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SUFFOLK COUNTY PLANNING COMMISSION

12:00 Noon
October 3, 2007
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, N.Y.

A P P E A R A N C E S

JOHN CARACCIOLO, Chairman

THOMAS MC ADAM

ROBERT BRAUN

CONSTANTINE KONTOKOSTA

CHARLA BOLTON

BARBARA ROBERTS

DANIEL GULIZIO

JENNIFER KOHN

LINDA HOLMES

THOMAS ISLES

JESSE GOODALE

EDWARD J. PRUITT

DAVID CALONE

SARAH LANSDALE

DONALD J. FIORE

ADRIENNE ESPOSITO

ANDREW FRELENG

CLAIRE CHORNY, Clerk

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THE CHAIRMAN: Since we have new minutes being taken, every Commission member and every member of the public that speaks, please identify himself prior to speaking so that we can help our friends down here.

Also if you have a cell phone, please make sure that your cell phone is on silent. I would appreciate that very much.

Every one that is from the public that is going to speak, you have to fill out a blue card. If you did not do that, please do so and make sure that you sign in.

Okay, with all those rules and regulations done, Linda, would you please lead us in the Pledge of Allegiance.

(The Pledge of Allegiance was given.)

THE CHAIRMAN: The first item on the agenda today is the review of the minutes of the August 1st meeting. And I think that everyone got them emailed or hard copy. Did everyone receive them and have the opportunity to review them?

MS. HOLMES: Well luckily I just received mine today. So I haven't had an

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2 opportunity to do all the typos. But it
3 looks good.

4 THE CHAIRMAN: Since you are a resident,
5 would you like us to table this?

6 MS. HOLMES: I did go through it.
7 It looks good.

8 THE CLERK: Excuse me. That's for
9 September. This is the August ones.

10 MS. HOLMES: I didn't get the August
11 ones.

12 THE CLERK: Everybody had them by the
13 last meeting. You got them a day or two
14 before. And you wanted a written copy,
15 a printed copy when everybody had received
16 the email. And I sent you yours. You
17 haven't gotten it yet.

18 MS. HOLMES: I hadn't gotten it. I'm
19 sorry.

20 THE CHAIRMAN: So we'll table it. We
21 have to table the review of the minutes.

22 MS. HOLMES: The September minutes?

23 THE CHAIRMAN: The August 1st minutes.
24 You have the September minutes even though
25 it's not on the agenda. You did review the

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September minutes?

MS. HOLMES: I did a quick review and it looks good.

THE CHAIRMAN: Okay, I'll make a motion to accept. Is that okay with everyone?

MR. CALONE: Second.

THE CHAIRMAN: The next item on the agenda is the public portion. I'll call the first person. You have the opportunity to please come over to the table, sit at the table or stand by the table, identify yourself prior to speaking.

You are going to have three minutes to speak. I'm going to try not to cut you off but if it goes any longer I'll give you the hi sign.

The first speaker is Jennifer Hartdale. You want to speak afterwards.

The next speaker is Albert Leutwyler. Is Albert here?

MR. LEUTWYLER: Yes, I'm here.

MR. KELLY: I think what she was saying is that after you get to him, she will speak after you get to him.

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2 THE CHAIRMAN: He's our first one.

3 Here is the card.

4 MR. LEUTWYLER: Albert Leutwyler.

5 THE CHAIRMAN: But you are not speaking?

6 You are giving your three minutes?

7 MR. LEUTWYLER: No. If it's possible,

8 we'd like to change the order and have our

9 attorney present it.

10 THE CHAIRMAN: The order is not up for

11 discussion.

12 MR. LEUTWYLER: Okay.

13 THE CHAIRMAN: Albert, are you speaking?

14 MR. LEUTWYLER: Yes, I will.

15 THE CHAIRMAN: Please continue.

16 MR. LEUTWYLER: My name is Albert

17 Leutwyler. I am a member of the Eastport

18 Lion's Civic Organization in Eastport.

19 And for the last five years, six years,

20 we have been appealing the Planning Board

21 decision of the Town of Southampton in

22 approving a site plan that in the meantime

23 has been put up and is operational.

24 And we were here at your last meeting

25 presenting our case. And we are here again

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because of the second referral that the applicant's attorney has made to the Commission and that you have agreed to hear.

Primarily the reason that we are here is in a nutshell two issues. One, parking as it relates to the catering hall and its associated facilities such as the restaurant next door as well as the marina next door.

And the other issue that we have is the size of the building.

And our attorney was going to handle the parking. So I'm going to defer that item to him. I will handle the size of the building.

As you remember the last time, one of the reasons that you disapproved the application was because the applicant submitted a size building that was supposedly to be 3,540 square feet.

If you remember, the survey that the applicant also submitted and if you measured the square footage of that building it was, I've got to get my glasses. Give me a second, please. It was over 4,400 square feet. That is counting the first floor and

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the second floor.

In this new submission or survey that you also have in your record, I believe, they are now reducing the second floor space by walling off certain items inside the building and converting it from storage into attic.

What we have also not done in the first application as well as the second application is to include a refrigerator, a walk in refrigerator of considerable size, 180 square feet.

There is an A.C. unit. There is stacking. There are balconies that have not been included at all in the square footage of this building.

I remind you for the first time now in this survey that you have received, there is actually an entrance from the kitchen that was supposedly not to be there into the refrigerator.

This is the first time that you are seeing it on any of the plans, any of the site size plans that you have received that have not shown that entrance at all.

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2 I am only pointing out to make you aware
3 that this clearly is part of the building
4 even though the applicant is saying that it's
5 not and they have not shown it on their site
6 plan.

7 THE CHAIRMAN: Start to wrap it up,
8 sir.

9 MR. LEUTWYLER: Thank you. In addition
10 to that, in this application they are showing
11 interior wall space rather than gross floor
12 area. So that reduces it again by 200 square
13 feet.

14 So if you add up the exterior walls, you
15 add the refrigerator to it. You add the A.C.
16 unit that's there as well and you add up the
17 balconies.

18 You are up to 4,900 square feet. And
19 it's an attempt clearly by the applicant to
20 stay below the 4,000 by saying their current
21 applicant is only 3,980 square feet.

22 THE CHAIRMAN: Thank you, sir.

23 MR. LEUTWYLER: Thank you.

24 THE CHAIRMAN: I appreciate it.

25 Jennifer.

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MS. HARTNAGEL: Jennifer Hartnagel.

I am speaking on behalf of the Group for the East End.

For those of you who are not familiar with the Group of the East End, we are an environmental and education advocacy organization serving over 3,000 members on the east end.

And the Eastport Community falls within our membership. I'm speaking specifically on the HTL application.

The Group has opposed the HTL application since at the Planning Board level. We continue to oppose it at this time.

In general we find that the use is significantly over intensified. We have issues physically with the size of the parking which Mr. Kelly will articulate.

Bottom line, this should never have been approved to the capacity that it was on paper. This is one parking space short of being a type one action under SEQRA.

And the occupancy rating that we find,

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2 of the 100 person occupancy rating, it is
3 considerably unrealistic and this has also
4 SEQRA relations.

5 So again we would ask at this time that
6 you disapprove this application with the
7 hopes that it will go back to the Town
8 Planning Board so that they can attempt to
9 rectify these issues for this community.

10 Thank you.

11 THE CHAIRMAN: Thank you, Jennifer.
12 Laurie Bishom. You are giving your three
13 minutes to Mr. Kelly?

14 MS. BISHOM: Yes.

15 THE CHAIRMAN: Mr. Kelly.

16 MR. KELLY: Christopher Kelly on behalf
17 of Eastport Alliance. Mr. Chairman, members
18 of the Commission, thank you for hearing us
19 today.

20 I know that some of you may remember
21 that we were here in December a year ago over
22 the same application. At that time we made a
23 presentation and this Commission unanimously
24 denied the application.

25 Subsequently the applicant submitted an

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attempt for a re-hearing which was also denied by the Commission for good reason.

And that's contained in the letter of Tom Isles which said that there was no new information. There were no changes, significant changes to the application requiring a re-hearing.

We submit to you today that the same situation applies now as it did when Tom wrote this in February, I believe it was the February 6th letter denying a re-hearing.

There has been no change in the application. This is a facility that has been built. They haven't torn anything down.

They haven't found new land to put parking spaces on. It's the same amount of parking spaces and the same issues that we raised a year ago.

We would ask that the submissions that we made and the record from the last presentation be incorporated by reference into the record here.

You may recall that this is a proposal to construct and it's a proposal, it's more

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2 than a proposal because it's been built, a
3 massive catering hall on 7/10's of an acre
4 where there's insufficient parking, where
5 there's a very large building and the size of
6 it has been in dispute.

7 But it was passed by the Southampton
8 Planning Board by a very narrow four to three
9 vote in the spring of 2002.

10 We litigated that approval. We got the
11 Appellate Division to nullify those approvals
12 based on the failure to refer to this
13 Commission.

14 I have submitted a letter today or
15 actually faxed it over to Andrew Freleng
16 yesterday. I've got copies for anybody that
17 would like a copy of it.

18 It's got several exhibits with it that
19 are important. Do people have this
20 submission?

21 MS. ROBERTS: Yes, we have it.

22 MR. BRAUN: It's yesterday's date,
23 Chris?

24 MR. KELLY: Yes. If you need extra
25 copies we have that here. So what's

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happened, the procedural history here is as a result of your denial it went back to the Planning Board.

The applicant I think at that time realized that he didn't have the votes on the Planning Board to override your denial. That's because there was only a four to three vote to begin with.

Subsequently the applicant withdrew his application and now submits a "new application". The question is whether it's really new at all or whether we should even be here wasting your time today.

We also currently have two Article 78's pending Health Department approval of this project. And I know that some of you may not be aware but the applicant has sued this Commission over its denial in December.

MS. ESPOSITO: We are aware.

MR. KELLY: Now what we are here to talk about is something that goes beyond just parking. Parking in and of itself may or may not be deemed a significant issue.

But parking has two significant limiting

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2 factors on this application. One, and in all
3 commercial applications the amount of parking
4 that you have to provide just like setbacks
5 and so forth is a limitation on the intensity
6 with which you can develop a lot. We all
7 understand that.

8 So whether or not the correct parking
9 was provided here is important as to the
10 intensity of use allowed.

11 The second significant thing about the
12 parking in this particular application, and
13 because of a quirk in the Southampton Town
14 Code that has been partially amended, is that
15 when you have the magic number of parking
16 spaces, only 49 or under, you qualify for
17 what is being a type two action. At least
18 you did at the time that this was submitted.

19 And what that means is SEQRA review.
20 Environmental review is essentially waived.

21 Alternatively, if you are 50 parking
22 spaces or above, you are a type one action
23 which in all instances requires the
24 preparation of a Draft Environmental Impact
25 Statement.

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So the peculiar situation here is where the applicant has tried desperately to minimize the amount of required parking so as to avoid any sort of environmental review.

And the outcome of this whole process is that we end up with no environmental review and insufficient parking on this property. We will go through that in a second as to how the parking was insufficient.

What happened at the Planning Board level is that the applicant came in with the project and the Fire Marshal determined that the capacity of the building was 152 patrons.

The planning staff did its analysis of how many employees would be required for a catering hall of this magnitude and determined that there would be employees required of 19 to 32.

When you figure out the parking which is under the Southampton Town Code, you are required to have one space for every three patrons and another space for every employee at peak hours.

They came to the conclusion that and

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advised the Planning Board that somewhere between 70 and 83 spots would be required to accommodate this building.

Unfortunately there was only room on the site for 38. What the applicant and the Planning Board seemed to work out on this was that well we'll put a limitation on the capacity of the building.

We will put up a sign that says there's only 119 patrons allowed. And they will covenant to that.

Therefore, whatever amount that you have, technically you are only allowed 119. And we will pretend that you only need nine employees even though our research showed that you needed somewhere between two and four times that.

And you are representing to us that you are not going to have a kitchen which I guess takes away some of the need for cook staff.

Well lo and behold, we had this great bait and switch, the Trojan horse. When the application was finally approved there was a kitchen. It was limited to 119 patrons and

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nine employees.

And they purported to grant approval for a 3,500 square foot building. Well as were here before and presented to you and as you found, the building is closer to 5,000 square feet.

So what happens again to reiterate the point. We have too little parking and no SEQRA review.

Now how did the parking get to be approved by the Planning Board? Well the Planning Board allowed for the first time in history as far as we can recall, it allowed a commercial project to have off site parking to qualify for its required on site parking.

And it did that, I just want to remind the Board, you may not remember the details, we are on a peninsula in Eastport going to Seatuck Cove.

At the end of the peninsula, roughly at the end is the Trumpets Restaurant owned by and operated by a related owner, related entity.

The catering hall is immediately north

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of that property. Immediately north of the catering hall is a marina also owned by a related entity.

They said that whatever parking, the applicant said, whatever parking we can't provide on the site we will get the permission of the marina to provide us with.

THE CHAIRMAN: You've only got about thirty seconds left.

MR. KELLY: I got somebody else that is going to donate the time.

THE CHAIRMAN: One donation.

MR. KELLY: All right.

THE CHAIRMAN: So if you would wrap it up, Mr. Kelly.

MR. KELLY: Real quickly. There's a chart in your packet. I'd like to refer to that quickly. We've got a board here.

There is insufficient parking on the site. And the reason being, on the marina site, the marina site using the Town's requirement that this 81.5 spots per slip at the marina, I'll pass this around, this is a section of the code that requires that. It's

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highlighted there.

Based on that, the marina which is 72 slips requires 108 spots of its own.

Based on the applicant's own note on its parking plan, an additional twenty is required for a retail store and two more for employees for a total of 130 spots required on the marina site.

The marina site only has 101 spots. And the 101 spots by the way includes a grassed area where there really are no spots. It's a lawn.

And you can see it on the aerial photograph in your own file. You can see it on these telephotographs.

THE CHAIRMAN: All right, Mr. Kelly, I'm going to ask you to finish it up.

MR. KELLY: Okay. This lawn is what they call parking spaces and they are using that. Again I'm synopsisizing here because I'm running out of time.

Even if you use the applicant's proposal of .5 spaces, you still come up with a parking deficit of 33.

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2 One other factor in here. There's more
3 over parking that is required from the marina
4 restaurants. You see in your packet that
5 there's a letter from Mrs. Sphere offering
6 that to the Building Inspector.

7 So you've got 29 parking spaces from the
8 restaurant. You've got another nine to
9 eleven coming from the catering hall. And
10 you've got all these spaces no matter how you
11 figure it out.

12 At the marina that takes up that space.
13 And you don't get the advantage of using the
14 grassed area because as the Town provision
15 circulating says, all parking spaces have to
16 be improved to Town specifications and
17 parking spaces can't be used for storage.

18 THE CHAIRMAN: Thank you, Counsel.

19 MR. KELLY: Thank you. I'll be happy
20 to answer any questions. I appreciate this
21 opportunity to come before you.

22 THE CHAIRMAN: Mr. Wagner.

23 MR. WAGNER: John Wagner. I'd like
24 to yield my time.

25 THE CHAIRMAN: You're yielding your

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time to?

MR. WAGNER: Mr. Walsh.

THE CHAIRMAN: Mr. Walsh.

MR. WALSH: Good afternoon,
Mr. Chairman. Michael Walsh, attorney at
law, 860 Montauk Highway, Watermill, New
York. I represent the applicant HTL Trumpets
Catering.

Good afternoon, Mr. Chairman, members
of the Commission. I didn't have an
opportunity to come last time. We didn't
know about the meeting.

And you got a somewhat one sided
presentation which I think was repeated today
quite frankly.

I reviewed this morning your minutes of
December 6th and your disapproval letter of
December 6th.

And upon reviewing that, I saw that
there were three and only three bases by
which you do need this application.

One, you found that the size of the
building was larger than represented on the
site plan. I brought with me today the site

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2 plan that was submitted to you and which was
3 approved by the Planning Board of the Town of
4 Southampton.

5 I want to eliminate on inaccuracy. I
6 think it's a gross inaccuracy.

7 The square footage that was being spoken
8 of at the last hearing was the square footage
9 of the footprint of the building which, on
10 the approved plan, was in fact 3,496 square
11 feet or 3,500 square feet, a round number.

12 So when Mr. Kelly tells you and he is
13 for the people telling you that this building
14 was supposed to be 3,500 square feet. That
15 is absolutely incorrect.

16 Nowhere was it represented that this
17 building was to be 3,500 square feet. It was
18 larger and it is larger today than 3,500
19 square feet.

20 That referred to the footprint of the
21 building. Let's eliminate that inaccuracy.

22 How about the building?

23 I have the engineer Jeff Vollmuth here
24 with me today. He drafted the plan. He's
25 the engineer on the plan. He stamped the

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plan.

The building as proposed today is less than 4,000 square feet. Mr. Vollmuth can speak to that. He's a professional. He can walk through the numbers.

So insofar as your disapproval was based on the fact that the building was larger than 4,000 square feet, that is an incorrect finding, number one.

Number two, the parking requirement. The parking requirement, Mr. Kelly mentioned that the planning staff made findings.

I have submitted the planning staff's report to you upon which the Planning Board's approval is based. While he was speaking, Mr. Kelly, I looked at the Planning Board report. It's part of the submission that I made. It's dated May 23rd, okay.

MR. ISLES: You are referring to the Town Planning Board?

MR. WALSH: That's correct.

MR. KELLY: Which one is that?

THE CHAIRMAN: Sir, please.

MR. WALSH: Yes, it's not the prior one.

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Why is that?

THE CHAIRMAN: Just address us, please.

MR. WALSH: Planning staff reports are amended. It's inaccurate or misleading to go back to an initial draft of the plan and bring that information to the Commission and tell you that somehow a prior draft of the plan became part of the plan. That's incorrect.

I'm looking at the report. The report states in no uncertain terms the number of parking spaces required, 49. Not 60, not 70, not 80 but 49.

The occupancy the report states and the approval states is 119 patrons plus nine employees. Not 30 employees, not 40 employees.

Why was that done? For obvious reasons. I think that Mr. Kelly alluded to them. The occupancy was reduced so that the parking could be reduced.

Because if we increase the occupancy or increase the parking, you couldn't have obtained an approval for this building on

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this site. That's why it is done before the Planning Board.

I was counsel to the Planning Board for several years. I know this. I think that Mr. Kelly knows it as well.

Finally there was another inaccuracy brought to your Commission that this property needed variances. Completely, utterly inaccurate, false, misleading.

The submission that we made included when we first made it and it includes again the Town Attorney Kearon Payne, Building Inspector Arthur Gearhouser. Both put memos in the file. No variance is required.

It's an under sized lot. It's a single and separate lot. It's grandfathered for the purposes of zoning.

Another very important point. This is an RWB resort order from the business district in the Town of Southampton. It has been so since 1972, ladies and gentlemen.

What does that tell us? The Town zoned this property for resort waterfront business. There's a restaurant adjacent to the site.

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This is a catering hall. And 80 to 90 percent of the affairs that take place in this building are weddings.

Why is that important? It's not a legal point. Okay? But it's a planning point.

This is the only wedding hall in the Town of Southampton as we stand here today. There are no wedding halls.

This is a place where weddings take place. This is not this catering hall. This is not a bar or a saloon that's open until 2 o'clock in the morning that's overflowing with patrons. This has become a very important facility.

On a personal note I was there in August of last year for a wedding. We came from Watermill. I live in Watermill. My neighbors had a wedding there. This has become an important facility.

One thing that I haven't heard here today and I didn't see it in the minutes was the one jurisdictional hook that this Board has is are these facilities interfering with access to County waters.

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2 There's a Trumpets marina, there's a
3 Trumpets ramp at the end of South Bay Avenue.

4 There has been not one scintilla of evidence
5 put before your Board to show you that
6 somehow the parking from the catering
7 facility is overflowing onto the street.

8 We have never had a complaint. We've
9 been operating for three years. We have
10 never had a complaint. Never had a parking
11 ticket.

12 This facility is the most well managed
13 facility in the township when it comes to
14 control of parking, control of patrons.

15 This is not a saloon or a restaurant.
16 This is a wedding hall. People that come to
17 weddings in an afternoon or an evening are
18 very buttoned down, very controlled
19 environment.

20 The presentation that has been given
21 quite frankly, December 6, '06, that was the
22 basis of your approval and today is
23 misleading.

24 You must look at the approval. I
25 implore you to look at the minutes, look at

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2 the approval and look at this planning staff
3 report.

4 And Mr. Wilcox is here today from the
5 township. He wrote it. It's important that
6 you stick with the facts.

7 THE CHAIRMAN: Would you wrap it up,
8 Counsel.

9 MR. WALSH: Let us not proceed based on
10 hypotheticals or things that may occur and
11 numbers that are being pulled out of the air.

12 I have made a submission to you. I
13 respectfully request that you look at it. I
14 think that when you do, you will approve this
15 application or at a minimum make it a matter
16 for local determination.

17 THE CHAIRMAN: Thank you, Counsel.

18 MR. KELLY: Rebuttal, Mr. Chairman?

19 THE CHAIRMAN: No, sir. Diane DeLucia.

20 MS. DELUCIA: Thank you all for having
21 us here again. I wanted to respond to the
22 comments that were just made.

23 And my main concern was that we are not
24 here to make up stories or make up numbers.

25 And from what we understand, the SEQRA

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2 regulation where it becomes a type one or a
3 type two action talks about a 4,000 square
4 foot structure.

5 It doesn't say interior usable space or
6 not including closets or storage space or
7 other types of rooms and walls.

8 So we have consulted with architects.
9 And the building as it stands is almost 5,000
10 square feet. So I beg to differ.

11 The presentation that they give you or
12 they have given you is only measuring spaces
13 that they have chosen to use as usable space.

14 And the second floor that had never been
15 described before, they have now taken half of
16 that floor and call it storage and lowered
17 the ceiling to seven foot four. So they are
18 claiming that is no longer usable space.

19 However, the definition is square
20 footage, not usable space.

21 I also wanted to make a comment about
22 the parking. Yes, we never argued that they
23 were allowed to have 49 spaces.

24 We are arguing the fact that they only
25 have space for 38 and that they have nine at

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the marina that doesn't have the space to give away. You can't double dip.

The restaurant has already given or taken nine spaces from the marina that they don't have.

And now the catering hall has also been given nine spaces from the marina that they don't have to give which I think Mr. Kelly's chart very clearly represents. Thank you.

THE CHAIRMAN: Thank you for taking the time. Mr. Adams, Douglas Adams.

MR. ADAMS: My name is Douglas Adams. I plan to give my time to Christopher Kelly.

THE CHAIRMAN: Christopher Kelly is done. He had three minutes already but he used six minutes which is the total amount that he can use.

MR. ADAMS: I'll give it to Andrea.

MS. SPILKA: Andrea Spilka. I'm next?

THE CHAIRMAN: Yes. You got his time.

MS. SPILKA: I was signed up at the end. Is there a chance that I could speak

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then instead?

THE CHAIRMAN: I'm sorry.

MS. SPILKA: I was the last speaker to sign up. Is there a chance that I can speak at the end?

THE CHAIRMAN: No, this is your time now, Andrea.

MS. SPILKA: For all six minutes?

THE CHAIRMAN: You got six.

MS. SPILKA: Thank you first of all for having me here. I am an advisor to the Speonk-Remsonburg Civic Association which is one of the community associations in the area.

I also sit in with the CAC which is the Town sponsored civic organization for the area of Westhampton to Eastport.

I think that what I am looking for today and I think many of us here from the community and those who couldn't be here, most of them are working, I'm looking for you to help us with oversight on projects in general to make sure that the right things are done. And certainly in this particular

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situation.

This has gone back and forth several times. We really applauded the fact that you sent it back and said no, sent it back to the Town and said no.

That there were real questions in this area, look at this again, you know, redo this.

I am not sure that that's happened. I don't know that it's been redone. It doesn't sound that way.

We think that in general you are sort of our court of last resort. Too often, you know, we sit and I know Dave knows but we speak often at Town Board meetings.

In this particular case it's unfortunate that the homeowners in the area had to go out and spend their money, raise money to file an Article 78 against this project.

We do want a catering hall in the area. We understood the issue of what was going to be there. It's a question of how it was done.

We knew that it was zoned at waterfront

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2 business. We accepted that. But we are
3 looking first for the Town and then for the
4 County to turn around and make sure that our
5 interests are taken into consideration and
6 the foremost issue in terms of what will
7 happen in that space.

8 And here is a situation where they have
9 filed the Article 78. They turned around and
10 I think demonstrated that what was built
11 there was not what was originally approved by
12 the Planning Board.

13 And as I think we all know, the Planning
14 Board, the Town can't be everywhere. We
15 identified it. We called it to everyone's
16 attention.

17 Now what we are looking for is some real
18 change in what is going on over there. In my
19 mind and again I'm not an expert as these
20 people are. But my feeling is always that
21 SEQRA needs to be done. You know, you should
22 give it a positive declaration if worst comes
23 to worst.

24 I am not sure what your options are
25 here. But certainly it should not be able to

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go ahead as it exists currently.

It does not conform to what should have been there. And I think that again we have all gone through the process.

I would hate to think that at the end of the day the interests of the community were not being taken into consideration.

The last thing that I am looking to say is that I think it's important too that it sets a precedent.

Too often we are fighting the developers constantly. They have more money. They have more time. They have more staff.

I mean, I'm one representing tons of people in the area, none of whom accept Sue who could probably come today who wasn't directly involved in this.

The reality is that we need the developers to understand that there is someone looking over their shoulder. That if the Town doesn't have enough time or whatever to do the oversight all the time that there is another step.

That there is something else that can be

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done so that it's going to be, you know what, it's built, it's done and now, you know, you guys have to live with it and live with the ramifications of what is there.

To the extent that you can work out something that will meet the community's needs and at the same time not impact as negatively as this is doing right now on the community, I think that would be in the interests of everyone. Thank you.

THE CHAIRMAN: Thank you, Andrea. I appreciate your coming down. Jeff.

MR. VOLLMUTH: Jeff Vollmuth. I am the project engineer and planner for Trumpets catering. I'm just going to respond to a few of the comments that were brought up.

One is with respect to parking. It all relates to occupancy when it comes to the Town of Southampton code.

The occupancy on this building is rated at 119 catering guests and nine employees. That's limited by covenant with the Town of Southampton on the property, by the Health Department approval for 119 seats on this

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property.

We couldn't get a bigger facility to go over 119 because we were bound by Article VI which limited us to the pre-existing flow on the site.

So there was already buildings on the site. Our flow is less than the existing flow. That's why there's 119 seats.

There is no magic. Did it end up adding up to 49 parking spaces? Yes, it added up to 49 parking spaces.

The employee issue that was discussed at length during the Planning Board meeting, it started off at much higher. It ended up being accepted based on evidence that was submitted at nine employees.

Parking. I submitted a detailed parking map showing how there are 39 spaces on site.

There are ten required off site. That's consistent with the Town of Southampton parking computation.

It's not 1.5 per slip. It's .5 per slip under the Town's own regulation.

If you do the count, it adds up that 36

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spaces would be required for 72 slips.
Anybody on this Board that goes to a marina
knows that everybody doesn't use their boat
on the same day. It doesn't happen.

Now 11 spaces are required for the
marina retail business. It's a 2,000 square
foot building. It's one to 180.

Two spaces are required for employees at
the marina. There are only two employees at
the marina.

Now 13 spaces have been set aside for
Trumpets. There were 13 spaces set aside for
Trumpets on that plan because ten is the
minimum requirement and there is a provision
in the approved site plan to provide an
interconnection between the two parking lots
if the Planning Board requires it.

If we provide an interconnection between
the two parking lots, we lose three spaces on
the Trumpets property. That's why there are
13 spaces on the adjacent.

It's consistent with the Town code to
allow spaces on an adjacent parcel as long as
there is an easement created that formalizes

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those spaces.

There is an easement filed recording 13 spaces with the metes and bounds on that marina property.

There can't be a change in use on the marina property that would eliminate that 13 spaces. No matter what happens with that property, long term, those spaces have to be provided.

Based on the prior record there was concern that the parking requirement from the marina at .5 per slip wasn't sufficient.

If there are 101 spaces at the marina and there are only 62 required by count by their own calculations, if every boat owner showed up at the same time in their own car for 72 slips and parked, there would still be sufficient spaces at that marina.

There has been an argument presented that we are parking on the grass. Well the marina is set up so that you park your front wheels on the grass.

Could the Town require us to put gravel there? Of course they could. But they

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didn't. They didn't think that it was necessary.

Floor area. There has been a lot of talk about floor area in the records. Resort waterfront business is limited to coverage, not to gross floor area.

On a catering facility gross floor area has nothing to do with the use. It's the number of seats.

When we presented the case to the Board the first time it was approved, we were showing first the footprint. The record for that approval shows a two story building the same size that was constructed here.

There was no subterfuge on the part of this owner trying to slip in extra square footage. The revised application now shows a reduction from what was built to under 4,000 square feet. We heard a lot of testimony about why that's happening.

THE CHAIRMAN: Start to wrap it up, sir.

MR. VOLLMUTH: Okay. The reason why I presented paperwork to you that shows you the

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exact dimensions inside the building, we have confirmed that with the upstate SEQRA office in terms of definition of gross floor area.

I have confirmed it with the Building Inspector for the Town of Southampton. What I am showing on that submission is in compliance with both upstate SEQRA office and the local Town Building Inspector. That's all I have to say.

THE CHAIRMAN: Thank you, sir. Helen Kealon.

MS. KEALON: Helen Kealon. Can I defer my time to Jeff?

THE CHAIRMAN: Sure. Jeff, you have another three minutes.

MR. VOLLMUTH: My name is Jeff Vollmuth again, I'm sorry. As has been said before, the Trumpets' facility is already constructed. We have something that this Board probably has never seen before. And I don't know if you will ever see it again. That you actually have a facility that you can go out and look at.

This facility is under 4,000 square feet

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on just under an acre. If you drive up and down this street, you will see space. You will see occupied residential properties with more than 4,000 square feet of gross square footage.

It's not as if there is too much bulk on this property. The building is between a marina and an existing restaurant.

And it's not set up so that the presence on the street is so much that you would have a problem in terms of view.

In terms of the impact of the restaurant and additional spaces, the Trumpets' facility has been in operation since December 2004.

There had been no reported or documented instances where the Trumpets catering parking has been insufficient or impacted surrounding streets.

Observations of parking in the marina during high use periods during the summer months, during the weekend after July 4th which for this marina for some reason happens to be a heavy use period, indicates that there is more than enough spaces to

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accommodate what is out there.

To suggest that we are causing an interference with the ability to get to the end of the street where the Town launch ramp is is disingenuous. We are not affecting them.

What affects that is people using the ramp and parking on the street. It has nothing to do with us. That's all I've got to say.

THE CHAIRMAN: Thank you, sir. Lance Keelan.

MR. KEELAN: Lance Keelan. I think everything has been covered in pretty much detail. We are not trying to nor have we tried, I represent the applicant by the way, to deceive anybody.

We have never considered a variance, asked for a variance or were required to have a variance. We have been operating for three years.

There was some opposition to this project before we got started where it was much more a theatrical operation.

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And as Jeff said, there have not been any issues presented or any issues documented or evidence provided.

THE CHAIRMAN: Thank you, sir. Susan Edmonson.

MS. EDMONSON: Susan Edmonson. I'm a neighbor. I live one block east of Trumpets.

And I was asked as a neighbor to write my experiences of Trumpets. And I would just like to read my letter into the minutes.

THE CHAIRMAN: Sure.

MS. EDMONSON: I will do my best to explain the negative impact that Trumpets catering facilities have had on my family and the neighbors.

My family lives one block east of South Bay Avenue. Especially during the summer months Trumpets facilities gets louder and more lit up.

The light pollution is so severe in my home. We no longer have a southwesterly sky. There is an illumination that lights up the

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trees every evening.

Noise pollution is another problem. The constant redundant repetitive ongoing of wedding songs has made me extremely frustrated since I can hear it from my own backyard.

Another negative impact is our beautiful beach right of way. It is located at the end of Lyler and Seta in Remsonburg. It is directly across from Trumpets.

This beautiful piece of beach that we all share is dramatically different. From a quiet lazy day at the beach of book reading and playing in the water with my four and seven year old boys to an uninhabitable right of way simply because of the redundant, repetitive, recurring, ongoing noise created by Trumpets almost every weekend. It's a lot.

If there are any other businesses on the creek, I am currently unaware because of the respect given to the surrounding homes.

Trumpets is not fair and not welcomed on this scale. I will say that I loved your

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2 restaurant when it first started. It's a
3 great restaurant.

4 As the Board I am hoping that you hear
5 me as a mom. That's all I have to say.
6 Thank you.

7 THE CHAIRMAN: Thank you for coming
8 down, Susan.

9 MS. EDMONSON: Do I submit this to
10 anybody?

11 THE CHAIRMAN: You can submit it.

12 THE CLERK: Thank you.

13 THE CHAIRMAN: Pete Danowski.

14 MR. DANOWSKI: Pete Danowski.

15 THE CHAIRMAN: You are an attorney?

16 MR. DANOWSKI: Yes. I am a poor
17 country lawyer. I grew up in Riverhead on
18 the main road in Aquebogue similar to
19 Mr. Goodale.

20 This house which exists as a historic
21 structure in the Town of Riverhead is now
22 owned by Terry Girls Realty.

23 I expected to not even come here today.

24 This is not similar to the other application.

25 THE CHAIRMAN: What application are

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you speaking of?

MR. DANOWSKI: Terry Girls Realty.

I think that I put it on the application.

When I signed it, I think that I put it on the signature list as Terry Girls Realty.

THE CHAIRMAN: Go ahead. Your three minutes will start now.

MR. DANOWSKI: Good. In line as I expected that you would send this back to the Town Board of Zoning Appeals as a matter for local determination.

However, I wanted to cover my bases by appearing before you in case there were some open questions that might arise.

This is a piece of property in which the Town and the County have an interest to purchase development rights over the rear portion to preserve agricultural land.

We in fact, the Terry family, have accepted an offer subject to the Zoning Board of Appeals variance application being granted.

We have an existing historical two family house, rather small structure, in the

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front along the main road. You have this referral because the main road is New York State Route 25.

We are hoping to get on the Town's designated historical structure list. We have no intention of developing the front portion of this parcel for commercial purposes.

We want it to be a residential area only. And yet the Town put us in a business zone in the recent rezoning.

However, even the Town planner who I have taken to the site appreciates the discussion that I will have now with you and ultimately with the Zoning Board of Appeals.

We would like to keep the farm land open vistas in the back by selling the rights.

The local farming family, the McKay family, have been farming it as tenants. They will continue to farm it as tenants.

All we are looking to do is to accomplish the erection of a new residential structure within an approximate two and-a-half acre in an area that won't be out in the

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middle of the open farmland. It will actually be bordered on two sides by the existing hedge rose.

What is unique about the application family wise is that we have one child. He is developmentally challenged.

We would like him to be placed eventually in an independent setting in that front house in half of that house which is a two family.

The other half of the house is owned by another part of the Terry family. But we also would like to be very close location wise with our main new residential structure.

So what we are saying to you is the Zoning Board of Appeals now has an application before it to consider allowing us to take a new single family home and, instead of throwing it out in the middle of the farm field, bringing it back closer to the main road.

What we will need is a variance from the Zoning Board. I would expect that they are the ones that would be most interested and

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have the ability to consider all the facts
and grant the necessary variances.

Should that be granted, we will move on
for the sale and the closing and the sale of
development rights.

That being said, I understand the
arguments technically that will come up on
every application. The zoning is here. Here
is what the comprehensive plan said.

But there are unique situations that
come along. This is one of those unique
situations. We don't want to knock down the
historic group building.

In fact, we have just re-shingled it and
it looks beautiful. We have got an old
windmill structure in the back.

Believe it or not, we have to go for a
variance as to the sail that floats. Because
when the sail comes around the windmill at
one point at the apex, it's more than 35 feet
in height.

Therefore, we need a height variance
for the sail. Even Mr. Hanley didn't
understand that that would be needed but in

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fact the Building Department says that it is.
That is it.

I would just love to keep the building
looking the way it is. I'd love to have the
extra structure especially because of our
child.

We would love to close with the County
on the sale of development rights. It makes
sense to develop it where it is because of
the unique structures that are there today.
That's it.

THE CHAIRMAN: Thank you, Counsel. I
appreciate it. If there was no one else left
to speak.

MS. EDMONSON: Can I just add something?

THE CHAIRMAN: I'm sorry. Your time was
up. The public portion is closed.

MS. EDMONSON: There was an error.

THE CHAIRMAN: I'm sorry.

MS. EDMONSON: Okay.

THE CHAIRMAN: On to the Director's
Report.

MR. ISLES: I'll keep it very brief.
A couple of very quick items. That was have

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scheduled the next Suffolk County Training Federation meeting the end of this month on October 25th. You should receive a copy of the brochure. If you didn't, we have extra copies available today.

We have nine courses being offered and they do qualify for training credits. They are now required for Planning Commission members.

Secondly, to bring to your attention, I did discuss at the last meeting some issues with the budget that the operating budget for the Department was being submitted to the Commission.

I am happy to report that the budget has been issued by the County Executive for consideration by the legislature for the entire County.

We had three positions that were critical to this Department that are in the County Executive's budget. So we are pleased with that.

Also I would like to point out that we were able to get a new staff member and I'll

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2 introduce her today who started on Monday
3 with us, Alicia Driscoll back there. And
4 starting as an economist who will be helping
5 us with new assignments and general planning
6 functions as well. So some good news on that
7 point.

8 The last point today is that we do track
9 building permits in the County. There was an
10 article in Newsday about that a little bit, a
11 couple of pages.

12 Now Peter Lambert who reviews that
13 information and keep tabs on it, just to give
14 two minutes of an overview of the findings on
15 his research.

16 MR. LAMBERT: Peter Lambert. You should
17 have a table in front of you with numbers on
18 it. I wanted to go over a couple of
19 highlights on the map.

20 THE CHAIRMAN: You've got a lot of
21 tables.

22 MR. LAMBERT: It's titled New
23 Residential Housing Units. It's on the
24 bottom I guess.

25 This table shows by County including

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Nassau County the trend of the number of building permits, the number of housing units offered by building permits each year and each town going back to 1990 and through the first half of 2007.

The main point of this, and this was also covered and highlighted in the Newsday article, was the dramatic decline in the number of units permitted in Suffolk County.

In 2006 the number was 2,500. It was about half the number in 2005.

The main reason for the decline is in the Town of Brookhaven which for the first time in many years was under 900 units. And you can see on the other side of the sheet that the trend continues --

MR. ISLES: Turn the sheet over.

MR. LAMBERT: Yes. For the first half of 2007 the number of permits in Brookhaven was only 251. Through the past few decades we've had a number of new housing units --

MR. CALONE: Peter, in the Newsday article the supervisor is quoted as saying that it's a one time thing because of some

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moratoriums. What's your read on that?

MR. LAMBERT: There have been moratoriums going on and off for the past several years. So it doesn't seem to be the primary reason.

I think that is a part of it for the past few years why Brookhaven has been down. For example, in 2003 the number was pretty low. It's lower than ever this year. It's just the trend that we are keeping our eyes on.

MS. ESPOSITO: Even Islip has it.

MR. LAMBERT: That too is down 59 percent. So that's just a brief summary.

THE CHAIRMAN: Thank you, Peter.

MS. ROBERTS: Shall we assume that all our Zoning Board members of our local towns really get it?

MR. ISLES: Let me just turn to Andy for that for a second.

MR. FRELENG: Yes.

MR. ISLES: This brochure, that goes to all town municipal planning boards, zoning boards, town boards?

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2 MR. FRELENG: Yes. We have a mailing
3 list of over 800 people and that includes
4 board members and chairs.

5 MR. ISLES: If there is anyone or
6 any group that we didn't hit, we would be
7 happy to send it out electronically or in
8 paper form.

9 MR. CALONE: I have a question on that
10 just to follow up on Peter's work. Tom,
11 you were quoted in the article as saying
12 a significant drop. Last year and this year
13 a steep drop. This is a concern that you
14 guys have? Something should be done about
15 it?

16 MR. ISLES: It's an observation. It's
17 a historic point in terms of we've had the
18 lowest really that it's been since World
19 War II essentially looking at the numbers
20 across the board.

21 In terms of a concern, well certainly
22 it's not a surprise in terms of the slow
23 down in the real estate economy in the
24 market, the issues with the mortgage market.

25 So I think that it's an observation in

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2 terms of what's happening. I wouldn't call
3 it a concern at this point other than to
4 understand that it's part of a national
5 economy as well as a specific real estate
6 economy.

7 I think that we are going to be
8 interested in just how long this goes on for.
9 It certainly does affect the construction
10 industry which is an equipment industry.

11 But at this point it's more of a watch
12 and what's happening with this. And I think
13 that in particular we are looking at the
14 distribution, it was noted in there and I
15 think that it's true in terms of apartment
16 development at this time.

17 I think that it was true also in
18 Smithtown where modest sized houses have been
19 spiking up and so forth.

20 I think it's also the function of, in
21 addition to the national issues which are the
22 biggest issues but also the fact that we are
23 achieving maturity as a suburban community.

24 We just passed the one and-a-half
25 million persons mark. The estimates that we

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2 have for Peter and Roy is that we
3 potentially get another 250,000 or so based
4 on current zoning within the community in
5 Suffolk County.

6 So we are getting more to the steady
7 State point. I think that it's a reflection
8 of that as well.

9 And here again we often talk about
10 what's the build out of Suffolk County. When
11 is it going to come? What is our remaining
12 open space and how quickly do we need to move
13 and so forth?

14 To some extent it's looking into a
15 crystal ball and it's trying to estimate
16 that. But these things are never straight
17 lined. And it's part of a cycle.

18 How long this cycle lasts, and Peter and
19 I have talked about how in the late '80s or
20 the '90s that wasn't on for quite a while in
21 terms of the real estate crisis being
22 affected before they start coming back.

23 So I guess in answer to your question
24 the National Economy, the mortgage industry,
25 the maturity of Suffolk County, it does

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2 provide opportunities in terms of perhaps
3 some of this final land acquisition and so
4 forth.

5 But I do expect that it will turn
6 around. And we still have here again another
7 quarter of a million, pardon me, 250,000
8 residents that are still possible under
9 current zoning and land development,
10 especially in Brookhaven, Central Suffolk
11 County. Eastern Suffolk there's still a fair
12 amount out there.

13 And the other dimension that's highly
14 significant I think is the redevelopment in
15 western Suffolk. One of the surprises that
16 happened in the Islip numbers, for example,
17 Islip was covered, around 300,000 people for
18 a long time.

19 I was personally surprised to see in the
20 2000 census that there were 325. And I think
21 that a lot of that was due to a lot of
22 redevelopment property, of conversion of
23 commercially zoned vacant as well as
24 developed properties to residential.

25 We are receiving applications such as

1
2 Pilgrim State Hospital 9,000 residential
3 units, upwards of 20,000 to 27,000 residents
4 and so forth. So there's a good aspect of
5 that.

6 But in terms of the regeneration of
7 sites, the rebirth of sites and so forth, the
8 regeneration of communities in many cases,
9 downtown Bayshore has seen a revitalization,
10 part of which is hinged upon residential
11 development.

12 But I think also that here again it just
13 becomes another growth of the central of
14 population. It's a little harder to measure
15 as opposed to vacant zoned land and so forth.

16 But I think that as we go on with our
17 development cycle that that's going to be a
18 more significant factor.

19 MR. CALONE: Thank you.

20 THE CHAIRMAN: Are you done?

21 MR. ISLES: Yes.

22 THE CHAIRMAN: We'll have an update
23 on your survey.

24 MR. FEDELEM: Roy Fedelem. Talking
25 about population, the last couple of weeks

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the U.S. Census Bureau released what was called the American Community Service Survey. We call that ACS for short.

And to go back a step, the Census Bureau usually does a census every ten years called the decentennial census. And they do it in two phases.

They have a short form which they extend to everybody and a long form that they send to about one out of six people.

And the long form contains information like income, labor force and things like that. But people didn't want to wait ten years to get that type of information.

So they have developed the American Community Survey which is an annual survey. It started about 1996.

In the year 2000 they had information for any place that had 250,000 people. Suffolk County easily qualified as the 21st largest county in the United States. So we had information.

Last year they started giving information for places over 65,000. So this

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allowed towns like Huntington, Smithtown,
before that we had Islip and Brookhaven and
we had information for Babylon as well.

Now we have information for five towns.
What we had done is outlined in a special
area called the Eastern Suffolk County. So
we have information on the five eastern towns
as a whole on an annual basis.

Next year they will have information for
places over 20,000. Large villages, small
towns. And by the year 2010 it will replace
the long form part of the U.S. Census, this
annual census.

And they will have it for all places
including census designated places, small
village and so forth.

I have given you a little profile which
is labeled page 8 of 14 ACS Selected
Population Profile.

I am not going to go over all this
because I don't have that much time and you
don't either. This particular profile you
will see has total population and Hispanic
population.

1

2 So you can quickly compare the two. You
3 can see that our largest minority group, the
4 Hispanics, are much younger than the general
5 population. And you can see a lot of other
6 information about them.

7 Last year group quarters was not
8 included in the ACS. So populations such as
9 college dormitories and jails were not
10 included.

11 This led to kind of an under count.
12 Some people used this and you have heard
13 about the expression braindraining.

14 Well people compare the ACS not
15 including college students to the census
16 which did include it.

17 So it made it look like there was a much
18 larger differential in the younger age
19 cohorts. And as a result people labeled that
20 in the braindraining.

21 This year group quarters are included in
22 the information. So the numbers are much
23 closer.

24 I have given you a table on number of
25 persons by percent of population by five year

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age cohorts. And you will see the 30 year old cohorts going down significantly.

Again people have said that the braindrain portion here is that there were less people in their 30's in 2006 than there were in 2000 which is true.

But if you look at the 15 to 24 age group, you will see that they are coming along and there will be a much larger cohort. So essentially we are going to have a brain overflow. That's the table on age.

The reason that there was that big discrepancy is that there were different birth rates. And there were less people being born. So as you age through the system there are less people in some specific age groups.

Now they have aged through the system. And now we are seeing another wave of higher births coming through the system.

The braindrain originally was used also in relation to affordable housing. And Peter and I looked at affordable housing and what value is, what incomes are.

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And affordable housing, usually it's a ratio of two to one house value to income traditionally, 2.5 to 1.

Back in the 1980's it went up over 3 to 1. And that's when housing started being unaffordable and you heard more talk about it.

As late as 1996 the ratio was back to 2 to 1. The median value home was twice the median income.

Now there is a table that I have included here which is labeled median income and median home value for Nassau County towns. And you can see the five towns in the eastern Suffolk.

You can see the need in median household income, median family income and the median owner-occupied value. And you can see really high ratios.

The County was 5.1 to 1. Totally unaffordable.

And I notice that problem, I heard on the radio this morning that Billy Joel was having trouble selling his \$32 million home.

1

2 The other thing on this chart I wanted
3 to point out is the margin of error. This is
4 something new with the ACS. They have
5 included a margin of error.

6 There always was in a census bureau,
7 they never publish it so nobody ever talks
8 about it. The margin of error basically is a
9 95 percent confidence interval which means
10 that they are pretty confident that the
11 number will actually fall somewhere between
12 that plus or minus figure that you see in the
13 second column, the fourth column or the sixth
14 column. Which leads you to how are you going
15 to use these numbers for comparison.

16 If you look at Babylon and Brookhaven
17 median household income, you see \$70,000,
18 \$73,000. Which is lesser?

19 Well you can't say that either one is
20 because the margin of errors are such that
21 the income for Babylon could be 74,000 or it
22 could be 66,000 or so.

23 So for that reason you can't make those
24 observations. You can, however, say that
25 Huntington is definitely higher income as is

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Smithtown.

There is a chart here on race. And from that chart you can see that minorities now make up one-fourth of Suffolk County's population.

The largest group is Hispanic at 13 percent. Afro-Americans or blacks, 7.4, and Asians are a rapidly growing group but they still make up only 3.4 percent of the population.

There is also a chart on income. There is actually two pages on race, numbers and percent.

You will see that Suffolk County rates 38th in the United States in median family income. Still quite high considering that we are one of the largest counties population wise and one of the largest counties in income.

We are a pretty good market. Again this is a margin of error there. So you can say well we might be number 38 and we might be number 30. But certainly we are in the top 5 percent of all counties and income.

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The last one is poverty level. And you will see poverty level bent up to 5.9 percent on Long Island and 6.3 percent in western Suffolk County, 6.5 percent in all of Suffolk County.

MR. CALONE: What's the poverty level now for a family of four?

MR. FEDELEM: You may have seen an article on that in the newspaper how poverty level is determined. It goes back decades.

The Feds came up with this formula and what this does is adjust it using the inflation rate or the consumer price index.

So it's totally antiquated, totally meaningless. But still that's the official U.S. poverty level.

MR. CALONE: Thank you.

MR. FEDELEM: It doesn't adjust for a higher income area for Long Island which is a problem.

MR. CALONE: Right.

MR. FEDELEM: Because we are using the same poverty rate that Atlanta or other poor areas are using.

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So it totally understates poverty.

So I am not going any more time on poverty.

To sum things up. Now we will have information every year from the ACS. But there are some cautions to watch out for like that margin of error.

I am part Welsh. I looked up the Welsh population in Babylon which ended up being 286 people plus or minor 308 people. That's either minus 20 something Welsh men or 400.

So when you get down into very specific things and small areas, the margin of error is going to get very large. But at the county level or the large town level it's very good information.

THE CHAIRMAN: Thank you, Roy. We'll keep an eye on that margin of error.

MR. FEDELEM: Okay.

THE CHAIRMAN: On to Commission business. Andy?

MR. FRELENG: I'm going to try not to blind myself. Good afternoon, Mr. Chairman, members of the Commission.

The first regulatory matter before the

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Suffolk County Planning Commission comes to us from the Incorporated Village of Lake Grove. This is the Lake Grove shopping center.

Jurisdiction to the Commission is at the subject property within 500 feet or actually adjacent to State Route 25.

The applicants are seeking Village Planning Board site plan approval for the conversion of vacant existing second floor area for additional retail space to an existing furniture retailer.

Moreover, the addition of a loading dock on the west side of the existing building is proposed. Within the subject property is an existing additional freestanding formula food establishment.

Total square footage of the retail buildings with the expansion requires the striping of 1,124 parking stalls. The proposed site plan provides for only 838 stalls.

It should be noted that inclusive in the lot area for the proposed use is approximately 1,000, I'm sorry, 122,000

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2 square feet of leased land from the New York
3 State DOT. I'm going to stand if that's
4 okay.

5 I just wanted to show you that the front
6 corridor of the project includes leased land
7 from the State DOT. There is proposed
8 parking in that area.

9 THE CHAIRMAN: That's included in your
10 number, Andy?

11 MR. FRELENG: That's included in the
12 838.

13 THE CHAIRMAN: Okay.

14 MR. FRELENG: The subject property is
15 located on the northeast corner of Middle
16 Country Road which is a State road and State
17 Route 25 and New Moriches Road which is a
18 village street in the Incorporated Village of
19 Lake Grove.

20 A review of the character of the land
21 use and zoning pattern in the vicinity if you
22 look at the map for a second indicates that
23 the subject property previously is located in
24 an area of predominantly B1 residential
25 zoning to the north and the east as well as

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three business zoning west and south.

The land use pattern in the area indicates a reflection of the zoning with attached residential dwellings to the northeast and commercial uses to the west. That is the Smithhaven Mall that you can see over here.

Adjacent land to the west is owned by the State of New York. And a small portion adjacent and to the northwest is owned by the Village of Lake Grove.

So there are two pieces here that are on municipal. You can see that this is a recharge basin owned by the State and this is property owned by the Village.

There are no significant environmental constraints on the subject property. The site is not located in a minority or economically distressed community.

The 1969 Village of Lake Grove master plan seeks to limit the expansion of commercial facilities along Middle Country Road.

And "any additional amount of growth

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along Middle Country Road would be oriented to capture a form of regional traffic generated by the Smithhaven Mall."

In more recent years the district plan for the Village of Lake Grove indicates that large retail/warehouses should be prohibited in all business zones.

It's not clear if the subject use is classified as a large retail warehouse by the Village.

However, it is apparent that both planned documents, the 1969 document and the more recent document, indicate that a motor vehicle trip generation and its impact to the area roadways is a significant concern.

It's the belief of the staff that the proposed expansion of the existing building is an unwarranted over intensification of the use of the premises.

The subject pre-existing use prior to the proposed expansion was deficient in the number of off street parking stalls required by the Village of Lake Grove.

With the proposed expansion, the total

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number of parking stalls as indicated on the submitted site plan is 1,124 stalls.

The proposed site plan provides for only 838 stalls. This is over a 25 percent deficiency.

Of the proposed parking arrangement, 138 stalls are situated within leased land from New York State DOT.

Leased land is not under the personal control of the applicant and hence should not be considered part of the lot area accommodating necessary parking stalls.

Should the State of New York widen or improve Route 25, the leased land may be acquired for the road project and rights terminated to the petitioner.

This would result in nearly a 38 percent parking stall deficiency of that required by the Village of Lake Grove zoning law.

It is the belief of the staff that the premises could be reasonably developed in accordance with the J3 business district requirement and the proposed deficiency and parking stall area may necessitate the use of

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the surrounding roadways for parking purposes, thereby diminishing the safety and traffic carrying capacity of the roadways.

Staff is recommending to the Commission disapproval for the following reasons. The first being that it constitutes the unwarranted over intensification of the use of the premises.

The paragraph number two which follows is an explanation of the first condition. It was a misnumber.

The second reason for disapproval is that the premises could be reasonably developed in accordance with the existing J3 business district requirements. That is the recommendation of the report of staff.

THE CHAIRMAN: Thank you, Andy.

Questions or comments?

MR. BRAUN: Real quick. You said that it's an existing unused second story?

MR. FRELENG: Yes. If we go to the aerial for a second, it's an existing building.

They have second floor space that they

1
2 are not using for retail. They would like to
3 convert that storage area to retail space.

4 MR. CALONE: And what's on the ground
5 floor?

6 MR. FRELENG: It's a furniture store.

7 MR. BRAUN: J.C. Penney furniture store.

8 MR. FIORE: When it was originally
9 approved, what was it approved for? Just
10 the first floor and the first floor only?

11 MR. FRELENG: Yes.

12 MR. FIORE: For retail?

13 MR. FRELENG: For retail.

14 MR. FIORE: But the second floor exists
15 anyway?

16 MR. FRELENG: The second floor exists.

17 MR. FIORE: And you said that it can
18 be used for other stuff?

19 MR. FRELENG: No, it is used for
20 storage. It is not retail to the public.

21 MR. CALONE: So it will be opened up
22 for retail?

23 MR. FIORE: I mean, it's abandoned.
24 Right now it's abandoned?

25 MR. FRELENG: No, it's an active

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furniture store.

MR. FIORE: Is that what they want to do?

MR. FRELENG: That's what they want to do is to convert that into floor area showroom for retail.

MS. BOLTON: Do they have designated areas for storage? Because I mean, isn't that the basic part of the furniture store?

MR. FRELENG: Yes. They are not converting all of the second floor to retail.

THE CHAIRMAN: So when they built it they had the second floor there? They were using the second floor for storage?

MR. FRELENG: The building originally was constructed for another retailer, another brand retailer. It has evolved over the years and currently there is a furniture retailer in there now using only the ground floor for retail.

MR. FIORE: That was my question.

THE CHAIRMAN: It was for two stories with the limited amount of parking space last time?

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MR. FRELENG: We have to presume that, yes.

THE CHAIRMAN: So without the approval for the limited amount of parking, now the guy is looking to put something else up there?

MR. FRELENG: Let me just clarify for the record. No prior application on this site has ever been referred to the Commission.

This is the first time that the offices of the Suffolk County Planning Commission has reviewed anything on this site.

MR. FIORE: I'm still confused. When they first built the building, the building had two stories.

MR. FRELENG: That is correct.

MR. FIORE: Was it approved for only one story of usage and the other story of non-usage? Or was it approved for both stories of usage with the parking field the way it is?

Because if it was approved for both stories, it doesn't make sense to disapprove

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it.

MR. FRELENG: Well as of --

MR. ISLES: I think that the point was the current referral from the Village is to convert the second floor space from storage to retail use?

MR. FRELENG: That's correct.

MR. ISLES: This was a Corvette parking store back in the '60's. So we don't know what they approved at that time. We do know what they referred to us.

The Village considers this to be storage because they are now selling. The applicant wants to convert it to retail, it has to go through the process.

That's what has been referred to you. Lawfully storage requesting use for retail.

THE CHAIRMAN: But retail prior with the amount of parking spaces that it has.

MS. ESPOSITO: But we don't know.

MR. ISLES: There may have been code changes in the past 40 years in the Village that changed their parking requirements.

We don't know.

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2 What we do know is that the Village is
3 saying that this is a change of use from
4 storage to retail. And it's a change in
5 parking requirements. And that's what is
6 before us.

7 THE CHAIRMAN: Sarah.

8 MS. LANSDALE: Does DOT have any
9 upcoming plans to alter the roadway in front
10 of this store?

11 MR. FRELENG: Staff is not aware of
12 any specific plans. But DOT has been up
13 and down Route 25.

14 MS. ESPOSITO: And did you go very
15 slowly?

16 MR. FIORE: Wasn't there something
17 before the Board going back a year or so
18 ago?

19 MR. ISLES: Yes, there was a
20 resurfacing and drainage process. I'm not
21 sure if it's in front of this property.

22 THE CHAIRMAN: That is more towards
23 the mall.

24 MR. CALONE: It is an issue though.
25 DOT has the right eventually to take that

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away.

MR. BRAUN: They can condemn it too.
It happened already. But if they wanted to
widen, they could condemn it.

THE CHAIRMAN: Any more discussion?
Or is a motion in order? Anyone make a
motion?

MR. CALONE: What was the
recommendation?

THE CHAIRMAN: The recommendation
is for disapproval.

MR. CALONE: I move the staff.

THE CHAIRMAN: Second?

MS. ESPOSITO: Second.

THE CHAIRMAN: All those in favor of
accepting the staff report?

(A show of hands.)

THE CHAIRMAN: Opposed?

(A show of hands.)

THE CLERK: Four disapprove. If
everyone could say their name.

THE CHAIRMAN: All those in favor of
accepting the staff report, signify by
saying your name.

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MS. LANSDALE: Yes.

MR. CALONE: Yes.

MS. ESPOSITO: Yes.

MR. GOODALE: Yes.

MS. HOLMES: Yes.

MS. ROBERTS: Yes.

MS. BOLTON: Yes.

MR. KONTOKOSTA: Yes.

MR. MCADAM: Yes. You got them.

THE CHAIRMAN: All those for not

accepting the staff report? Aye.

MR. FIORE: Yes.

MR. PRUITT: Yes.

MR. BRAUN: Yes.

THE CHAIRMAN: Any abstentions?

(None.)

THE CLERK: So it's nine-four.

It passes.

THE CHAIRMAN: Yes.

MR. FRELENG: The next matter before

the Commission is from the Town of Islip.

This is the application of 761 Montauk LLC.

The jurisdiction for the Commission

is that the subject property is adjacent to

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State Route 27A and within one mile of the Good Samaritan Hospital Heliport.

The applicant seeks Town Board approval for change of zone from residence A district to general service district in order to maintain an existing medical facility and construct a 445 square foot addition.

Parking, landscaping and buffer relaxations are also being requested as part of this application.

The subject property is located on the north side of Montauk Highway which is indicated as New York State Route 27A approximately 90 feet west of Keith Lane which is a town street in the hamlet of West Islip.

A review of the character and land use in the zoning of the vicinity indicates that the subject premises is located in an area predominantly of residential zoning.

Some general service districts D and T are found along Montauk Highway, the largest use being the hospital property to the south.

The land use pattern in the area is

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indicative of the zoning district with detached residential dwellings dominating the area and commercial uses along the highway.

Good Samaritan Hospital is located along Montauk Highway to the south and the east. This is the hospital Good Samaritan subject property on Montauk Highway.

You can see the general residential pattern of development with the exception of some J business uses along the road corridor.

Access for the proposal is intended to be from an existing access point to New York Route 27A.

There are no significant environmental constraints on the subject property. The subject property is not in a minority or economically distressed community.

The Town of Islip comprehensive and community identify plans make no specific recommendations for the site.

It is the belief of staff though that the proposed expansion of the existing is the over intensification of the use of the premises.

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The proposal is deficient in the Town of Islip zoning law required parking by approximately 13 percent.

Moreover, the subject property does not meet the minimum lot width which is for the intended zone nor does it comply with commercial to residential buffer setbacks. Nor does it comply with site landscaping requirements.

The over intensification issue is exacerbated by the proposed use as a medical facility building.

Medical office or facility buildings have been found to have a higher than usual parking demand and a higher motor vehicle trip generation rate.

It is the concern of the staff that the proposed deficient situation in parking stall area may necessitate the nature of Route 27A of parking purposes, thereby diminishing the issue of the traffic carrying capacity of the road.

It is the belief of the staff that the change in zone to general business categories

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appears to be a logical request.

However, the site should not be over developed. The expansion should be decreased in area or the expansion should be reconsidered for another site.

Moreover, pedestrian and motor vehicle cross access adjacent properties should be included in any site development concept.

Staff is recommending disapproval for the following reasons. Proposal constitutes the unwarranted over intensification of the use of the premises.

The paragraph which follows is the rationale of the report.

THE CHAIRMAN: Go ahead, Andy.

MR. FRELENG: All right. So just to recap, staff is recommending disapproval for the following reasons. Subject proposal does constitute over intensification of the premises.

Staff has recommended that a comment go from the Suffolk County Planning Commission to the Town of Islip. That's a change of zone to general business category appears to

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be a logical request.

However, the site should not be over developed. That comes from the staff report. Staff is recommending disapproval. That is the staff report.

THE CHAIRMAN: Thank you, Andy. I think that's a good comment. Questions, comments?

MS. BOLTON: Yes. I wanted to ask Andy if you would go back to the aerial photograph for a minute. This building is not what they are showing on the site plan as the existing building.

MR. FRELENG: I think there's a discrepancy back in here. Is that what you are referring to?

MS. BOLTON: Yes. But you've got a different shaped structure in the back. And then you also have more of a bump out.

MR. FRELENG: To the best of my ability when I did the site inspection it is close. It looks like there were some changes in the back. You have to keep in mind that this is a 2006 photo.

MS. BOLTON: Yes. I was just wondering

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2 if all that existing square footage that's
3 on the plan really is legally --

4 MR. FRELENG: Right. There's a bump out
5 here that is in the field but not on the
6 plans. So it's possible that they are
7 looking to remove that bump out and
8 reconstruct the area.

9 MS. BOLTON: Because it's just a
10 labeling as existing building.

11 MR. FRELENG: Go back a second.

12 MS. BOLTON: It's not represented.

13 MR. FRELENG: This bump out here for the
14 site plan?

15 MS. BOLTON: Yes.

16 MR. FRELENG: This is the part that was
17 confusing.

18 MS. BOLTON: And I have one other
19 question which is the additions. Do we have
20 any idea what those additions are to be used
21 for specifically?

22 MR. FRELENG: We did not floor plans
23 that are submitted with the referral. But it
24 is --

25 MS. BOLTON: I'm just wondering if they

1
2 relate to sort of medical. You know, part
3 of, I'm trying to think of the right word,
4 part of, for example, space to accommodate
5 various kinds of equipment rather than more
6 office space.

7 MR. FRELENG: The local parking
8 requirements are based on gross square
9 footage.

10 MS. BOLTON: So it doesn't matter what
11 they are.

12 MR. FRELENG: That's correct. According
13 to the local zoning law.

14 MS. BOLTON: Thank you.

15 MR. KONTOKOSTA: What is the implication
16 if the change of zone isn't granted for the
17 existing operation, the business? Could they
18 be able to continue?

19 MR. FRELENG: I believe so. They are
20 operating at a pre-existing non-conforming
21 status at the moment.

22 We are not privy to whether or not they
23 observed the violation and were forced to go
24 to the Board or whether they are just looking
25 to expand the use.

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And as part of the expansion, cleaning up the zoning.

MR. FIORE: I'd like to go back to that overhead slide that you have. The building to the left, what is that?

MR. FRELENG: I can't recall. It's an office use of some sort. I believe that it's a medical office.

MR. FIORE: Another medical facility?

MR. FRELENG: Yes.

MR. FIORE: And that's going to be another medical facility?

MR. FRELENG: They are proposing that, yes.

MR. FIORE: What's the difference between the one that was disapproved and the one that was apparently approved at some point by somebody?

MR. FRELENG: The difference between this as proposed?

MR. FIORE: And that as existing. I mean, wouldn't you take a look at what's in the area and say, listen, this one has that many and X amount of parking spaces and

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this is required?

From what I'm looking at, it looks like they are going to have more parking spaces here. Is there a reason for disapproval?

MR. FRELENG: Well both sites are substandard from the wording. The staff was not there when these sites were occupied.

However, there is insufficient parking in accordance with the local zoning ordinance for this site. And there is insufficient parking as it exists and as it would be proposed to be expanded.

MR. ISLES: We are not necessarily opposed to the use. That's another question.

MR. FRELENG: That's correct.

MR. ISLES: But for starters it doesn't specifically comply.

MR. CALONE: Someone approved the thing over on the left.

MR. FIORE: Right.

MR. CALONE: But the flip side of that is if it was wrong the first time, this time we have a chance to stop it. And actually my

1
2 son was born at the hospital right across the
3 street there a few months ago.

4 So I've been along that area quite a
5 bit. A lot of it is old houses. It's really
6 an eyesore over there.

7 MR. FIORE: The houses are actually
8 offices. Most of those are offices there.

9 THE CHAIRMAN: It's not residential.

10 MS. ESPOSITO: Not on Montauk Highway.

11 MR. FIORE: It's mostly commercial.

12 MR. FRELENG: The existing use is
13 pre-existing to the non-conforming prior
14 to the zoning. So it might have been, the
15 use was there prior to the zoning.

16 MR. FIORE: Thank you.

17 MR. GULIZIO: The old permit process
18 that existed in the 1970's and the early
19 1980's, the Town discontinued that special
20 protection process for those residential
21 structures along Main Street because of the
22 lack of landscaping, the lack of adequate
23 parking.

24 It indicates the fairly intense nature
25 of a typical medical office use. So I think

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that's part of the reason why you see some non-conforming uses in the area.

THE CHAIRMAN: Any other comments or questions from the Commission?

MS. HOLMES: I would move the adoption of the staff report with that comment. It's a very good comment.

MS. ROBERTS: Second.

THE CHAIRMAN: All in favor?

(Unanimous aye.)

THE CHAIRMAN: Opposed?

(None.)

THE CHAIRMAN: Abstentions?

(None.)

THE CHAIRMAN: Motion carried.

MR. FRELENG: Dan, you are going to do the next one.

MR. GULIZIO: The subject parcel is located on the north side of Main Road or State Route 25 in the hamlet of Aquebogue in the Town of Riverhead.

The property maintains a lot area of 16.74 acres. It is located in two individual zoning districts, the Hamlet Center District

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along Main Road. And going back a few hundred feet is zoned Hamlet Residential Zoning District.

The Hamlet Center District was intended to create mini hamlet centers along Main Road within individual communities that lack a poor commercial development.

This is one as you can see on the aerial of about a dozen properties. There's fully 14 or 15 properties that are owned by the Hamlet Center Zoning District.

The intent or the purpose of the zoning district, to read very quickly from the code, is intended to provide small clusters of shops and services in a rural setting with a residential character.

The concern that staff has with this application is that the Hamlet Center District simply and exclusively prohibits single family and two family residences.

This was enacted by the Town Board in recent years. It's a recent amendment to the zoning map. It's a recent amendment to the Town comprehensive plan.

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And the reviews requested by the applicant which is the establishment of the second residence and barn and garage on the property within the Hamlet Center Zoning District on the property is inconsistent with the zoning code. It's inconsistent with the comprehensive plan. And both of those are recently adopted.

In order to obtain the approval to place this use in additional or within the zoning district, the Zoning Board of Appeals would be obligated to issue what is called a use variance.

As we discussed previously, use variance is different from an area variance under the Town law. And area variance is relief from the dimensional requirements of the code, less setback than what is required.

Whereas the use variance is looked upon more significantly in the sense of it's requesting a use variance which is prohibited under the code. De facto rezoning under the code.

Based upon the standards that are

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enacted under Town law for a use variance, it is the opinion of staff that that doesn't meet those standards.

A use variance, the applicant would have to show four tests, the principal test of which is that they can't maintain any reasonable use for any of the permitted uses under the zoning district.

When you look at the variety of uses permitted under the hamlet Center Zoning District for this property, it would include retail storage, art galleries, antiques, personal services, restaurant, offices, professional offices, it's difficult to make the argument that you can't maintain a reasonable use of the property for any of those permitted uses.

Based upon those standards it's difficult for staff to recommend approval of the application.

Again just to summarize because it's, number one, inconsistent with the zoning that was enacted by the Town Board for the property.

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Number two, it's inconsistent with the comprehensive plan that was recently adopted by the Town Board in connection with this Town of Aquebogue. And three, because it doesn't meet the use variance standards that are enacted under 267B of Town Law.

Based on those criteria we are recommending disapproval. However, in light of the previous comments that we heard, again we are not unaffected by the comment that we want to preserve the historic character of the structure. We recognize that.

But there is a better vehicle to do that. Rather than try to force a use variance for the Zoning Board of Appeals and inconsistent with again the comprehensive plan, State law and the zoning code itself, there should be an amendment to the Zoning Board that the applicant seeks to the Town Board.

If this is an appropriate use as a residence or as a second residence on the property, that's a legislative act. It's more appropriately situated by the Town

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Board.

Based upon those comments we would recommend disapproval of the application as identified in the staff report. If there are any questions, I would be happy to address them.

THE CHAIRMAN: You say that there's sufficient information to demonstrate the compliance with the acceptable use variance and criteria. Would you consider the application incomplete?

MR. GULIZIO: I think that it's just a sensitive way of saying that they don't meet the tests enumerated under State law.

MS. HOLMES: Dan, you are saying that there is a possibility of the Town Board amending the zoning act? I'm wondering if that, I don't recollect whether it was a Town Board decision or a Zoning Board decision on Shelter Island.

But we did have a use variance request by somebody to operate a nursery school out of her home for financial relief reasons.

And the outcome was that she was granted

1
2 the use variance as long as she occupied the
3 house. Because this was in a double A
4 residential right across the street from me,
5 as a matter of fact.

6 And if only it did not run with the
7 land, it only ran with the occupants of the
8 house.

9 And that once she was no longer
10 occupying the house that, you know, the
11 variance would be terminated and it would
12 remain a double A residential single family
13 house.

14 Is that a possibility for this
15 situation? Because I think that as you
16 referred to Mr. Barnowski's comments, there
17 is a unique situation here.

18 And it might be feasible for the Town to
19 allow this variance for this family for as
20 long as they occupy the premises. Is that a
21 possibility?

22 MR. GULIZIO: I don't know the
23 specifications of the day care center use.
24 But generally speaking, there are a number of
25 attorneys in the room. But zoning is based

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upon use not individual.

Everyone has a individual reason and a personal reason why something ought to be approved. I personally would like to send them a letter.

But that's generally not consistent with zoning. My personal needs don't supersede those zoning issues.

Again I think there is an appropriate vehicle and an appropriate tool to consider this application. And that's a legislative act and amendment of the zoning.

But to base zoning upon an individual's personal needs, financial or otherwise, I think is something that the courts would be reluctant to consider.

MR. GOODALE: I find the comparison to a 7-Eleven.

MR. GULIZIO: I didn't mean any disrespect by that.

MR. GOODALE: I feel that I must say that considering the fact that there is already a house at the front with a house behind it, for this particular reason it's

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not going to affect the development of this.

Everybody knows Aquebogue. If you do know Aquebogue, you know what I'm talking about.

Most of these are houses, very nice houses right there including this one. And to put a house behind it for this particular reason in the connection if I understand correctly, the selling of the development rights for the balance of the property, strikes me as being something that we may or may not like.

But certainly it should be something that should be local determination and not something that we can approve or disapprove.

I am frankly a little bit surprised that this came to this. And it wasn't sent back for local determination. It's a small matter. It's not that big a deal.

THE CHAIRMAN: Representing Riverhead, would you like to make that motion?

MR. GOODALE: I would make that motion.

MS. HOLMES: I would second it.

THE CHAIRMAN: I feel --

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MR. FIORE: What is the motion?

MR. GOODALE: I'm just making the motion.

THE CHAIRMAN: Are there any more comments on this application?

MS. BOLTON: I'd like to make a comment. Since the zoning classification that precludes this use is classified under B and really you are looking at a site plan which positions this house very near that zoning line or fairly near that zoning line, what would be the difficulty in solving this problem by putting a house an additional 50 feet plus or minus behind the zone line? So that it would be within the residential.

MR. GOODALE: I would say that maybe there may be reasons for that. But I would say that that is exactly why this should be a local determination issue.

MS. BOLTON: Yes.

MR. GOODALE: On this map.

MS. BOLTON: Okay.

MR. GOODALE: There is an option and I agree. And there may be something, this is a

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recently zoned piece.

MS. BOLTON: Right.

MR. GOODALE: And I am thinking that to go through the legislative thing is very difficult.

MS. BOLTON: That I know. I would not think that's a good idea.

MR. ISLES: Obviously it's your choice as to the local determination or not. As far as the staff's review, we historically bring all use variances to the Commission, your judgment as to whether you want to act on it. But in terms of why this was selected.

THE CHAIRMAN: Your motion would be for disapproval of the staff report and sending it back for local determination, is that correct?

MR. GOODALE: Yes, that would be my resolution. My motion rather.

THE CHAIRMAN: Second?

MS. HOLMES: Second.

THE CHAIRMAN: All those in favor of disapproval of the staff report and

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sending it back for local determination?

(A show of hands.)

THE CHAIRMAN: Opposed?

MR. PRUITT: Yes.

THE CHAIRMAN: Any abstentions?

(None.)

THE CHAIRMAN: Motion carried.

MR. FRELENG: The last regulatory matter for the Commission was referred to us by the Town of Southampton. This is the matter of HTL, LLC. The jurisdiction is that the subject property is adjacent to Seatuck Avenue.

THE CHAIRMAN: Before you begin, we reviewed this application in December of 2006. Does this new application have any significant changes from the old application that we already reviewed and made a motion on or made a determination on?

MR. FRELENG: Mr. Chairman, there is no substantive changes to the map that was referred to us as compared to the map of 2006.

There were notation changes on the map

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2 with regard to the referral materials. There
3 has been material that has been submitted by
4 the petitioner if you will to clarify certain
5 matters that were entered into the record on
6 the 6th.

7 But to answer your question directly,
8 the maps before the Commission are no
9 different than the plans before the
10 Commission on the 6th. There are just
11 notational differences on those maps.

12 MR. CALONE: I have one concern,
13 Mr. Chairman. That would be that I wasn't
14 here last December.

15 But we have been pretty clear in the
16 past about when we make a decision, we made a
17 decision and if there hasn't been any new
18 significant changes in the map, my concern
19 would be that we shouldn't be in the business
20 of reopening the record on this kind of
21 thing.

22 So I actually would make a motion that
23 we not hear this and stand by the original
24 determination.

25 MS. HOLMES: I would second that.

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THE CHAIRMAN: Yes?

MS. ESPOSITO: I was just going to say that I was here in December and we gave this extensive discussion.

THE CHAIRMAN: So the motion is on the table. Go ahead.

MR. FRELENG: Well just the motion is on the table. I have a second. But for discussion purposes staff would like to interject.

There are three parameters that the Commission considers. Is there a change in the plan which we have addressed just now?

Is there a change in the local law, the zoning laws that affect the property? And whether or not there is a change in the County and State laws affecting the application.

If I was to review the staff report to the Commission, you would find that this matter comes before the Commission in the first instance in December as a result of litigation between interveners and the Town of Southampton.

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The court ordered that the case be remanded back to the Town and sent to the Commission due to a procedural defect on site plan related to general municipal law.

The application was referred through the applicant. We wouldn't accept it. The Town weighed it against those parameters.

What is changed is that now this is becoming litigated and on advice of counsel staff is bringing this before the Commission.

THE CHAIRMAN: We understand that. And I ask you again, is there a significant change in this new application from the old application that we already made a determination on?

MR. FRELENG: No, sir.

MR. CALONE: Then my motion stands.

MS. HOLMES: Second.

MR. GOODALE: Discussion on that motion?

THE CHAIRMAN: Yes.

MR. GOODALE: You indicated that you are stuck here. That you the staff believe that our decision back in December was made on grounds that were perhaps not correct.

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That's what they are saying here.

Now is that the case? That you believe, the staff believes that our decision back in December was made on insufficient or unclear or incorrect information?

MR. FRELENG: I would characterize it this way. The Commission acted on information presented to them. There has been information submitted to the record that appears to clarify the Commission's three reasons for disapproval. And we bring that information back before the Commission.

MR. GOODALE: That's why it's back here. Because we have clarifying information. Is that something that's commonly done?

MR. ISLES: It's fact because there has been a new referral from the Town of Southampton Planning Board. As indicated, this is a matter in litigation. We consulted with the Department of Law Suffolk County.

It was felt that it was a matter that had to be brought to the Commission for whatever your determination is, whether it's a determination of the current motion

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previously reviewed or any other motion.

THE CHAIRMAN: So it's on that basis that staff has taken the matter today.

MR. PRUITT: I just have some questions for staff. On the three points that you have on your report, it says first it appears that several variances for the proposal were required, yet relief was not apparent. Are there any variances required?

MR. FRELENG: No, sir.

MR. PRUITT: And the second floor plans submitted were not clear to the gross floor area as it related to parking. What's the gross floor area? Do we know that now?

MR. FRELENG: There is a change in the notation on the plan. The gross floor area, I would have to read through the staff report to find it. It's less than 4,000 square feet, 3,900 and change.

The clarifying text which is noted indicates that parking is not determined on gross floor area.

At the time that the Commission heard this in '06, there was some discussion on

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whether or not parking was based on gross on floor area or on rated occupancy and which of the rated occupancies if you will recall, which of the two rated occupancies apply.

There has been clarifying information submitted to the Commission through the offices of the local referring body. Staff brings that before the Commission.

THE CHAIRMAN: Anything else?

MR. PRUITT: I just want to make sure that I understand. So what is the basis of the gross?

MR. FRELENG: Parking is based on rate of occupancy which has been limited by covenant to 119 patrons plus 9 employees.

MR. ISLES: If I could just on that same point that Mr. Pruitt made. The number of 4,000 square feet, square footage, is significant as far as SEQRA which is raised today.

For your information it's our belief that that's not a matter before you since you are not an involved agency in terms of SEQRA.

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2 That's a matter that has been handled by
3 the Town. And whether there is a corollary
4 with that determination is something that you
5 do not have the authority in my opinion to
6 judge on. So just on that particular point.

7 THE CHAIRMAN: Dave, you had a comment.

8 MR. PRUITT: Excuse me. I just have
9 one last question.

10 THE CHAIRMAN: Go ahead.

11 MR. PRUITT: Now what is the official
12 occupancy of this building?

13 MR. FRELENG: The rated occupancy is
14 119.

15 THE CHAIRMAN: Dave.

16 MR. CALONE: My concern is just simply
17 the issue with reopening this. I understand
18 that there are some minor differences.

19 The bulk of these things seem to be,
20 you know, they were analyzed in December. It
21 was decided by this Commission based upon
22 this site plan. And I think that we need to
23 stick by it. That's my position.

24 THE CHAIRMAN: And we have more
25 discussion on it.

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MR. KONTOKOSTA: Just a question. With respect to the new requirements for parking based on occupancy, does this application as far as you are aware meet all those requirements for parking, on site parking?

MR. FRELENG: Yes. Staff has reviewed the Town required requirements. Staff has reviewed the plans submitted.

And it's the belief of staff that the proposed application meets the Town of Southampton parking requirements as put forth by the Town.

MR. BRAUN: Just to follow up on what the Commissioner Pruitt was asking. There are no variances required now. The gross floor area doesn't relate to parking.

And the parking is adequate based on the Town allowance for easements and so forth to the next property.

MR. FRELENG: Yes.

MR. BRAUN: All that, is that correct?

MR. FRELENG: Yes.

MR. BRAUN: So all three bases for the Commission recommending disapproval of this

1
2 application in December have now been
3 addressed. Is that right?

4 MR. FRELENG: It is the belief of the
5 staff that they have been addressed and
6 clarified, yes.

7 MR. BRAUN: So the staff recommendation
8 on this report if I am reading it correctly
9 is determined locally and not go out of here
10 without a recommendation?

11 MR. FRELENG: That's correct. Staff is
12 recommending that the matter be returned for
13 local determination.

14 THE CHAIRMAN: I'm going to ask you
15 one more time so we are very clear on this.
16 This new application, Andy, does it have
17 significant changes from the old application
18 that we already made a determination on?

19 MR. FRELENG: Mr. Chairman, there are no
20 changes to the plans that have been submitted
21 except for notational changes.

22 There is clarifying information that has
23 been submitted by the applicant through the
24 local referring body to the Commission.

25 THE CHAIRMAN: I guess I'm just looking

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for a yes or no.

MR. FRELENG: Mr. Chairman, if you would repeat the question, I'll give you a one word answer.

THE CHAIRMAN: Does this new application, Andy, have any significant changes from the old application that we already made a determination on?

MR. FRELENG: No, sir.

THE CHAIRMAN: Thank you. Is there any more discussion?

MR. MCADAM: Regarding the litigation. Now I wasn't here in December. And there is no discussion about the litigation.

Would this be something that you would normally bring up at a meeting like this if it's litigated?

MR. ISLES: Here again the question was brought up can the Commission handle this matter. The answer was that we were advised that yes, it should be processed and brought to the Commission's attention for whatever determination the Commission makes. We do have a representative of the County attorney

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present today.

MR. MCADAM: Fine.

THE CHAIRMAN: Don.

MR. FIORE: I have a question.

MS. HOLMES: Can we get a clarification from the County Attorney on that point that was just raised?

MS. KOHN: I was just going to ask. Did you want to pull up the attorney that is handling the case?

MR. ISLES: If you feel that's necessary, it's up to you.

THE CHAIRMAN: Do you feel that it's necessary, Counsel?

MR. FRELENG: Mr. Chairman, the Commission has adopted guidelines for the review of applications. They are guidelines. You can deviate from your guidelines.

Again the staff discussed this with the Department of Law and they advised us to bring it back to the Commission.

THE CHAIRMAN: Thank you, Andy.

MR. PRUITT: I'd like to make one more comment. I was here in December.

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And I just want to say that my vote for disapproval is based on the assumption that there were variances because that is what I believe at the time and that's the information that we had at that particular time. And that we did not clearly understand the gross square footage.

Because I think that we were estimating somewhere around 5,000. And at the time it was made.

So I believe right now that there is a lot more information in this application than I had when I made my original decision.

THE CHAIRMAN: There is a motion on the table. It was made and seconded by Linda.

MR. BRAUN: Restate the motion, please.

THE CHAIRMAN: The motion, Dave.

MR. CALONE: The motion was to not hear this application because we have already made a decision on the application as previously submitted. It's the same application.

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THE CHAIRMAN: Correct. That motion was seconded by Linda. All those in favor? Are we ready for a vote on this motion? All those in favor of that motion, signify by saying aye. Please raise your hand.

(A show of hands.)

THE CHAIRMAN: That's nine. All those opposed to that motion?

(Three.)

THE CHAIRMAN: Motion carried.

MR. FIORE: One abstention. Based on the litigation, abstention.

THE CHAIRMAN: Motion carries. Up to the Commissioner's round table. Don, do you want to start us off?

MR. FIORE: Nothing to report.

MS. LANSDALE: Nothing to report.

MR. CALONE: Nothing to report.

MR. PRUITT: Nothing to report.

THE CHAIRMAN: Linda, please tell us about Shelter Island.

MS. HOLMES: Now that Shelter Island has been found to have plummeted more than any other town in Suffolk, new application,

1
2 this will be very significant as an election
3 issue in our town.

4 THE CHAIRMAN: Counsel.

5 MS. KOHN: Nothing.

6 THE CHAIRMAN: Dan?

7 MR. GULIZIO: No.

8 MS. ROBERTS: In light of today, I
9 would like to ask a clarification as to
10 whether individual members of this
11 Commission are liable to be sued on our
12 decision on what is the law on this
13 kind of situation.

14 MS. ESPOSITO: You were served, is
15 that right?

16 THE CHAIRMAN: Let's have a discussion
17 off the record. I'll talk to anyone after
18 the meeting.

19 MR. FIORE: Why don't we talk about
20 it? I'm concerned about this and I wanted
21 to bring it up before. I don't know if he
22 should have heard it.

23 MS. ESPOSITO: Can't we go into
24 executive session?

25 THE CHAIRMAN: I would feel more

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comfortable doing that. Can we just end the meeting?

MS. KOHN: Well you can't end the meeting and then have the meeting.

THE CHAIRMAN: We are not going to.

MS. HOLMES: We can go into executive session.

THE CHAIRMAN: Don has a question.

MR. FIORE: I don't know, just who represents the Planning Commission? Is it all of us together today? Or was it the people that were sitting on the Board in December?

MR. BRAUN: In December.

MR. FIORE: I happened to be sitting on the Board. So I am concerned.

MR. ISLES: Counsel, can you give an answer based on the general answer?

MS. KOHN: As to who is liable?

MR. ISLES: What protection does a Commission member have?

MS. KOHN: I would have to look into it.

MR. ISLES: Please do.

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MS. KOHN: The question is who would be personally liable.

MS. ESPOSITO: I always assumed that we weren't.

MR. BRAUN: Except for intentional misfeasance you are not.

MS. ROBERTS: You still can be sued. You still have to hire a lawyer.

MS. KOHN: That shall be some relevant indemnification.

MS. BOLTON: It's something that we would have as officers.

MS. ESPOSITO: That's why we need to have it.

MR. CALONE: Maybe the attorney could write us or put something in. Here's what we need to know.

MR. BRAUN: Maybe we could have a course at the end of the month on your liability and on the Commission.

MS. HOLMES: If it's at all relevant which it may not be, the last Commission that I was on was for the Dioceses of Long Island in Garden City.

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THE CHAIRMAN: We are getting off the round table. Let's continue the round table. Charla, do you have anything?

MS. BOLTON: No. I was just going to say that I'm glad to be back.

THE CHAIRMAN: Thank you.

MR. KONTOKOSTA: No.

MR. BRAUN: Nothing else.

MR. MCADAM: I just have a question about the planning session at the end of October. Is that open to anybody else?

MR. ISLES: It's open to anyone who is interested in attending and we welcome all participation.

MR. MCADAM: Very good.

THE CHAIRMAN: Sarah, you had something to mention on the record?

MS. LANSDALE: No.

MR. FIORE: I'll ask it. I don't want to steal your thunder.

MS. EPSTEIN: Don, you are such a gentleman.

MR. FIORE: Is there any type of insurance let's say for lack of a better

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word that covers us in a sense like this?
Or are we completely immune from everything
which I don't think we are?

THE CHAIRMAN: Counsel, can you look
into that as well?

MS. KOHN: I'm sorry, I was writing
something down.

THE CHAIRMAN: Don, could you?

MR. FIORE: Go ahead. You're closer
to us.

MR. BRAUN: The question is whether
there is any indemnify for Commission members
acting in the course of their obligations.

MS. KOHN: Right.

THE CHAIRMAN: Any other business?

MS. HOLMES: We were also non-salaried
and we were advised.

THE CHAIRMAN: Motion?

MR. FIORE: Motion to adjourn.

THE CHAIRMAN: Second.

MR. CALONE: Second.

THE CHAIRMAN: The meeting is adjourned.

(Whereupon the meeting was concluded
at 2:15 p.m.)

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RE: Suffolk County Planning Commission
AT: H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, N.Y.
ON: October 3, 2007

C E R T I F I C A T E

I, JAMES F. GILL, a Shorthand Reporter and
notary public within and for the State of New
York, do hereby certify;

That I reported the proceedings in the
within-entitled matter, and that the within
transcript is a true and accurate record of such
proceedings.

I further certify that I am not related by
blood or marriage to any of the parties; and that
I am in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this ____ day of _____, 2007.
