town of Brookaven Dark Sky compliance  
15 requirements, and can demonstrate that  
16 through site plan approval, but that would  
17 allow us to be consistent with Pine Barrens  
18 requirements in that regard. The proposed  
19 ingress and egress locations align with the  
20 existing access locations with the prior  
21 approval.

22 Of course, we'll address any further  
23 comments. Thankfully there weren't too many  
24 comments on this. I think we can easily  
25 clarify them by taking care of the Health

2 Department issue on the credit, and  
3 committing to signage variance, and looking  
4 to try and move forward with this.

5 All of this was covered. It's just a  
6 brief summary of the presentation materials  
7 that you have in your record and I presented  
8 to you today. We will come back with  
9 information. We'll submit this presentation  
10 for the record, so you have a copy of that as  
11 with the prior presentation.

12 I don't know if it's possible, but  
13 we'd like to continue to keep the Town  
14 apprised of our progress with all the  
15 agencies. So, if there is any sense that can  
16 be offered or if we wait and come back at the  
17 next hearing, we will do so. That concludes  
18 our presentation. Thank you very much  
19 Mr. Kepner. Let us know if you have any  
20 questions.

21 MS. MOORE: Could you repeat what you  
22 said about not redeeming the Pine Barrens  
23 Credits with the Health Department.

24 MR. VOORHIS: Health Department has  
25 required us to obtain a Pine Barrens Credit.

2                   We reached out to the county reviewer and we  
3                   shared with them the staff report that we  
4                   received yesterday, taking issue with that,  
5                   and we're looking to come up with another  
6                   means to satisfy Article 6 of the sanitary  
7                   code.

8                   MS. MOORE: "Chick," could you  
9                   provide us a copy of that letter from the  
10                  Health Department that requires that?

11                  MR. VOORHIS: Yes, I'll be happy to  
12                  do that.

13                  MR. CALARCO: Any other questions?

14                  Thank you, "Chick."

15                  MR. VOORHIS: Thank you. I  
16                  appreciate your attention.

17                  MR. CALARCO: We have another speaker  
18                  signed up for this public hearing. Nina  
19                  Leonhardt.

20                  MS. LEONHARDT: Most of these issues  
21                  have already been addressed for the record.  
22                  We were concerned about the Pine Barrens  
23                  Credits, and we were concerned about the  
24                  sanitary flow. So, those two were main  
25                  thing.

2                   And yes, the 30 year old hardship  
3 waiver does remain in effect, because that is  
4 how the decision came down. The applicant  
5 explained something about market forces. But  
6 it just makes you wonder. Just a comment.  
7 30 years old. It does seem a little strange.  
8 That's it. Thank you.

9                   MR. CALARCO: Thank you. I  
10 appreciate it.

11                  Anybody else who would like to  
12 address us at this time at this public  
13 hearing?

14                  Seeing none, counsel is telling me to  
15 take a motion to close the public hearing,  
16 leaving the record open for two weeks.

17                  MR. VOORHIS: We will be submitting  
18 some information.

19                  MR. CALARCO: We'll leave it the  
20 record open for two weeks.

21                  MS. DI BRITA: I'll make a motion.

22                  MR. HUBBARD: Second.

23                  MR. CALARCO: Motion by Ms. DiBrita,  
24 second by Mr. Hubbard. All those in favor.

25                  (WHEREUPON, there was a unanimous

2 affirmative vote of the Board.)

3 MR. CALARCO: Opposed, abstentions.

4 (No response was heard.)

5 MR. CALARCO: Before we close out

6 today's meeting, we have one more public

7 comment portion. Is there anybody in the

8 audience that would like to address us at

9 this time?

10 Seeing none, I'll undertake a motion  
11 from Supervisor Moore, second by Supervisor  
12 Hubbard to close todays meeting. All in  
13 favor.

14 (WHEREUPON, there was a unanimous  
15 affirmative vote of the Board.)

16 MR. CALARCO: Opposed.

17 (No response was heard.)

18 MR. CALARCO: We are recessed.

19 (Time Ended: 4:37 p.m.)

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C E R T I F I C A T E

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5 I, BETHANNE MENNONNA, a Notary Public  
6 within and for the State of New York do  
7 hereby certify that the foregoing is a true  
8 and accurate transcript of the proceedings,  
9 as taken stenographically by myself to the  
10 best of my ability, at the time and place  
11 aforementioned.

12

13

IN WITNESS WHEREOF, I have hereunto

set my hand this 30th day of April, 2024.

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BETHANNE MENNONNA

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