

In the Matter Of:
SHWONIK/GUYDER FARM

PUBLIC HEARING

March 15, 2017



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SHWONIK/GUYDER FARM (FINK'S COUNTRY FARM, INC.)
COMPATIBLE GROWTH AREA HARDSHIP WAIVER APPLICATION

REPRESENTED BY NICHOLAS RIGANO, ESQ.

116 Hampton Road, Southampton, New York 11968

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March 15, 2017
3:01 p.m

PRESENT:

- CARRIE MEEK GALLAGHER, Chairwoman
 - SEAN WALTER, Member
 - BRENDA PRUSINOWSKI, Member
 - JAY SCHNEIDERMAN, Member
 - JOHN MILAZZO, Counsel
 - SARAH LANSDALE, Representative
 - DAN McCORMICK, Commission Staff
 - JOHN PAVACIC, Commission Staff
 - JULIE HARGRAVE, Commission Staff
 - DAVID FINK, Applicant
 - MICHELLE FINK, Applicant
 - RICHARD AMPER, Executive director of LIPBS
- *****

PUBLIC HEARING

MS. MEEK GALLAGHER: We are holding a public hearing today on Shwonik/Guyder Farm (Fink's Country Farm, Inc.) Compatible Growth Area Hardship Application.

MS. HARGRAVE: Thank you.

Everyone should have received a package that contains the staff report and the exhibits for this public hearing and the applicants are here, David Fink and Michelle Fink and their attorney Nick Regana. I am just going to briefly go through the staff report and the exhibits.

MR. MILAZZO: Give it to the stenographer and we will just mark it as they appear.

MS. MEEK GALLAGHER: So I'll just mark that as one. The application is from Michelle and David Fink and they are the lessees of this property. It's an estate of Peter Guyder and they have been authorized to make this application along with their attorney. The property is 21.5-acres, it's one parcel, it's on the east side of Wading River Manor Road in the Town of Riverhead. It is currently zone RB80, which is a 2-acre zoning district, but

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2 the reason that's -- I just want to make
3 note -- that at the time of adoption of the
4 Pine Barrens plan, it was zoned residence A and
5 that was a one acre zone, I believe, and that
6 allowed more clearing than the current zoning
7 district allows. So under Resident's A, which
8 is what has been the practice of the commission
9 to apply the zoning as of '95, that allowed 53
10 percent. And right now, if it was zoned 2 acre
11 in '95, it would only be allowed 35 percent.
12 And then, so in 2016, the applicant applied to
13 the town and cleared the property to the limit
14 of 53 percent because they were informed that
15 that was allowable and at this point they are
16 proposing to clear to 90 percent of the
17 21-and-a-half acre piece.

18 So the applicant submitted a hardship
19 application which included a letter and the
20 review of standards and all of the materials.
21 Subsequently, the applicant has submitted
22 additional materials to make their hardship a
23 case.

24 Just to go through the description of the
25 site, again, it was wooded up until last year.

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2 It was entirely wooded, but the applicant has
3 said the property was cleared 30 years ago and
4 was farmed by the Finks family and -- but
5 again, now, even though the aerial is old and
6 even their plan that they submitted is a little
7 bit old in terms of updating the cleared area,
8 it shows it all wooded right now. So
9 47 percent of this site remains natural.

10 This is an unlisted, uncoordinated review
11 under SEQR. The commission did receive a
12 letter from the state historic parks office and
13 said there would be no impacts on the cultural
14 or archeological resources and it does require
15 a Town of Riverhead permit, I think, to clear
16 the remaining area that they proposed to clear.
17 So in Exhibit B you will see that the plan the
18 applicant provided, this notation of areas A,
19 B, C, D and A, B, and C, would be clear and
20 that D would be the 10 percent to remain, and
21 that's on the eastern side as a buffer appears
22 to this adjoining subdivision.

23 MR. WALTER: Which exhibit is that?

24 MS. HARGRAVE: Sorry, it's Exhibit B. The
25 plan looks like this (indicating).

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2 There is open space on the adjoining
3 southeast side of property, that's State land,
4 I believe, and then there's also some
5 two-and-a-half acres or so of open space on the
6 north side of the property, but the buffer that
7 the applicant proposes is on the east side.

8 MR. WALTER: How many feet is that?

9 MS. HARGRAVE: Well, it would be the ten
10 percent to remain and that would be about
11 2.15-acres.

12 MR. WALTER: So we don't know the width of
13 that?

14 MS. HARGRAVE: The width of that parcel,
15 no.

16 MR. WALTER: You can tell me later.

17 MR. SCHNEIDERMAN: I'll tell you later.

18 MS. HARGRAVE: So C is another aerial of
19 the site and the immediate area, D is some
20 photographs of the site and the first two pages
21 show the site before it was cleared from the
22 road front. And then the remaining photos show
23 an existing old structure that's on the south
24 side of the property and some existing
25 woodlands surrounding it and then also the area

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that's cleared and cleared to date.

So E is an aerial of the study area which is generally just a half mile radius around the site to characterize the land uses in that study area. As you can see, there's a subdivision on the east side and to the north -- immediately to the north -- and to the northwest is a residential subdivision -- residential single family subdivision -- and then sort of directly to the west is some farmland that is farmed by the Finks that has frontage of Route 25 and really south of 25 is -- 25 is the border of the core in this immediate area and that is to the southwest -- it's significant holdings of Suffolk County property preserve land. And to the east of Wading River Manor Road is really the land, 2,000 plus acres, that is under the Town's ownership.

Further to the east, on the north side of 25 is the Calverton National Cemetery and to the north in the core is the Wading River Boy Scout's camp property that's about 450-acres and that's in the core and a little further

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away. To the west of this study area is the Lake Panamoka community around Lake Panamoka.

So Exhibit F is the applicant's review of standards and, again, this is really aimed to get the waiver from the clearing standard. One question is how much fertilizer dependent vegetation would be proposed on this property? The limit and the standard is 15 percent so I am not sure about that.

MR. WALTER: How would that apply? It's going to be a farm so it's all fertilizer dependent.

MS. HARGRAVE: I know, so they may need the waiver from that as well.

MR. WALTER: Even now when they are planning to farm 53 percent?

MS. HARGRAVE: That was the standard so it's up to you as far as that's --

MR. WALTER: That's probably never been enforced. It's interesting.

MS. HARGRAVE: Yeah. The Exhibit G contains the applicant's letter and their desire to farm this property and also some additional information that was submitted on

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2 March 8th. The affidavit of David Fink is
3 supporting the application and their financial
4 analysis, determining their profits and losses
5 that would occur under this activity, the
6 farming activity, and also an affirmation from
7 the applicant's attorney. And at the end, the
8 last page, is their financial analysis and that
9 is in the hardship criteria for a compatible
10 growth area hardship.

11 Back to the staff report, as far as some
12 questions we had, again, one of them was about
13 the fertilizer independent or if they needed
14 any other waivers of standards that you can
15 see, and I guess this wasn't clear before, but
16 it is clear that they are proposing the
17 10 percent to remain on the east side. I think
18 originally, for one reason or another, that
19 wasn't clear. That's understood now.

20 And a potential covenant, if they cease to
21 farm this property, that a new -- say it were
22 to be redeveloped into housing, that only
23 53 percent of it can remain cleared and a
24 remaining 47 percent would be left natural. So
25 that's just something too, if you would want to

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2 consider that, or would a new development be
3 able to consume the entire 90 percent of the
4 property.

5 MS. PRUSINOWSKI: The current zoning is
6 two acre residential?

7 MS. HARGRAVE: Yes.

8 MR. MILAZZO: It was A1 or one acre zone
9 at the time of the plan, so they are getting
10 the benefit of that extra.

11 MS. PRUSINOWSKI: I understand.

12 MS. HARGRAVE: Thank you.

13 Do you have any questions?

14 MR. SCHNEIDERMAN: Maybe after I hear from
15 the applicant.

16 MR. RIGANO: Good afternoon. Nicholas
17 Rigano from Rigano, LLC, on behalf of the
18 applicants. The Finks come before the
19 commission today -- and thank you, Ms.
20 Hargrave, for the introduction. The Finks come
21 before the commission today seeking a hardship
22 variance with respect to the use restrictions
23 placed on the property regarding the clearing.
24 As mentioned, the Finks seek authorization to
25 clear approximately 7.5-acres on the property

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2 to farm and continue their agricultural
3 endeavors.

4 At this point they do seek the variance
5 based on the ECL standards and the town code
6 standards. There are four elements to the town
7 law in order to establish a hardship variance,
8 the first of which is that the applicants
9 cannot realize a reasonable return on the
10 property itself, and as submitted with the
11 papers, the applicant realized a \$5,400 yearly
12 return with respect to their agriculture
13 operations on the property as currently
14 cleared.

15 In the event that the variance is granted
16 and the applicants are authorized to clear
17 90 percent or an additional 37 percent, they
18 would realize and approximate and estimate a
19 yearly return of approximately \$15,000 and
20 change. We are not talking about, obviously,
21 big money here, but that additional clearing
22 does provide some means by which the property
23 can realize the use that the applicants intend
24 to use it for by means of agriculture. Without
25 the variance, the applicants will consider

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2 closing their farming. This just doesn't make
3 sense to go forward.

4 The second element for the hardship, to
5 establish a hardship, is that the alleged
6 hardship does not apply to the whole
7 neighborhood, and as stated, the hardship is
8 really a financial one here in that the
9 applicants cannot realize a reasonable return
10 and so it is unique hardship. It does not
11 apply to the whole neighborhood.

12 Further, the use variance as requested
13 will not alter the essential character of the
14 neighborhood and, as stated throughout the Pine
15 Barrens plan and applicable town codes, the
16 Pine Barrens has seen agriculture as a primary
17 development issue for 350 years. Agriculture,
18 it's been there forever and the Pine Barrens is
19 so important to the Pine Barrens itself such
20 that agriculture is not considered development
21 under the Pine Barrens plan.

22 And the final element to establish a
23 hardship variance is that the hardship itself
24 is not self-created, and I'd like to point out
25 for the commission and reiterate that the

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2 applicants are tenants to the property, they
3 are not the owners. They started leasing this
4 property two years ago when the entire property
5 was, in fact, covered with natural vegetation.
6 They are only seeking to clear the natural
7 vegetation that was preexisting, so as stated
8 the problem here, or the use issue here, was
9 not self-created and therefor the applicants
10 respectfully submit that the hardship criteria
11 set forth in the town law are satisfied and
12 respectfully request that a use variance be
13 granted. We are happy to answer any questions.
14 The Finks are here today and would be happy to
15 answer any questions directed to them.

16 MR. SCHNEIDERMAN: The area they are
17 looking to clear, was it once cleared for
18 farming or it was never farmed?

19 MR. RIGANO: I believe it was farmed.

20 MR. FINK: My father farmed it 35 years
21 ago.

22 MR. MILAZZO: Can you come up, please?

23 (Whereupon, Mr. Fink was sworn in at this
24 time.)

25 MR. FINK: David Fink, Fink's Farm. My

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2 father farmed about 35 years ago.

3 MR. SCHNEIDERMAN: All whole of it, the
4 whole parcel?

5 MR. FINK: Yes, I mean, at the time, the
6 residential portions to the north, northwest,
7 none of that, that was all farmland.
8 Basically, wherever you see houses was all
9 farmland at one time.

10 MR. SCHNEIDERMAN: So, this rectangle was
11 entirely farmed at one point?

12 MR. FINK: Yes.

13 MR. WALTER: That doesn't make sense
14 because when you look at the --

15 MR. FINK: It's all secondary growth.
16 Most of it is actually Russian olive which is
17 an invasive plant.

18 MR. SCHNEIDERMAN: So when did it stop
19 being farmed, about 30 plus years ago?

20 MR. FINK: My father passed away in 1983,
21 so the Spring of '83. That was strawberries at
22 the time. My mother continued to farm it a
23 year after my father passed away and next
24 growing season she couldn't handle it anymore
25 so she let it go back to what it was. It's

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2 never been touched since.

3 MR. SCHNEIDERMAN: Did the Pine Barrens
4 rules came along in the 90's?

5 MR. MILAZZO: '95.

6 MR. WALTER: There is tremendous
7 development pressure on this parcel as was said
8 when we came in here. It's not zoned for
9 commercial, but there's a never-ending covary
10 of attorneys that come in to try to get the
11 property rezoned, and there has been varying
12 degrees of support from town board members over
13 the years since I've been both supervisor, town
14 attorney, to rezone it.

15 MR. SCHNEIDERMAN: But that gets to the
16 standard and the compatible growth area in
17 terms of economic viability. They are there in
18 terms of subdivision.

19 MR. WALTER: No, they want it rezoned
20 commercially. The proposals are mini marts
21 which we desperately do not need.

22 MS. MEEK GALLAGHER: It's at the corner of
23 25.

24 MR. FINK: I don't want that.

25 MR. SCHNEIDERMAN: It has economic value

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2 then even with a --

3 MR. WALTER: It has zero chance of getting
4 rezoned as long as I am town supervisor.

5 MR. SCHNEIDERMAN: So it is going to stay
6 commercial.

7 MR. WALTER: Can we agree on that?

8 MS. MEEK GALLAGHER: He doesn't have that
9 choice.

10 MR. SCHNEIDERMAN: It doesn't have value?
11 I thought that's what I was saying, I thought
12 it was residential?

13 MS. MEEK GALLAGHER: They want it rezoned
14 commercial.

15 MR. SCHNEIDERMAN: But as a residentially
16 owned parcel, if they were doing the
17 subdivision and they had to stay within the
18 guidelines of the compatible growth area they
19 can put a viable subdivision in?

20 MR. WALTER: Yes.

21 MR. SCHNEIDERMAN: So it's just not
22 economically viable in farming?

23 MR. WALTER: I would assume you can put
24 eight houses in there potentially on 20 acres,
25 maybe ten. We don't want that either.

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2 MR. FINK: Neither do I.

3 MS. PRUSINOWSKI: So when your mother and
4 your parents were farming this, did they own a
5 piece?

6 MR. FINK: No, they leased it.

7 MS. PRUSINOWSKI: They leased it then?

8 MR. FINK: Yes.

9 MS. PRUSINOWSKI: But you own a piece that
10 is to the west of Wading River Road?

11 MR. FINK: Yes, it's that long rectangle
12 piece that runs -- it's basically the same
13 dimensions of that parcel there. It's just
14 over.

15 MS. PRUSINOWSKI: It appears from this
16 that a parcel is entirely cleared; is that
17 correct?

18 MR. FINK: My parcel, yes, that's correct.

19 MS. PRUSINOWSKI: How did that happen
20 because that's in the CGA as well.

21 MR. FINK: That's been cleared for --
22 since it was the Horn Tavern Farm, which dates
23 back to 1770-something.

24 MR. SCHNEIDERMAN: So had this continued
25 to be cleared, if they never stopped farming

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2 it, it would be farmed today, but because they
3 stopped and it was able to grow back in --

4 MR. FINK: Correct.

5 MR. SCHNEIDERMAN: Now you need the
6 hardship to get it back to the way it was?

7 MR. FINK: Correct.

8 MR. SCHNEIDERMAN: From a farming
9 perspective, the size that you are allowed to
10 clear within the standards is too clear to make
11 it work?

12 MR. FINK: It doesn't make it
13 economically. It's close but it's not close at
14 the same time.

15 MR. SCHNEIDERMAN: Would somebody else
16 farm it if you didn't farm it?

17 MR. FINK: Not that I know of. I can't
18 speak for somebody else, but I don't foresee
19 somebody else moving in for attending a parcel,
20 no.

21 MR. SCHNEIDERMAN: The only way to keep it
22 in agriculture would be to expand the clear?

23 MR. FINK: Correct. For us, I can't speak
24 for somebody else, but for our bottom line, it
25 wouldn't be economically sound for us to use it

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2 as where it is.

3 MR. WALTER: There's only one other farmer
4 in the area and he's doing asparagus and hops.

5 MR. FINK: Yeah, and you know, to travel,
6 it's a lot. To move equipment back and forth
7 it's a lot and for us, there's no land local
8 enough for us. This is close, it's a hop,
9 skip, and a jump.

10 MR. SCHNEIDERMAN: The type of farming you
11 do -- the Pine Barrens Act was primarily to
12 protect drinking water, but also the ecological
13 aspects of the Pine Barrens community.
14 Obviously if you are cutting down pine trees or
15 whatever the vegetation is, that can't be
16 compatible with the standards, but the farming
17 you do, in terms of drinking water, your
18 farming practices, can you speak to that? Is
19 it compatible with the standards?

20 MR. FINK: Yes, I would say yes. We
21 follow -- we are stewards of the land. I don't
22 do anything that -- my kids drink this water on
23 a piece of land that we own. I wouldn't do
24 anything that's going to harm my children or my
25 wife or my family, you know.

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2 MR. RIGANO: That's natural, you don't use
3 pesticide or anything, right?

4 MR. FINK: At this point no, not at this
5 point in time. Anything that I do use is --

6 MS. MEEK GALLAGHER: Is it certified --

7 MR. SCHNEIDERMAN: Is it certified organic
8 farm?

9 MR. FINK: No.

10 MR. SCHNEIDERMAN: Is that something you
11 would consider?

12 MR. FINK: No. My practice is no, I don't
13 practice organic farming. It's a totally
14 different realm, you know. I've been at it all
15 my life, I don't foresee myself going into the
16 organic market, you know, there are 167
17 chemicals that are registered organic which
18 have the same chemical makeup of what I spray,
19 so if the public knew actual organic, it's
20 deceiving.

21 MR. SCHNEIDERMAN: I am just thinking
22 about drinking water protection as part of the
23 Pine Barrens plan if we are going to allow
24 additional farming, whether is it compatible or
25 not.

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2 MS. MEEK GALLAGHER: All the septic
3 systems just to the north are having a lot
4 bigger an impact on the ground water.

5 MR. WALTER: You guys have the open space,
6 can you tell us -- sorry, go ahead.

7 MS. MEEK GALLAGHER: Sarah had a question.

8 MS. LANSDALE: So I just had a quick
9 question on whether the property is in an
10 agricultural district or not?

11 MR. FINK: It's not. Our parcel is in an
12 ag district because the rights have been sold,
13 but the county rights have been sold. Our
14 ultimate goal is to do that, we have the
15 application already for this parcel, we are
16 going to go through with the application, but
17 the unfortunate part is Suffolk County will not
18 address this piece of property until it is
19 clear to where we want to submit. We won't --

20 MR. SCHNEIDERMAN: So you are trying to
21 sell the development rights off this? I
22 thought you don't own it.

23 MS. FINK: We don't own it.

24 MR. FINK: We don't own it. The two
25 sisters that own the property have owned it for

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2 years. They are trying to sell the development
3 rights. We are working with them to get this
4 parcel cleared hopefully from you guys and then
5 we are going to present it to the county and
6 hopefully the county is going to purchase the
7 development rights on the property, and then in
8 turn, we can afford to come in on the back end
9 instead of --

10 MR. SCHNEIDERMAN: I am getting more
11 confused. If we gave a hardship waiver, it
12 would increase the value of the property by
13 allowing the number of development rights to
14 increase, correct?

15 MR. FINK: No.

16 MR. MILAZZO: The way I understand it is
17 this: Two sisters own the property and they
18 have owned it for a long time. They would like
19 to sell the agricultural development rights to
20 the county. The county won't entertain that
21 purchase until it's actively farmed. The
22 applicants here today say we will farm it if
23 you allow us to clear the entire property.
24 Once you allow us to clear the entire property,
25 the county then will consider development

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2 rights and then the applicant will be able to
3 afford the underlying fees subject to the
4 easement from the county. That's the way I
5 understand it.

6 MR. FINK: You got it.

7 MS. LANSDALE: I just also want to clarify
8 that the New York State Agricultural District
9 Program is separate and apart from the Suffolk
10 County Farmland Development Rights Program.
11 New York State Ag District allows farmers to
12 partition the New York State Commissioner of
13 Agriculture and Markets, they petition them to
14 the right to farm for unnecessarily burdensome
15 local laws, just something.

16 MR. SCHNEIDERMAN: So the development
17 right purchase would be based on --

18 MR. MILAZZO: However the county values
19 it.

20 MR. WALTER: Would it be the RB80 zoning?

21 MR. SCHNEIDERMAN: Sometimes they appraise
22 based on the land area. Sometimes they look at
23 the number of dwelling units. That's why I am
24 a little bit confused if the additional land
25 clearings will change the value of the land.

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2 MR. MILAZZO: They can't even get to start
3 with the county.

4 MS. MEEK GALLAGHER: No, they --

5 MR. SCHNEIDERMAN: They are also offering
6 if we grant a hardship waiver it would be tied
7 to the farming use, but you are looking to sell
8 the development rights.

9 MR. MILAZZO: That offer was a suggestion
10 from commission staff, so the reason, the
11 genesis for that suggestion is it's the will of
12 the commission. The commission staff is
13 recognizing, hey, what's to prevent Mr.
14 Developer and/or Ms. Developer with ten acres
15 from saying I am going to farm it. You know,
16 farming is not for me, now I am going to build
17 and I have no clearing restriction on my
18 property because I cleared it last year for my
19 farm that I couldn't grow.

20 MR. WALTER: We would covenant.

21 MR. MILAZZO: That is a suggestion from
22 staff to make sure that there is not an end
23 around the clearing standard.

24 MR. WALTER: I would support the covenant
25 on this property. I see this property is under

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2 immense development pressure for things we
3 don't want. By allowing this, it's a way to
4 preserve the property should all the pieces
5 fall into place. It's an odd way to preserve
6 the property, but from my perspective, we are
7 either faced with eight or ten houses there or
8 some town board member coming along and
9 convincing two others to change the zone to
10 business CR and then you are going to have a
11 shopping center or something there. They have
12 come very, very close in the last couple of
13 years to getting, this current, not quite this
14 current town board, to getting three members
15 and it's only by me standing on the desk
16 stopping it. So the problem is, for us, that
17 if you can do this -- I am not trying to
18 testify, but this is a back doorway to preserve
19 the property for agriculture. My only concern
20 is one, a covenant on the property that should
21 be ceased to be farming and one that has to be
22 revegetated back to the 53 percent standard and
23 the second thing is how big is the buffer
24 between the houses?

25 MR. FINK: 40 feet.

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2 MR. SCHNEIDERMAN: It's noble to me,
3 Shawn, but the Pine Barrens Program was not a
4 farmland preservation program, it was a
5 drinking water protection program. Are there a
6 lot --

7 MR. WALTER: I was good with when you said
8 I sounded noble.

9 MR. SCHNEIDERMAN: We all care about
10 farming. We want to see farming survive. This
11 seems like a nice family who farms this. The
12 first thing I am thinking about, are there
13 other farmlands in compatible growth area that
14 will now say hey, you doubled the clearing in
15 this case, we want this too.

16 MR. FINK: I think I am the only one.

17 MS. MEEK GALLAGHER: We can certainly --
18 we could certainly ask staff to prepare that
19 for us before the next meeting because the
20 decision deadline for this is May 31st, which
21 means that we would want to vote on it.

22 MR. SCHNEIDERMAN: We have a little bit of
23 time to analyze the precedent.

24 MR. RIGANO: It is also a very fact
25 specific standard, right? Here we have kind of

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2 an extraordinary financial predicament that the
3 applicants are in, so the beauty of the way
4 it's set up is that the applicant or future
5 applicants have to come before the commission
6 in order to make similar arguments and the
7 commission would be able to review those on a
8 case by case basis. We do believe that these
9 standards are pretty fact specific so it would
10 be a case by case and mitigated by that fact.

11 MR. SCHNEIDERMAN: I hear the economic
12 impact, the hardship is strong because he
13 doesn't own the property. There's other pieces
14 that he can farm.

15 MS. MEEK GALLAGHER: It's also whether or
16 not -- it's not core. It's a compatible growth
17 area.

18 MR. SCHNEIDERMAN: It still a hardship
19 labor.

20 MR. MILAZZO: What's your interest in the
21 property? Do you have a lease?

22 MR. FINK: Do I have a lease? I do.

23 MR. MILAZZO: How long is that lease for?

24 MR. FINK: Right now I think it is three
25 years. I believe it's a three year lease.

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2 Hopefully within three years this will be said
3 and done. That is our goal.

4 MR. SCHNEIDERMAN: So your goal is to end
5 up owning this?

6 MR. FINK: Correct.

7 MS. MEEK GALLAGHER: It is a three year
8 lease?

9 MR. FINK: Correct.

10 MR. MILAZZO: When did it start?

11 MR. FINK: This year.

12 MR. SCHNEIDERMAN: So it is the first year
13 of your lease?

14 MR. FINK: Correct. We are not going to
15 go through this whole clearing process and
16 everything and, you know, not have solid --

17 MR. SCHNEIDERMAN: So you have some sort
18 of option or verbal agreement to purchase it at
19 the end of the day?

20 MR. FINK: We have a verbal agreement with
21 the two sisters.

22 MR. SCHNEIDERMAN: So what if we granted
23 this and then the owner decides to let somebody
24 else farm this property?

25 MS. MEEK GALLAGHER: There's no one else

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interested in coming in and doing it.

MR. SCHNEIDERMAN: Not at the moment.

MR. FINK: I don't foresee anybody coming in.

MR. SCHNEIDERMAN: I am looking at it looks like a very nice family, he seems like a very nice guy, very nice family and --

MR. FINK: It's basically -- the land in our core area is not -- there's no more land. This is the last piece of good size trek of land that I have for my two kids to eventually farm. I instill that in them and hopefully they will take over our shoes one day, it's to secure it for the future. For right now I can get away with the property I have, but in the next three or five years, you know, I am going to need more space, you know, especially if I want to make a living for my family and my children want to make a living out of it. So to us, it's a very viable piece of property and it's really the last piece of property in our general area.

MR. MILAZZO: I have two questions. One is the rental amount. What's the lease amount

1 PUBLIC HEARING

2 for this year?

3 MR. FINK: 225 per acre.

4 MR. MILAZZO: How many total acres,
5 excluding this piece, do you have?

6 MR. FINK: Just over 40.

7 MR. MILAZZO: So this would be 60?

8 MR. FINK: Correct.

9 MR. McCORMICK: And the \$5,000.00 return,
10 right, the 54-15, that's on the ten remaining
11 acres?

12 MR. FINK: Correct.

13 MR. RIGANO: That's on the cleared acres.
14 The \$5,000.00 is on the cleared acres and --

15 MR. McCORMICK: Not what you are seeking
16 the hardship on?

17 MR. RIGANO: Right. And the estimate, if
18 the clearance is granted, it would be \$15,000 a
19 year.

20 MR. FINK: It's hard. You know, the
21 commodity price is changing and everything is
22 changing. You don't know.

23 MR. RIGANO: It's an estimate based on
24 future rain and weather patterns.

25 MR. FINK: To us, at some point in time,

1 PUBLIC HEARING

2 the two sisters can't hold on much longer, they
3 are in their late 60's, early 70's.

4 MR. SCHNEIDERMAN: Understand.

5 MR. FINK: But they are looking to get
6 out. They are tired of paying the taxes on it.
7 I mean, at some point it's going to go to
8 housing or it is going to go to farm. There's
9 no in between, unfortunately.

10 MR. MILAZZO: Do you have a contract to
11 buy the property or just to lease it?

12 MR. FINK: Just to lease it. To us, I
13 wouldn't have a contract to buy it --

14 MS. PRUSINOWSKI: You have a verbal
15 agreement you said?

16 MR. FINK: Correct.

17 MR. SCHNEIDERMAN: Can you distinguish if
18 there is a distinction between the criteria for
19 a hardship waiver in compatible growth versus a
20 hardship waiver --

21 MR. MILAZZO: There's a difference. There
22 has to be no beneficial use on the core
23 property, except for the one that's being
24 requested.

25 MR. SCHNEIDERMAN: So in this case,

1 PUBLIC HEARING

2 because when you say beneficial, you are
3 talking about economically beneficial use so
4 the compatible growth is not as difficult to
5 test?

6 MR. MILAZZO: It is a different standard.
7 Really it's compared to the surrounding
8 property and they addressed the four elements
9 in their application. It's the four
10 preservation standard.

11 MR. SCHNEIDERMAN: So there is a legal
12 distinction in terms of the test that has been
13 done?

14 MR. MILAZZO: Yes.

15 MR. SCHNEIDERMAN: So if we were to grant
16 this, somebody was looking for a core hardship
17 to apply --

18 MS. MEEK GALLAGHER: It would not be a
19 precedent.

20 MR. SCHNEIDERMAN: You are considering
21 that a hardship, but you are not considering
22 that a hardship (indicating).

23 MS. MEEK GALLAGHER: Does it say anything
24 about agriculture in the CDA, as a compatible
25 activity in the CDA?

1 PUBLIC HEARING

2 DEFENSE COUNSEL: Generally agriculture is
3 not considered development and technically it's
4 not subject to the jurisdiction of the pine
5 barrens commission.

6 MS. PRUSINOWSKI: Only if applying the
7 clearing, that's the distinction.

8 MR. SCHNEIDERMAN: So you are not talking
9 about a mature forest here, you are talking
10 about economical growth?

11 MS. MEEK GALLAGHER: Yes, or who knows how
12 many times it's been farmed.

13 MR. SCHNEIDERMAN: Partially invasive
14 species I am assuming?

15 MR. FINK: Mostly.

16 MR. RIGANO: This is unique, right, so the
17 applicants really are the only individuals able
18 to farm this property. So the commission is
19 ultimately faced with the determination, do you
20 want this property to be agriculture, if so we
21 need the use variance to be granted, otherwise
22 they have to close down the farming operations
23 on the property. Otherwise you may see houses
24 like you previously mentioned, or you may see
25 some other application in here seeking some

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PUBLIC HEARING

commercial development. We think that this is certainly the lesser of the two evils that could otherwise be presented to the commission, if you want to consider it evil.

MR. SCHNEIDERMAN: Lesser of the evils in term of what?

MR. RIGANO: In terms of traffic. At the end of the day the Pine Barrens Commission --

MR. SCHNEIDERMAN: In terms of nitrogen loaning, I would have to see whether the septic systems would --

MS. MEEK GALLAGHER: Septic systems are worse than fertilizer.

MR. McCORMICK: It's likely they will have the new and improved septic systems being installed in this subdivision if the county moves forward with their plans. I don't think nitrogen loading from this subdivision might be an issue.

MR. SCHNEIDERMAN: Right. Because of the advanced waste water under the new res. How many houses did you say it was?

MR. WALTER: It would be at least eight or ten houses. It is interesting because the way

1 PUBLIC HEARING

2 it is laid out, you wouldn't necessarily have
3 to put roads in and I am just looking at it
4 now, you can probably put ten houses with road
5 frontage on narrow lots going straight up that
6 home.

7 MS. MEEK GALLAGHER: And all those
8 homeowners want perfectly green lawns where
9 they use chemicals to keep those lawns green.

10 MR. WALTER: And trust me, they will all
11 clear cut more than 53 percent when they put
12 their swimming pools in and everything else.

13 MS. MEEK GALLAGHER: Or you can get a gas
14 station with underground storage tanks.

15 MR. SCHNEIDERMAN: The total farm area
16 would be how many acres?

17 MR. FINK: 19.35.

18 MR. SCHNEIDERMAN: So 8 septic systems is
19 less nitrogen than --

20 MS. MEEK GALLAGHER: I am looking at the
21 whole impact from housing development. You've
22 got septic systems, it is not just nitrogen,
23 you got cleaning products, pharmaceuticals,
24 personal care products, all getting flushed
25 down. You've got people putting chemicals,

1 PUBLIC HEARING

2 fertilizers, pesticides on their lawn because
3 they want their nice green lawn and don't want
4 bugs when they go outside even though bugs
5 should live outside.

6 MR. SCHNEIDERMAN: But to farm you are
7 also going to have pesticides and fertilizers.

8 MS. MEEK GALLAGHER: Right, but for farm,
9 there's a big cost associated with chemicals so
10 most farmers are going to use the smallest
11 amount possible to get the results they want.
12 To them more is not always better. To
13 homeowners, if a little bit is good, a lot is
14 better.

15 MR. WALTER: I don't want to discount, but
16 the ground water here flows to the Long Island
17 Sound so there is no wells. That water under
18 that land is never going to be anybody's
19 drinking water.

20 MS. MEEK GALLAGHER: It's all public
21 water.

22 MR. WALTER: Yep. We have two major
23 production wells, east of there on 25 and then
24 the water authority has maybe a mile west,
25 south to southwest, so you are never going to

1 PUBLIC HEARING

2 see production wells there. There is no place
3 to put them, nor would you put them in that
4 area.

5 MR. SCHNEIDERMAN: The Long Island sound
6 is a big body of water. It still has nitrogen
7 issues.

8 Do we have a calculation? Can somebody do
9 a calculation in term of one nitrogen,
10 pesticides verses the other?

11 MS. LANSDALE: Per crop or per?

12 MR. SCHNEIDERMAN: Per 20-acres of
13 farming.

14 MS. LANSDALE: I'll send around the
15 appropriate notation, but it's already there.
16 There is a chart that lists single family
17 dwelling on specific acres verses production
18 and the different kinds of crops.

19 MR. SCHNEIDERMAN: Does Riverhead, do you
20 guys have a cluster requirement under
21 subdivisions and particularly in agricultural
22 subdivisions?

23 MR. WALTER: Yes, we do, but if you look
24 at that particular parcel, I am thinking it
25 would be very difficult to cluster. What they

1 PUBLIC HEARING

2 are going to try to do is cluster them so that
3 the road frontage is, you have the vista or
4 they would cluster them away from other
5 subdivisions. I would be hard pressed to
6 figure out --

7 MS. MEEK GALLAGHER: I drove this on the
8 way here so I could physically see it.

9 MR. SCHNEIDERMAN: It's certainly safe to
10 say that the subdivision couldn't occur on more
11 than 50 percent of the property because of the
12 compatible growth area clearing the 54 percent.

13 MS. PRUSINOWSKI: I don't think that's
14 true.

15 MR. WALTER: No, they can get eight to ten
16 houses, however it lays out so they can get the
17 two acre zoning, and we have a 70/30 cluster
18 where you try to preserve 70 percent of the
19 property and cluster it down on 30 where the
20 planning board finds it practical. I mean, I
21 am not an engineer, but that's a bowling alley,
22 that is going to be tough to cluster. They may
23 force them to, common driveways and things like
24 that, but I think you are going to have a
25 series of flag lots here.

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2 MR. SCHNEIDERMAN: They would still have
3 to meet the clearing restrictions.

4 MR. MILAZZO: They can meet the standard
5 in their layout, they don't have to come to the
6 commission.

7 MR. SCHNEIDERMAN: It's the 53 percent on
8 one part of the lot or 53 percent on the back
9 of everybody's house.

10 MR. MILAZZO: They have already cleared
11 53 percent.

12 MR. RIGANO: Preserving the land for
13 agriculture really is preserving the integrity
14 of the pine barrens. The pine barrens,
15 throughout the plan, throughout the town codes,
16 discusses how agriculture was there for 350
17 years and so when you rule out agriculture and
18 start putting single family houses, that may
19 cause a slippery slope in other areas. I think
20 the commission here has an opportunity to
21 preserve an agricultural use which is
22 consistent with the origins of the pine
23 barrens.

24 MS. MEEK GALLAGHER: What are the crops?
25 What are the crops that you anticipate growing?

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2 MR. FINK: Right now we are just doing
3 field corn for grain.

4 MS. MEEK GALLAGHER: So corn is a very
5 nitrogen intensive crop. They have done a
6 whole bunch of -- Cornell is doing a lot of
7 work with farmers on other ways for growing
8 corn.

9 MR. SCHNEIDERMAN: Corn is a fairly
10 pesticide heavy crop.

11 MR. FINK: Sweet corn is, field corn is
12 not.

13 MS. MEEK GALLAGHER: I was thinking sweet
14 corn.

15 MR. FINK: I use a slow release
16 fertilizer, what we use on it, so if you get
17 heavy leeching, it stays there. It's a time
18 release fertilizer.

19 MS. MEEK GALLAGHER: Mr. Amper -- can I
20 have him address it?

21 MR. MILAZZO: Swear him in.

22 (Whereupon, Mr. Amper was sworn in at this
23 time.)

24 MR. AMPER: Before I get into this, let me
25 say two things. We are neighbors of these two

1 PUBLIC HEARING

2 people and consider them good neighbors, they
3 are not personal friends, but good neighbors
4 over a long period of time.

5 First off, I just want to purpose myself
6 for my remarks about the precedent setting
7 nature of this, that we have to consider to
8 address one issue raised here and that was that
9 the nature of the surrounding community is such
10 that any contamination would not impact and it
11 would just go straight to the sound.

12 In the first place, let's get things
13 straight here, when we are talking about
14 protecting ground here, that you don't protect
15 it for the person who is adjacent, many of whom
16 are not on public water in the first place, so
17 the idea that we only protect land if there is
18 somebody in the neighborhood who would be
19 required to drink it.

20 MR. WALTER: Every single one of those
21 subdivisions is on public water and had to be a
22 part of it so that's not correct.

23 MR. AMPER: Okay, the answer is that the
24 people of Lake Panamoka aren't and the idea of
25 the molecules of water will go directly north

1 PUBLIC HEARING

2 to the sound along North Country Road -- or
3 Wading River Road and down to the sound --

4 MR. WALTER: Is pretty accurate.

5 MR. AMPER: Yeah. And the idea that all
6 of the people who are between there and the
7 sound will never be drinking the water. So let
8 me continue to the area that Commissioner
9 Schneiderman mentioned. He started it off
10 correctly and stayed with it. That is that the
11 Pine Barrens Society almost never has a problem
12 with individual projects. We are only ever
13 concerned about what the implications are if
14 you create this precedent. If somebody comes
15 and says, but you gave it to them why can't we
16 do the same thing. That is a real serious
17 concern.

18 In fact, we have never litigated anything
19 that we didn't believe had implications for
20 precedent setting, so let's just talk about
21 what this is and where things are a little
22 loosey-goosey.

23 First of all, I would agree that you can
24 call this the lesser of two evils if indeed we
25 thought that the property was going to be

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2 developed into housing. We don't know that and
3 you correctly pointed out we will be using
4 different septic systems and the speculation
5 between the two of you as to okay, but how much
6 more fertilizer would be used on the farm,
7 but -- Sarah may have some information that is
8 helpful to you -- but the idea is a farm is
9 less contaminating and a subdivision is
10 something that you probably don't want to base
11 your findings on.

12 MS. MEEK GALLAGHER: It's not one of the
13 standards we have to meet, right?

14 MR. SCHNEIDERMAN: Drinking water is, I
15 think.

16 MR. AMPER: Can I just stay with him for
17 just a minute because he has thought this
18 through very, very well. It is a major, it is
19 a law that is designed to protect water. So
20 it's important. He says that it is a law
21 that's designed to protect drinking water and
22 to preserve habitat. This use does neither.

23 Let's start with that. I am trying to
24 understand the relevance of the final
25 documents. I am not sure that the \$5,400 yield

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2 represents the value of the business that they
3 have a commercial farm stand agriculture
4 industry associated with this operation, so
5 when we are talking with that, not that that
6 should rule them out, but it has to be taken
7 into consideration in terms of what portion of
8 this represents admonition of income.

9 We are trying to relate this in each case
10 to the hardship criteria. So if you read the
11 portions of them, it is useful to say is this
12 something that can be replicated and, if so, do
13 we want it replicated? The criteria that deals
14 with a self-created hardship usually means that
15 this was something of your doing. The purchase
16 of the property is a self-created hardship. If
17 they didn't purchase the property, then there
18 would be a hardship, so what created the
19 hardship? It's the purpose of the property.

20 And by the way, what the results is in
21 terms of its future use requires a whole bunch
22 of things to follow the line over a projected
23 and a very noble series of events that might
24 make the neighbors very happy that that's the
25 future of the property, that a whole bunch of

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1 things still have to happen and that includes
2 the failure, could include the failure of the
3 county to protect the property in any
4 eventualities the people say no. I can make
5 more money from developing ten houses on this
6 property than I can by selling the development.
7 There is a lot of stuff that, if it all worked
8 out fine, you would see no reason why they
9 shouldn't do this. But there's a lot of stuff
10 that has to happen in order for all of this to
11 come out as -- I do think you have to look at
12 the pesticides not just the fertilizers. I
13 think you'd have a hard time. I think you
14 wouldn't have a hard time getting the ten
15 people who John says are all going to be
16 required to hook up to public water, to not put
17 more pesticides and fertilizers on their
18 property than a farm.

19
20 Let's consider this. Put all of this on
21 the table. Let's weigh this. Now, we were
22 talking briefly about the parcel not being in
23 an ag district and Sarah pointed out New York
24 State ag has regulations that try to prevent or
25 can prevent the danger of residential, some

1 PUBLIC HEARING

2 local residential government action and I would
3 propose to you that the New York State Pine
4 Barrens Protection Act is not a little local
5 law that is interfering, it is a State law. So
6 I am not comfortable with the notion that this
7 is some trivial law that the municipality put
8 in place that state ag and markets law
9 superceded new York State Legislation that you
10 are charged with protecting.

11 MR. WALTER: So are you recommending them
12 apply before March 31st to the Commissioner of
13 Agricultural Markets under that Section 308,
14 whatever that is, to see if there is a super?

15 MR. AMPER: I am not making any
16 recommendations --

17 MR. WALTER: That's what it sounded like
18 you were recommending.

19 MR. AMPER: Can I just answer your
20 question?

21 MR. WALTER: Are you recommending that
22 they do that?

23 MR. AMPER: No, I am not.

24 MR. WALTER: Ag and Market Section 308?

25 MR. AMPER: I am not recommending that. I

1 PUBLIC HEARING

2 am not making any recommendations to the
3 applicant at all.

4 MR. WALTER: Before March 31st.

5 MR. AMPER: I am not talking to them at
6 all. I am -- they are successful at what they
7 do. I am talking to the commission about
8 whether or not your approval of this hardship
9 poses any potential problems as a precedent.
10 It's clear that neither of the objectives of
11 the Pine Barrens Act are being advanced by
12 farming, and it's also clear that this is a
13 self-created hardship. And it's also clear
14 that we are not -- I am not sure that you are
15 in the position of saying would we rather have
16 a farm or --

17 MS. MEEK GALLAGHER: Our job is to see if
18 it meets the criteria.

19 MR. AMPER: If it conforms, that's what I
20 want to do if it does, then I don't have a
21 problem with whatever they do.

22 MR. WALTER: I think it conforms to the
23 criteria.

24 MS. MEEK GALLAGHER: So we know where Sean
25 stands.

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2 MR. AMPER: I was hoping that you might
3 look at the law, that you have prejudged this
4 is not surprising. This is why I am talking to
5 his points mostly, because I think he is
6 thinking it through as a commissioner.

7 MR. SCHNEIDERMAN: Sorry Sean.

8 MR. AMPER: Because he is one.

9 MR. WALTER: It's my lucky day today.

10 MS. MEEK GALLAGHER: As usually mentioned
11 what type of precedents might be set. There
12 are other farms in the CGA and that this could
13 set a precedent for --

14 MS. HARGRAVE: I am going to tell you
15 right now, the two properties across the
16 street, do you see one is partially cleared
17 with some farmland and the other one below
18 that --

19 MR. AMPER: Across which street?

20 MS. HARGRAVE: I'm sorry. On the west
21 side of Wading River Manor Road. I know at
22 least one of them has been recently reformed to
23 clear that property and purchase development
24 rights on that as well. So I don't know about
25 the other one, but that could be a similar

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case.

MR. SCHNEIDERMAN: That's just right here.
We would have to look at all of the --

MR. MILAZZO: Why don't we ask the
applicant?

Do you have any interest in the two
parcels -- they look like squares -- between
your existing farm and then as we head east you
have the cursor --

MR. FINK: Yes, the parcel to the north
there.

MR. MILAZZO: That looks like the bottom
area is farmed?

MR. FINK: Yes, that's currently in
process with Suffolk County to purchase
10-acres on that parcel.

MR. MILAZZO: How big is that piece?

MR. FINK: The piece to the south is my
elderly aunt who lives with me. That's still
in her parent's name and they are trying to
work all that out, so that will be years.

MR. MILAZZO: So ultimately the big
picture for the neighborhood, so when we look
at the surrounding community on the criteria,

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2 what we can say is the property that's been
3 subdivided had been subdivided. You have a
4 road on the south, a road on the west, you have
5 your lot, and to the left of Wading River Manor
6 Road are two pieces that you may have some
7 interest in farming, and then you have your
8 lots, so that's really the surrounding
9 community?

10 MR. FINK: Correct.

11 MR. AMPER: I also want to make a couple
12 of points. All of the properties south of the
13 proposed property is in the core preservation
14 area. Just to clarify, I don't think she's
15 mistaken, but Ms. Hargrave indicated that the
16 property immediately south of 25 and
17 immediately east of Wading River Road is in
18 EPCAL, which is town-owned property, but it is
19 also in the core preservation area and the only
20 portion of that land.

21 MR. SCHNEIDERMAN: Before you go, maybe
22 it's a question for counsel or -- those other
23 pieces around it, so it sounds like they could
24 potentially come in for the same type of relief
25 to make it all contiguous farmland.

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MR. MILAZZO: I would suspect that we --

MR. SCHNEIDERMAN: You see the separation between there, if that's going to be 100 percent farmed, why wouldn't you take the area in between where these two farms are that the same gentleman is farming and make that part of the farming too?

MR. MILAZZO: What I heard to that question is a relative lives on the southerly portions. The lower southwest quadrant of one is already cleared. That piece is before the county for development right purposes and the applicant indicated he farms that. The southerly piece of that site is owned by a relative and you can imagine, I can't predict what will happen, but -- to connect it all and make one big farm would make sense if you're the farmer.

MR. SCHNEIDERMAN: It would make sense, right? Whoever owns those --

MR. MILAZZO: They would have the same restrictions as the piece that we are talking about.

MR. SCHNEIDERMAN: It would be tough to

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2 make an argument. If they clear the whole
3 thing for farming, why not clear the other ones
4 for farming too? They are right next door.

5 MR. AMPER: Thank you once again, sir.

6 MR. SCHNEIDERMAN: I am not saying --

7 MR. AMPER: I understand, you are saying
8 this has to be taken into consideration and
9 that is all we are trying to get you to do.

10 MR. SCHNEIDERMAN: We have to look much
11 more broadly. It's a good thing, if farming is
12 a good thing and rather than --

13 MR. MILAZZO: That's the policy that you
14 have in front of you and you have to weigh that
15 when you view the criteria of a hardship.
16 Nothing else in that area of New York State,
17 New York State, you have the core part of EPCAL
18 which is core, you have county owned property
19 and you have county owned property. So really,
20 these three pieces -- and I am not quite sure
21 what's going on underneath the piece where the
22 aunt lives -- it looks like you have some sort
23 of subdivision going on here.

24 MR. MILAZZO: That's part of the trailer
25 sales.

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2 MR. SCHNEIDERMAN: If I wanted to make
3 this piece different from all the others, the
4 one thing that it seems is that it was
5 historically farmed.

6 MR. MILAZZO: Were the other two pieces
7 farmed?

8 MR. FINK: Yes.

9 MR. SCHNEIDERMAN: It may distinguish it
10 from the category -- so you might have to then
11 apply it to all of these or whatever it is up
12 there.

13 MR. AMPER: Can we hear from Sarah?

14 MS. HARGRAVE: Counsel, two of the three
15 were farmed.

16 MR. SCHNEIDERMAN: You might be able to
17 distinguish it from other compatible farms.

18 MR. MILAZZO: You wouldn't necessarily be
19 able to distinguish it from other farms. You
20 would be able to distinguish, perhaps, the
21 farms that are now wooded where this piece was
22 historically farmed and that other piece may
23 have never been farmed.

24 MR. McCORMICK: That is clear.

25 MR. WALTER: That shuts down your

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argument.

MR. SCHNEIDERMAN: So then it would help, and that's a tough request to get a sense of how many other pieces, besides these three right here, that were once historically farmed.

MR. AMPER: Thus the concern.

MR. SCHNEIDERMAN: But we can come up with it.

MS. MEEK GALLAGHER: There's not that many parcels that are vacant or wooded that are not already in some kind of public ownership. I think there's a way that we can narrow it down. I have faith.

MR. SCHNEIDERMAN: That would be significant to me. That would reduce the precedented setting value.

MR. AMPER: The only thing I am concerned about.

MR. MILAZZO: I think the applicant can provide the information.

MR. WALTER: Can I ask a question? You've been around the commission a while and farms have come up before, what is the most we've ever allowed cleared in a farm, to your

1 PUBLIC HEARING

2 knowledge, over the period of time of the
3 commission? What's the highest percentage?

4 MS. HARGRAVE: In the compatible growth
5 area. In the south street, I think, I believe
6 I think it was allowed 46 percent, but they
7 were only permitted 35. I think those were the
8 numbers, they were given a waiver to clear in
9 excess of the standard.

10 MR. MILAZZO: That clearing was
11 coterminous with successional growth. It was
12 formerly a farm and they established that this
13 was the limit of our former farm. The species
14 that are on this farm now are invasive,
15 successional, and that's how much it was.

16 MS. MEEK GALLAGHER: So we have previously
17 granted hardship waivers for agricultural
18 purposes in the CGA?

19 MS. HARGRAVE: At least once.

20 MR. SCHNEIDERMAN: Not to this extent?

21 MS. MEEK GALLAGHER: Not to this extent,
22 but at least this wouldn't be the first one.

23 MR. WALTER: We did it based on the limits
24 of farming that they did.

25 MS. HARGRAVE: Historical farming.

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2 MR. WALTER: So if you are following the
3 logic to the end, this would be allowed
4 100 percent, which we would never agree to, but
5 if you follow that we've looked at historical
6 farms, this would be consist with Mets.

7 MR. SCHNEIDERMAN: We have photographic
8 evidence. We have aerials that show the full
9 farming --

10 MR. WALTER: You are losing point now.
11 You realize that.

12 MR. SCHNEIDERMAN: I am not sure I am.

13 MR. AMPER: He is trying to weigh the
14 criteria, you can learn.

15 MS. MEEK GALLAGHER: Thank you, Mr. Amper.

16 MR. SCHNEIDERMAN: We can prove that this
17 was historically farmed. We are not talking
18 about a hundred years ago or 300 years ago.

19 MR. RIGANO: If I may, I would like to go
20 back to the precedential effect. We just heard
21 a case related to farming and we distinguished
22 that case easily based on certain facts. These
23 are very fact-specific criteria and so in the
24 future, when requests are made by anyone, there
25 are facts that have to be considered. This is

1 PUBLIC HEARING

2 not really a legal issue, this is a more
3 factual issue and should be considered on a
4 case by case basis. Here we should be
5 considering solely what is before the
6 commission, not speculate as to what may or may
7 not happen in the future, because what may or
8 may not happen in the future, first off, may or
9 may not happen, but may be relying on
10 completely different facts.

11 MR. MILAZZO: With all do respect, you
12 probably should have disclosed that your client
13 had an interest to the piece directly to the
14 left.

15 MR. SCHNEIDERMAN: It's on the record now.

16 MR. MILAZZO: It is fact specific and I
17 hear your point, but --

18 MR. RIGANO: I completely understand.

19 MR. WALTER: Only one person can talk at a
20 time.

21 MR. SCHNEIDERMAN: In terms of our
22 decision, how relevant it is whether you are
23 farming neighborly farm or not.

24 MR. MILAZZO: I think it just goes to not
25 criticizing, it goes to the surrounding

1 PUBLIC HEARING

2 neighborhood. The criteria includes the impact
3 of the surrounding neighborhood, that the
4 surrounding neighborhood is farmed and by the
5 way, I farmed it.

6 MR. SCHNEIDERMAN: We have too many people
7 talking at one time.

8 (Whereupon, Ms. Fink was sworn in at this
9 time.)

10 MS. FINK: I just want to make note in our
11 letter when we did apply, I did state that our
12 main farm is made up of 40-acre parcels, that
13 is including the ten acres.

14 MR. MILAZZO: I stand corrected. That's
15 just relevant.

16 MS. FINK: I know, but to assume that we
17 didn't put it in there is incorrect.

18 MS. PRUSINOWSKI: So the farmed area to
19 the left, do you farm that as well?

20 MS. FINK: No, that's owned by the county.
21 We wanted to -- I think it's bought with open
22 space money and we wanted to try and rent it,
23 but it seems that you can't do that.

24 MS. PRUSINOWSKI: Why is it all cleared?

25 MS. FINK: It's not cleared. It looks

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MR. SCHNEIDERMAN: It's getting close.

MR. FINK: It's a crapshoot. My life is a
crapshoot. Farming is a crapshoot. I love it.
It runs in my blood, it runs deep in my blood.
I am fifth generation farming and this parcel
would just continue the sixth generation and
the seventh generation. We are very passionate
about this and --

MR. SCHNEIDERMAN: And I understand that
passion, and just like you do your job on the
farm field, we are trying to do our job in
making a decision based on very strict criteria
of when we can say yes and when we can say no.
That is why we are asking all these questions.
There's no way around it. We have to. It's
nothing personal.

MS. FINK: We respect that.

MR. SCHNEIDERMAN: We don't want to run up
your bill either. That's really another
question for John. The fact that we are
looking up a hardship wager and the hardship is
being made by Alessi (phonetic) who has a three
year lease that can be substantiated. Wouldn't
it be more proper to have the owner of the

1 PUBLIC HEARING

2 property making the hardship? Can you have a
3 secondary party or third party in a sense
4 making a hardship claim?

5 MR. MILAZZO: That's a good question.
6 I've noticed in the last several years that it
7 used to be contract vendees and lessees made
8 the applications, but now it's mostly the
9 owners on behalf of the buyer/lessee so the
10 commission is always allowing contract vendees,
11 lessees, their lease is an interest in the
12 property.

13 MR. SCHNEIDERMAN: This gentleman is kind
14 of --

15 MR. MILAZZO: If they do a terrible job.
16 Discount that, the owner is taking the risk
17 because if they do a terrible application and
18 they get denied, denial runs with the land.
19 That has been a shift in government.

20 MR. SCHNEIDERMAN: There's nothing that
21 prohibits us from considering the hardship of
22 the third-party.

23 MS. MEEK GALLAGHER: No, it wouldn't have
24 gotten this far if there was.

25 MR. MILAZZO: It has changed. Most towns

1 PUBLIC HEARING

2 now are saying the owner has to come in.

3 MR. SCHNEIDERMAN: That would have to be
4 the owner.

5 MR. WALTER: The one thing that works here
6 is the covenant. I would require that if you
7 guys didn't farm it that it would go back to
8 the 53 percent clearing limits and you'd have
9 to replant it. That's a covenant we may
10 require. Now say your lawyer did a good job
11 because, honestly, he laid out all the points
12 and I think he did a good job with it and
13 unlike Mr. Amper, I was able to read them and
14 understand them and I think he did a good job
15 and you should commend him for it because he
16 laid out all the points.

17 MS. MEEK GALLAGHER: I don't foresee us
18 needing you to be available at a future
19 meeting.

20 MR. MILAZZO: I think we can close the
21 record and you will have a decision from us
22 before the May 21st deadline.

23 MR. SCHNEIDERMAN: One more question for
24 John. Do we need some proof that they are
25 representing the owner of the property?

1 PUBLIC HEARING

2 MR. MILAZZO: We have the owners's
3 consent. They should supply the lease.

4 MR. SCHNEIDERMAN: At the end of the day,
5 if the owner says I am not going to file a
6 covenant --

7 MR. WALTER: Then it's over.

8 MR. MILAZZO: Typically you'd have to get
9 a building permit. You'd have to tie it.

10 MR. SCHNEIDERMAN: Only the owner can
11 offer that.

12 MR. MILAZZO: We would have to figure out
13 how to do that because typically when the
14 commissioners require a covenant, they have to
15 be filed before you can get further town
16 relief. Here, they don't need anything else
17 from the town.

18 MR. WALTER: We have a tree clearing
19 permit. I stopped on that property when they
20 were first clearing it because I received a
21 complaint on a Sunday for clearing. We do
22 require a permit.

23 MR. MILAZZO: You can say they can't get a
24 tree clearing permit for the rest of the
25 property until the covenant is filed and that

1 PUBLIC HEARING

2 would be the way the C&R is recorded.

3 MS. FINK: Who would file that, the
4 property owner?

5 MR. MILAZZO: I think your attorney would
6 work with you and the owner. It's easy enough.

7 MS. FINK: If approved, you might run
8 something where we -- if we don't farm it
9 forever, or if it ever does go back into
10 something other than farming, only a certain
11 percentage can be used for development or
12 whatever the case is beyond that?

13 MR. SCHNEIDERMAN: I think it would have
14 to be revegetated according to some sort of
15 plan.

16 MS. FINK: My question is: If it is
17 overgrown agriculture, what would you be
18 possibly replanting?

19 MR. McCORMICK: An invasive species.

20 MR. SCHNEIDERMAN: No, I think the
21 condition would probably have to be --

22 MR. FINK: It's probably 40 percent
23 invasive right now.

24 MR. SCHNEIDERMAN: That is something to
25 think about.

PUBLIC HEARING

MS. FINK: If it's abandoned agriculture.

MR. MILAZZO: First off, time out. One person at a time. The commission is not going to negotiate the terms of a covenant for a revegetation requirement now. If the commission is inclined to approve it then those will be the conditions and that's in approval in conditions. That is how the commission would grant an approval. And if they deny it, you don't have to worry. The conditions would apply to the landowner, and if they didn't follow through on those conditions, they would be in default and the commission does prosecute those cases and it gets expensive for people not to follow approvals, so that -- you can't put bamboo up.

MR. FINK: We are trying to do this the correct way.

MS. FINK: We need to know what we are going to go back to the landowner and say.

MR. SCHNEIDERMAN: You might get an approval, you might. I can't say you will, but if you do, you might end up with conditions that you are not willing to accept the

1 PUBLIC HEARING

2 conditions, or the landowner, but --

3 MR. MILAZZO: You control that because you
4 would give us a legal promise in the form of a
5 covenant. If you don't provide that covenant
6 signed, executed and recorded with the county
7 clerk, you can't proceed because you will not
8 get a tree clearing permit. Because the town
9 would --

10 MS. MEEK GALLAGHER: Obviously you are
11 going through all this because you want the
12 hardship waiver and hoping to become the
13 landowner so the notice will be on you
14 eventually.

15 MR. SCHNEIDERMAN: I can't speak on behalf
16 of the commission, but I can't see the
17 requirements that you would have to refill it
18 with mature -- I don't --

19 MS. MEEK GALLAGHER: No, we usually don't
20 get that specific. It would be native
21 vegetation.

22 MR. SCHNEIDERMAN: Something that would
23 eventually grow into an ecosystem that would be
24 expected.

25 MS. MEEK GALLAGHER: Again, your whole

1 PUBLIC HEARING

2 goal is to avoid it and to not do that.

3 MR. FINK: Right. I am trying to be
4 positive. I have to be positive. Now,
5 question for you: Your meeting is May 31st?

6 MS. MEEK GALLAGHER: No, it would be the
7 decision by May 31st, the meeting is May 17th.

8 MR. FINK: So there's no April meeting?

9 MS. MEEK GALLAGHER: There's an April 19th
10 meeting so you could have a decision by then.

11 MR. FINK: The only thing I ask, we are
12 encroaching now -- you know, right now we have
13 spring is -- we have time.

14 MS. MEEK GALLAGHER: Right, it's the
15 growing season.

16 MR. FINK: The more we get into the
17 season, the busier we get so I would ask if
18 possible --

19 MR. SCHNEIDERMAN: Maybe not. It doesn't
20 sound that possible. Even if we do our best
21 job to make an expedite decision.

22 MS. MEEK GALLAGHER: Jay, don't be such a
23 pessimist.

24 MR. SCHNEIDERMAN: It's got to be filed
25 with the Secretary of State.

1 PUBLIC HEARING

2 MR. MILAZZO: It would be our decision,
3 okay?

4 MS. MEEK GALLAGHER: Just our decision is
5 talking about it.

6 MR. SCHNEIDERMAN: Our decision isn't
7 going to let him go out there and clear the
8 fields.

9 MS. MEEK GALLAGHER: Sean's got the tree
10 clearing permit ready in his back pocket.

11 MR. SCHNEIDERMAN: We are in mid March now
12 and planting season is probably in --

13 MR. FINK: We already started.

14 MR. SCHNEIDERMAN: Right. So I think it's
15 an unrealistic expectation if you think you
16 will be farming that acreage this season.

17 MR. WALTER: By the time you file the
18 covenant and everything else, it's going to be
19 very difficult for you to get everything you
20 need and get your tree clearing permit by mid
21 April.

22 MS. MEEK GALLAGHER: That's not our
23 responsibility. Our responsibility is to make
24 a determination. You just want a decision from
25 us, either way, as soon as possible so you

1 PUBLIC HEARING

2 know.

3 MR. SCHNEIDERMAN: That decision, even if
4 you get the decision you are hoping for, I
5 can't guarantee that won't be challenged. That
6 could delay things too. We'll do our best.

7 MR. FINK: Thank you.

8 MS. FINK: Thank you.

9 MR. AMPER: I thought Mr. Rigano did a
10 very good job too --

11 MS. MEEK GALLAGHER: Mr. Rigano, did you
12 hear that?

13 MR. AMPER: -- and that prevented
14 Mr. Walter from having to assist this client
15 and that's a relief to all of us. What I do
16 want to distinguish about is they did make one
17 error and said this is not a legal decision.
18 You bet it is.

19 MS. MEEK GALLAGHER: Any other comments
20 before we close the record on this public
21 hearing?

22 MR. MILAZZO: The hearing is now closed.

23 (Whereupon, this hearing was adjourned at
24 4:28 p.m.)

25

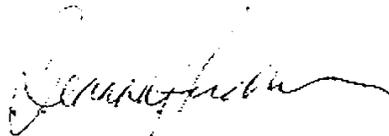
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C E R T I F I C A T E

I, DEANNA HUDSON, 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 15th day of March, 2017.



DEANNA HUDSON

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