

SUFFOLK COUNTY PLANNING COMMISSION

DECEMBER 6, 2006

A regular meeting of the Suffolk County Planning Commission was held in the Clerk's Conference Room of the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Hauppauge, New York, on December 6, 2006.

Members Present:

***John W. Caracciolo - Chairman/SC Planning Commissioner Representing
Town of Huntington***

Edward James Pruitt - SC Planning Commissioner Representing
Town of Brookhaven

Donald J. Fiore - SC Planning Commissioner Representing
Town of Islip

Jesse R. Goodale - SC Planning Commissioner Representing
Town of Riverhead

Linda Holmes - SC Planning Commissioner Representing
Town of Shelter Island

Barbara Roberts - SC Planning Commissioner Representing
Town of Southampton

Adrienne Esposito - SC Planning Commissioner Representing
Village Over 5,000 Population

Constantine konkokosta - SC Commissioner Representing
Village Under 5,000 Population

Charla E. Bolton - SC Planning Commissioner Representing At-Large

Sarah Lansdale - SC Planning Commissioner Representing At-Large

Members Not Present:

Louis Dietz - Planning Commissioner/Town of Babylon

Also in Attendance:

Thomas Isles - Director/Suffolk County Planning Department

Dan Gulizio - Deputy Director/Suffolk County Planning Department

Andy Freleng - Principal Planner/Suffolk County Planning Department

Chris Wrede - Planning Aide/Suffolk County Planning Department

Peter Lambert - Principal Planner/Suffolk County Planning Department

Claire Chorny - Suffolk County Planning Department

Jacqueline Caputi - County Attorney's Office

Bruce Barnet - Tallgrass Properties, LLC

P. Daniel Hollis - Shamberg, Marwell, Davis & Hollis

Christopher Kelley - Twomey, Latham, Shea & Kelley

Albert Leutwyler - Eastport Alliance

Diana Kelucia - Eastport Alliance

Douglas Adams - Eastport Alliance

John Baker - PJ Venture

Minutes Taken By:

Alison Mahoney - Court Stenographer

*(*The meeting was called to order at 12:44 PM*)*

CHAIRMAN CARACCILO:

Good afternoon, everyone. This very intimate meeting of the Suffolk County Planning Commission is now in session. Thank you all for your understanding and cooperation in setting up.

The first item on the agenda -- we're going to move to the agenda quickly. The first item on the agenda is the approval of the minutes of the November 1st meeting. Has everyone on the commission had the opportunity to review the minutes; are there any corrections, changes or additions?

COMMISSIONER HOLMES:

One little correction.

CHAIRMAN CARACCILO:

I'm sorry; please identify yourself prior to speaking, commission members, since we are in this very intimate setting.

COMMISSIONER HOLMES:

Commissioner Holmes, Shelter Island. I just want to note a couple of things. On the first page, Jesse Goodale of Riverhead is listed as present and he's also listed as absent; regrettably he was absent that day, but I think we should make the correction that he was not present.

And just one more, on page 22, Sarah Lansdale made a motion but apparently somebody else seconded it because I know she didn't make and second her own motion. So I don't know who the other one was.

CHAIRMAN CARACCILO:

I seconded it.

COMMISSIONER HOLMES:

Yes, okay.

CHAIRMAN CARACCILO:

Thank you, Linda.

COMMISSIONER HOLMES:

That's all I had.

CHAIRMAN CARACCILO:

Any other comments, questions? Ed?

COMMISSIONER PRUITT:

Commissioner Pruitt and my name is absent, my name is missing, I was present at the meeting as well.

COMMISSIONER HOLMES:

That's right.

CHAIRMAN CARACCILO:

And you had some good ideas at that meeting, Ed.

COMMISSIONER PRUITT:

That was the one I spoke up the most.

CHAIRMAN CARACCIOLO:

Thank you, Ed. Any other corrections, additions to the minutes?
A motion is in order to accept the minutes?

COMMISSIONER BOLTON:

So moved.

COMMISSIONER PRUITT:

Second the motion to approve.

CHAIRMAN CARACCIOLO:

Motion by -- Bolton first, second Pruitt. Motion carries, *minutes approved (VOTE: 10-0-0-1 Not Present: Lou Dietz).*

Moving on to the public portion. We have some speakers. I just want to remind our speakers that you each have three minutes. I'm going to try not to cut you off, but I'll give you the high sign if you're running a little long. Our first speaker is Christopher Kelley.

MR. KELLEY:

It makes sense, Mr. Chairman, to sit here?

CHAIRMAN CARACCIOLO:

That would be great, Mr. Kelley. I appreciate it.

MR. KELLEY:

Mr. Chairman, members of the commission, before I get started I do have some clients here and they have graciously donated time to me, so I have another three minutes here and if I go over I have a third three minutes.

CHAIRMAN CARACCIOLO:

Which ones are those, counselor?

MR. KELLEY:

My name is --

DIRECTOR ISLES:

Just speak as loudly as you possibly can, under the circumstances.
We appreciate it very much. Thank you.

MR. KELLEY:

Christopher Kelley, Twomey, Latham, Shea and Kelley for the intervenors on the Eastport Alliance. We're here to talk about the application H.T.L-LLC which is also known as Trumpet's Catering Hall.

The Eastport Alliance is a group of 38 residents who live in the neighborhood of the project which is on East Bay Avenue in Eastport. We're here to ask for your recommendation of denial of the proposed site plan application. I do want to give you a brief background on this, but the importance of your review in this application is because -- first of all, the reason we're here today is because the residents have sued successfully and the Appellate Division ordered that the case be remanded to the Planning Board of Southampton after a very tight 4-3 vote and that it be heard here which the Planning Board had failed to do prior to approval of the site plan in the spring of 2002.

We submitted a seven page letter and a Memorandum of Law which highlights in detail the

points that we believe are sufficient for you to recommend a denial to the Planning Board, but I'll try to highlight just a couple of points which I think are important for you to hear.

The application was made in 2002 for sight plan approval for a catering hall and also for a wetlands permit. This application was for a very dense development of a three-quarter of an acre plot on the water, on Seatuck Cove which is a tributary of Moriches Bay which is how you get your jurisdiction here. The application was approved, it went to the courts, came back, there's also two other Article 78's pending regarding the Health Department approval of the project. In the meantime, unfortunately, the project is constructive because the conjunction was denied by the court, but we have a building now that's up and the site plan approval for it is invalid, has been nullified by the courts. And again, your review is so important because it was a close 4-3 vote and the three votes against this project are still members of the Southampton Town Planning Board. So if you were to recommend against denial and the votes held, there wouldn't be approval of this project.

The reason that we want you or are asking you respectfully to recommend denial are that this application, if you can believe it, had no SEQRA review whatsoever, and the reason for that was there was manipulation. I call it a bait and switch, but there was a manipulation of the criteria that go into classification of whether this action was a Type I Action or a Type II Action. Southampton Town Code has an unusual -- I think your staff would confirm this -- an unusual classification process whereby if you're a project, a commercial project with 49 or less parking spaces required, you're what's called a Type II Action and require no SEQRA review whatsoever; if you're 50 or above in terms of required parking you're what's called a Type I Action, so it's a black or white, there's no unlisted action interim.

MS. BOLTON:

There's no in between.

MR. KELLEY:

There's no in-between. As you probably know, those of you that are familiar with SEQRA, if you're a Type I Action you're considered likely to have significant adverse environmental impacts and almost always required to prepare a Draft Environmental Impact Statement on the project. What happened here is the applicant came in with a proposal for this catering hall -- and by the way, the applicant owns a restaurant on the property immediately to the south and a marina on the property immediately to the north -- came in with a proposal and the planning staff said, "This looks like a Type I Action." The reason they said that is because the Fire Commissioner of the Town of Southampton did its estimate of maximum occupancy for this building and determined based on its size that it would accommodate 152 patrons. Added to that, the staff estimated that to run this operation it would require anywhere between 19 and 32 employees at peak time.

The way parking spaces are allotted in Southampton Town Code, you get one -- one patron equals three parking -- three patrons equals one parking space and one employee equals one parking space. The required parking, under the staff's calculation, would be somewhere in the 70's or the 80's. Also, a side issue here is that the State has in its Type II list under SEQRA a facility that's less than 4,000 square feet. The applicant came in and said, "Well, we have a facility that's only 3,500 square feet." And the Planning Board accepted that, I still don't understand why, but they were only talking about the first floor of the building, not the second floor; in fact, we now have a building that's close to 5,000 square feet on the site. So they did this crazy, sort of convoluted manipulation and the developer said to the Planning Board, "Well, you know what? Even though my building is close to 5,000 square feet, I'll only allow 119 people in the door and I will make the operation work with only six employees because -- or nine employees because I won't do any cooking on-site. I'll do the cooking at the restaurant next door, we won't have a kitchen and that way I'll only need 49 spaces. We don't have to do SEQRA, we can get this thing done."

What happened was -- and again, I call it the great bait and switch. When it came time to finally approve the site plan, the Planning Board was presented with a plan that had a kitchen in it, so that representation went out the window. And the building wasn't really for 3,500 square feet, the building permit application said 4,800 square feet and they added the 240 and it went ahead and built this facility with absolutely no SEQRA review. And the significance of that is that the Health Department then reviews the application and says, "Oh, well, they've got a Negative Declaration out of the Town of Southampton, we don't have to do anything on SEQRA, let's just go approve this." Well, the problem with that is that nobody has ever done SEQRA on this project -- even though the Health Department had to do it and we're in court over that -- because of this manipulation of the parking requirement.

The impact of not doing SEQRA, as you well know, is that none of these impacts the wetlands impacts. The reason that you have jurisdiction is because this is on the water, the building is actually constructed nine feet from the water's edge, the decking goes right out to the water. We have -- for those of you who may not be familiar with the area, there's no public sewer in Southampton, this is all septic system.

So you have a major commercial establishment with a septic system approximately a hundred feet from the waters of Moriches Bay, this is just crazy. And no one took a look at it to see what could be -- how these impacts could be mitigated or what alternatives to the project there might be. So that's the problem, there's been no SEQRA review here and if this was done properly there would have been SEQRA review.

Switching to the next issue I want to hit on, it also goes to the parking. Aside from this manipulation of parking requirements resulting in no SEQRA review, it's a substantive issue in the application. The restaurant to the south called Trumpets Restaurant was approved -- it was required to have 46 parking spaces when it was approved; in fact, it only had room for 38, only 38 spaces on the property. The Planning Board said, "Oh, you can land bank it in some other area," and it turns out that area is now occupied by accessory structures. But the Planning Board at the time required a cross access to the property of this catering hall that's now constructed up so that parking could be conducted or placed on the catering hall site, which didn't have a catering hall at the time, and people could -- pedestrians can walk over.

Now the applicant comes in, related companies all have the same principals, and has a proposal for 49 parking spaces. Well, they don't have room for 49 spaces either, they only have room for 40, so now they're saying, "We'll put nine of our spaces on the marina to the north," so you have this cascading effect, you know, like the fountain of champagne glasses, you know, when the champagne just flows over. So the parking just pours over; in fact, really where it ends up is out on the street in my client's neighborhood. Typically on a Saturday night, particularly in the summer, you have cars lined up parked throughout the neighborhood on the street and on the Southampton Town Trustees boat ramp along the shore there.

The applicant says, "Oh, well, we can provide this extra parking on the neighboring marina." They referred it to their town engineer and the town engineer said, "Wait a second, there's no extra parking on the marina." There's an approved site plan from 1997 for 73 boat slips and under the town code, that means 1.5 parking spaces per boat slip, that gives 108 slips. The approved site plan showed 108 slips, most of which, by the way, weren't constructed yet but were proposed. After the Planning Board approved the site plan, they said, "Okay, just show us that you can put the extra parking on the marina." The applicant came in and got an agreement, and I just don't know how this ED, got on agreement with the town planning to allow only -- to require only a half of a parking space per boat slip because he said, "Well, we won't put any upland storage of boats there and therefore we don't need that much upland space." Well, I was out at the project yesterday and I took some photographs and there ED to be 67 spaces on this marina that are actually constructed, the other 40 some-odd spaces are just this grass area that you see in the foreground. Every single parking space, you can take these and look at them, every single parking space is occupied by upland boat storage for the winter. So if there's a wedding at the catering hall there this afternoon, there would be no place at the marina for a

single car to park. Okay? So --

CHAIRMAN CARACCILO:

Could you start wrapping it up, Counsel?

MR. KELLEY:

I will wrap it up. There are other issues involved, and they're addressed in the Memorandum of Law, about the use, whether it's been written on the code, whether they're non-conformance with respect to setbacks.

In closing, what I just want to mention to you is that because this is constructed doesn't mean the ball game is over. It doesn't mean that you don't have the power to act and that the Planning Board certainly has the power to still -- to go back and do SEQRA on this and to mitigate it and to find alternatives. Be aware, your Counsel is advising that there are cases of the Court of Appeals that needs to be taken down when they were illegally constructed. I'm from East Hampton, there's motel case in Montauk that actually had to take down units. You can do things, the Planning Board can require the marina area to be apportioned to the catering hall by a lot line modification with reduced intensity of the use of the overall three commercial users; there are things that can be done. So I implore you to look carefully at this application and would ask respectfully that you recommend denial.

CHAIRMAN CARACCILO:

Thank you, Counsel. I appreciate it.

COMMISSIONER ESPOSITO:

May I ask a question, John?

CHAIRMAN CARACCILO:

No.

COMMISSIONER ESPOSITO:

No, I can't ask questions?

MR. KELLEY:

I'll be available for questions, I'll stick around if anybody wants to ask questions. Thank you.

CHAIRMAN CARACCILO:

Mr. Adams, do you want to speak or do you --

MR. ADAMS:

I wish to give my three minutes to Mr. Kelley.

CHAIRMAN CARACCILO:

You gave it already, you can't give it again. Ms. Delucia, Diana Delucia?

MS. DELUCIA:

Yes?

CHAIRMAN CARACCILO:

Would you like to speak or did you --

MS. DELUCIA:

I would, but can this gentleman speak before I do?

CHAIRMAN CARACCILO:

That is?

MS. DELUCIA:

Mr. Leutwyler?

CHAIRMAN CARACCILO:

Yeah, sure.

MR. LEUTWYLER:

Mr. Chairman, members of the commission, thank you very much for giving us the opportunity to be here today. I'll try to keep it under three.

The main points that we want to raise, and I will illuminate a little bit further from what Chris Kelley already has done. Zoning, there is a code that the town has that says, "All unlisted uses are prohibited in all districts"; a catering hall is not a listed use, it doesn't exist anywhere in code; that's one.

Secondly, the size of the building, as Chris Kelley already illustrated, should be stated in the public notice for a planning board meeting that's taking place next week. They're saying that it's a catering hall of 3,496 square feet and according to the survey to you, the staff of the Planning Commission, that when you add up all of the square footage of the building plus the additional decking, walk-in refrigerator and AC units that are not on the survey, you're ending up over 5,000 square feet. That includes the second floor and these accessory structures that are built on to the building itself, and yet the town insists to this day that the building is only 3,496 square feet; second point.

The occupancy. The Fire Marshal has jurisdiction over capacity of the building and -- sorry. Low and behold, this is the occupancy sign that's in the building, you allowed up to 164 people or patrons, people in the building itself, and voluntarily the applicant submitted that, "Well, we will restrain ourselves to 119 plus nine employees." So how are we going to enforce this? We have no means to enforce any of this whatsoever; that's the third point.

The fourth point, staffing. Planning -- the staff of the Southampton Planning Board conducted their own research as to how many people are needed for a catering hall of anywhere between 110 or 150 people. We have internal documents that we pulled from their records, there's nowhere is anything below 12, it's from 12 on, as many as 30 or 40. They've listed the catering halls that they visited to get their numbers for employees and yet they were saying, "We're perfectly happy with the nine employees and I think you'll do just fine with nine." They're not even counting -- in any of these analysis there's no photographers, there's no valet parking, there is no -- cooking I believe is in there.

Parking. I think Chris Kelley already pointed out to you, the spillover from the catering hall goes into the parking lot -- the spillover from the restaurant goes into the parking lot of the catering hall. On a continuous basis every day there are anywhere between 12 and 20 cars parked on the catering hall parking spaces because the restaurant doesn't have the space for it. So where are these cars going when there's a catering hall event? To the marina, supposedly.

The restaurant itself had land banked eleven parking spaces. They're totally obliterated with accessory structures, with generators, big huge generators for extra power in case there's a power failure. And there's no way that the town ever came and said, "You have to enforce your eleven land banked parking spaces." They're spilling over into our Town Trustee Marina, it's difficult to get the slip down there but there's a lot of in and out of people parking their trailers down there after they put the boat in the water and it's been very stressful to even be able to get a parking space down there at the Town Trustee Marina.

The marina itself that supposedly is holding 115, as Chris Kelley pointed out in his photograph, it's totally obliterated with land stalls, boats that are shrink-wrapped.

CHAIRMAN CARACCILO:

I don't want to cut you off, so you've got to wrap it up.

MR. LEUTWYLER:

I'm done.

CHAIRMAN CARACCILO:

Okay.

MR. LEUTWYLER:

I end with no seconds left, huh?

CHAIRMAN CARACCILO:

No, you're done.

DIRECTOR ISLES:

Sir, if you can just for the record state your name, please?

CHAIRMAN CARACCILO:

Your name, sir?

MR. LEUTWYLER:

Albert Leutwyler.

CHAIRMAN CARACCILO:

Thank you, I appreciate it. Diana? What neat penmanship you have. Diana has very neat penmanship.

MS. DELUCIA:

I represent the neighbors that live in the South Bay Avenue and across on Dock Road who have now joined the fight.

Since the catering hall has built, there have been other problems that have surfaced that those of us on the west side didn't anticipate and they've kind of joined us and said, "Can we join in and help say something?" And of course most people are working and they just can't get the time off to come here, so they've asked us to represent them, so please accept these as not just my comments but at least 20 or 30 --

MR. LEUTWYLER:

So you want an additional three minutes for each one?

CHAIRMAN CARACCILO:

You're not getting that.

MS. DELUCIA:

What I'd like to express is the more emotional content of what this development has done to our neighborhood and what it's done to the wildlife and the surrounding environment.

I am on the CAC of Westhampton and Remsenberg and what we try to do is to monitor and help protect and preserve the beauty of Southampton and we're very involved in that. And we believe that the SEQRA regulations, these were created to protect that beauty and protect the

wildlife that we all came to the east end for. We have seen these vistas and much wildlife on this area which was duck farms before any of these developments came in. And of course I realize that developments have to come in, but we'd leak SEQRA and the commission to maybe monitor a little bit more closely that the projects are built more in the scale and scope of the neighborhood and what the local people would like to see, not what people coming from other towns to have big festivities.

I won't touch on the square footage, I think all these things have been extremely well taken care of by Mr. Kelley and Mr. Leutwyler. But I would say that the neighbors are complaining about a lot of noise. They've put decks on the back which they were vehemently were told they couldn't have but they put the decks on nevertheless, and of course there's parties, there's weddings, there's speakers, the Hokey Pokey is going across the creek. There's a town beach across the street and it's very disturbing on the weekends when you go to the beach with the kids to hear -- and yes, we want people to have weddings and fun, but they shouldn't have been having them there, they said they wouldn't have them and it should stop. And of course, there's other kinds of noise that go with it. They put up big outdoor tents and continue the parties.

They have, you know, the parking, stuff going on from one parking lot to another, slamming doors, people, "Hey, how are you," all this kind of noise going on until two, three o'clock in the morning. Speeding, delivery trucks, all kinds of vegetable trucks, trash compacting trucks, all these kind of noises and just the patrons driving up. If there's a wedding and there's a hundred cars, that's a lot on a Saturday afternoon and then again on a Saturday evening, and they promised they wouldn't do that.

Bright lights. They also were told they couldn't have any lights and this is just a quick shot, you know, this is not a quiet, respectful, non-glare set of illumination. This is what it looks like from across the creek from some of the neighbors that are quite unhappy about how they're proceeding.

The size of the structure itself, if anybody would go there and see, it's nowhere near a 3,500 square foot building. And because of its situation by the water it needed to be nine feet up off the ground; well, they chose to bring it up 12 feet off the ground so there's 12 feet of landfill. As you drive down the street, you've got a mound going up 12 feet and then you've got a two-story building that was proposed as a one-story building, plus it's got huge roofs and cupolas on top. We haven't had anything professionally measured because we're not allowed on the property, but I surmise it to be somewhere between 45 to 50 feet high off the ground, and this is just not in the character of a little duck farming town street. And it's just for the neighbors to have to deal with that, it's unfair.

Safety. This was another condition that we talked about early on, that you have a catering hall, you have many, many people drinking and partying, you're going to see a lot of weaving, and you do, I mean, you see people -- I haven't seen it, but many of the neighbors tell me that when they're walking the dogs they have to jump out of the road because people are whizzing up the street after a few drinks. You know, we've talked to the Police Department about it but, you know, they say of course, they have much too much to do and they don't have time to put someone steadily on our street, but it has become a very, very significant issue, as we predicted.

There's also flooding at the bottom of our street now because of all the asphalt paving. The restaurant was supposed to have a gravel parking lot and it's now all asphalt and the catering hall has asphalt, so there's, I don't know, 30,000 square feet of asphalt where there used to be natural grasses, so all the water floods down into the center area where we're supposed to be parking our cars. We want to enjoy the end of our street which is the Trustees Marina and boat dock.

So all in all, we feel like Southampton says they want to retain the natural qualities of what we

have here for the local people, working people and I don't think that that's what's being offered here with this very oversized, very extravagant catering hall.

CHAIRMAN CARACCILO:

Thank you for coming down and speaking on behalf of the community, we appreciate it.

MS. DELUCIA:

And I have some handouts, if I may. It's copies of some of the exhibits that we put together.

CHAIRMAN CARACCILO:

Next we have Mr. John Baker.

MR. BAKER:

I'll stay seated here.

CHAIRMAN CARACCILO:

No, because we have the mike there, Mr. Baker.

MR. BAKER:

Oh, okay.

CHAIRMAN CARACCILO:

Thank you.

MR. BAKER:

John Baker, PJ Venture. We have a site plan before you, it's part of a transfer of development rights done back in -- I think in '03 with the Town of Smithtown, on existing development, Crooked Hill Road and the LIE. The Home Goods building is there and was always there, a second floor two-story building, TDR permitted the use of the second floor as retail space and the addition of either a 6,000 square foot bank or a Starbucks, we chose to do a 1,200 square foot Starbucks in lieu of a bank and that's what's before you now. If you have any questions, I'd be glad to answer them.

CHAIRMAN CARACCILO:

Thank you, Mr. Baker. I appreciate you coming down again.
Bruce Barrette?

MR. BARNET:

Close, it's Bruce Barnett.

CHAIRMAN CARACCILO:

I'm sorry.

MR. BARNET:

These are copies of what I'm going to speak about. My attorney -- I'm Bruce Barnett, I'm one of the principals for Tallgrass Properties, LLC. My attorney, Larry Feldman of Farrell, Fritz can't be here today because he suffered an achilles tear and he's home in bed after the operation, so he asked me to read his letter and that's what I would like to do, as if I were he.

"Dear Sir or Madam, the undersigned represent TCG Operating Company, LLC and Tallgrass Properties, LLC, the owner of Tallgrass Golf Course and contract vendee of the DeLalio Sod Farm in Shoreham, New York; a 321 acre tract of land zoned for 1 acre single-family development. Reference is made to the above-captioned moratorium which is being considered by the Suffolk County Planning Commission at the December 6th, 2006 meeting."

"The study area of the proposed moratorium is approximately 3,000 acres in size and runs from

Shoreham, starting essentially at my client's property and ending in Wading River on the Riverhead Town line. The proposed moratorium's stated purpose is to identify development needs along 25A corridor in the study area. A careful review of the properties included in the study area raises many concerns relative to the need and validity of the proposed moratorium."

"Attached is a graphic depiction of the study area. If you don't have it up, let me just describe it to you. As you can see, approximately 65% of the study area is owned by the government or quasi-governmental entity. Development of this entire 65%, or approximately 2,000 acres of the 3,000, would yield only 70 single-family homes. Approximately 15% of the study area is my client's project."

"This tract of land has been the subject of intense community outreach over the last two and a half years, including two visioning sessions and numerous meetings with community groups and other stakeholders in the community. My client's proposal includes a smart growth development of the entire tract which would provide affordable housing, a diversified housing mix including moderate and luxury housing, a village center, open space, parks, recreational areas and ball fields, community benefits including a positive tax base and fewer school children than the "as-of-right" zoning."

"The balance of the study area, 20% of the entire study area, consists of smaller properties, the majority of which are zoned for one-acre single-family development. In broad strokes, 80% of the study area consists of either my client's proposed project or governmentally (or quasi-governmentally) owned property. This alone should be reason enough to deny proposed moratorium."

"I have extracted a section of the Suffolk County Planning Commission's website regarding moratoria. Its relevant part states, a moratorium is, from one perspective, the most extreme land use action that a municipality can take because it suspends completely the rights of owners to use that property. Seen in this light, it is advisable to precede the adoption of a moratorium by findings that confirm the necessity of this action."

"Questions here. What are the conditions that mandate the imposition of a moratorium? Are no other alternatives, less burdensome on property rights, available? Why are existing land use plans and ordinances not adequate? What recent circumstances have occurred that justify the adoption of a moratorium? How serious and urgent are these circumstances? What hard evidence is there to document the necessity of a moratorium?"

"What are the conditions that mandate a moratorium? There are none and there cannot be any. The only development of significance that is being considered is my client's proposal. With the exception of a small subdivision which has been in the pipeline for approximately six years and is on the eve of approval, there are no other developments proposed."

"Are there any alternatives which are less burdensome? Yes. SEQRA will accomplish all of the goals of this moratorium. Any project of significance will be analyzed under SEQRA; that is the appropriate method and means of analyzing and mitigating impacts of land use proposals."

"Are the existing land use plans adequate? Yes. The Town of Brookhaven, approximately 18 months ago, adopted a hamlet study which analyzed the study area and made recommendations on how future land uses within the study area should be treated."

"What recent circumstances have occurred to justify the adoption of a moratorium? None. The only development being considered is the proposal my clients have been working on for two-and-a-half years.

How serious and urgent are these circumstances? There are no circumstances, hence this is no urgency. What hard evidence is there to document the necessity of the moratorium? None."

"The fact that not one of the conditions required to impose a moratorium have been satisfy. In

fact, the Planning Commission of the Town of Brookhaven has recognized that there is no legitimate reason for the proposed moratorium. Accordingly, he made a written recommendation to the Town Board to deny the proposed moratorium."

"The proposed moratorium is not a local matter. It involves a development of regional significance, the Pine Barrens, areas within the Pine Barrens which are receiving zones for transfer of development rights, County, State and Federal property. Moreover, the implementation of this moratorium will have an affect on the residents of the Town of Riverhead as a result of its potential impact on the Shoreham-Wading River School District as well as other properties in the Town of Riverhead."

There is no legitimate reason for the proposed moratorium. The Suffolk County Planning Commission must take action and deny this moratorium and we respectfully request that you do so. Thank you for your consideration. Larry S. Feldman."

CHAIRMAN CARACCILO:

I don't think you need an attorney, sir, you did just fine.

MR. BARNET:

Thank you.

CHAIRMAN CARACCILO:

Thank you. I appreciate your time. Mr. Hollis?

MR. HOLLIS:

Good afternoon.

CHAIRMAN CARACCILO:

Good afternoon.

MR. HOLLIS:

My name is P. Daniel Hollis, III, I'm a partner in the law firm of Shamberg, Marwell, Davis & Hollis, 55 Smith Avenue, Mt. Kisco, New York. We represent the Long Island Builders Institute. I've submitted a quite lengthy piece of legal work with regard to both the factual situation surrounding this moratorium, which Mr. Barnet has discussed in great detail through his counsel, and our legal points as to why we believe that this moratorium is ill-conceived, improperly drafted and, if enacted, will be done so illegally. This matter is referred to you by Section 239 of the General Municipal Law for your determination as to whether it's a matter for local determination or whether you should make a recommendation; we'll get to that in a minute.

Long Island Builders Institute, which I'll refer to as LIBI, does not oppose the moratorium. And by the way, our firm has been very much involved in litigation to the highest court of the State with regard to moratoria that were improperly enacted in Westchester, Putnam, Orange, Rockland and Dutchess Counties, so we speak with some degree of familiarity of the topic and our memorandum sets forth the reasons in great detail why this moratorium is faulty. But the reason I'm here is to urge you to not defer this matter for local determination. Because of the comments made during the course of a public hearing on November 9th by certain members of the Town Board and by members of the public, it indicates that this matter, as Mr. Barnet and Mr. Feldman have said, goes far beyond the borders of Brookhaven and along the Route 25A corridor.

In fact, the purposes that were discussed were that this is to discuss the cumulative impacts of future development in adjoining municipalities. Well, if you're going to do that, then that is not a matter for the Town of Brookhaven to determine alone, it becomes a regional significance

thereby putting it well within your jurisdiction for a recommendation, it's your decision to make. And then when you have the jurisdiction, we respectfully submit taking it one step further, that your recommendation be not to adopt this moratorium. Because the moratorium, as I said, is ill-conceived, faulty crafted and will be illegally enacted.

It has no legitimate purpose. The hamlet study, as Mr. Barnet says, was enacted 18 months ago, March, 2005, as the final piece of work in a three part trilogy that started in 2002 where this issue has been looked at. It is that this is an action designed to stop development and in particular one development. There's no legitimate purpose, the moratorium is not in accordance with the town's comprehensive plan as it must be, the town law requires that. If you are going to enact a moratorium which is, in effect, a zoning ordinance amendment, that has to be for a legitimate purpose and the action has to be reasonably related to that legitimate purpose. There is no legitimate purpose and this action, therefore, can't be reasonably related to any legitimate purpose.

The moratorium was a result of -- there's perhaps an unofficial reason that I've talked about in my papers and it was discussed, in fact, during the public hearing. And the unofficial reason is the possibility for a condemnation or acquisition of certain properties subject to the moratorium by the Town of Brookhaven and/or the County of Suffolk. And if that's the case, then I make reference to affirmative acts of municipal authorities in precondemnation activities that create a cloud of condemnation over the property -- that's not my phrase, that's from a court case -- and that cloud of condemnation lowers the value of a person's property and that municipality and/or the County would be responsible to that property owner for the diminution of value of the property by that affirmative act creating the cloud of condemnation.

There is no legitimate purpose in this ordinance. There's no proper governmental purpose here and nothing can be reasonably related to it.

To enact this moratorium would be arbitrary and an invalid act constituting a violation of whatever property owner is there, particularly Mr. Barnet and others, without due process of law raising significant constitutional questions. And as my papers say, it amounts to a taking and with that taking flows from it the cost attendant. The Town of Brookhaven ought to be familiar with verdicts against it, it had a huge one against it not so long ago. And some of the case that I cite, the Continental case, the {Triglia} case, those are cases that we tried and we won and those towns paid a lot of money because of things that they did improperly without proper afore-thought, without a proper process in place and without proper legal standing to enact that moratorium.

And for all of these reasons, we urge you to jump into this fray, consider it a matter of regional importance, act and then recommend against it because of the reasons I set forth in my submission.

CHAIRMAN CARACCILO:

Thank you, Mr. Hollis. I appreciate your time today.

MR. HOLLIS:

Thank you for having me.

CHAIRMAN CARACCILO:

If there are no other speakers, we will close the public portion. Bobby, you've got to go, too?

COMMISSIONER GOODALE:

In about a half an hour.

CHAIRMAN CARACCILO:

All right, so we'll jump right into -- we're going to put the Director's Report, the Commissioner's Roundtable on the side and we'll just jump right into our business today. Andy, you're going to start us off?

MR. FRELENG:

Okay.

CHAIRMAN CARACCILO:

And the first item on the agenda is the Town of Brookhaven moratorium, correct?

MR. FRELENG:

Yes. The first regulatory matter before the Suffolk County Planning Commission comes to us from the **Town of Brookhaven**, this is a referral on the Town Board's own motion, enactment of a moratorium along **New York State Route 25A from Shoreham to Wading River**, otherwise known as Local Law 30.

Jurisdiction for the commission is that moratoria are zoning actions subject to referral pursuant to the Suffolk County Administrative Code, Section A14-14A(1). The moratorium also affects land within 500 feet of Long Island Sound and Route 25A. Also, the moratorium is adjacent to the Town of Riverhead. Subject to commission operating procedures, the Town of Riverhead was notified with respect to the moratorium and we do have in the file a letter we just received from the Town of Riverhead indicating that they're familiar with the language of the moratorium and they have no objection to its approval.

With regard to some of the proposal details and the overview --

COMMISSIONER ESPOSITO:

Andy, was that distributed to us?

MR. FRELENG:

No, it wasn't. This application on the Town Board's own motion is for an amendment to the Town Zoning Code, Chapter 17-H which is now entitled "Moratorium/New York State Route 25A, Shoreham and Wading River." This is applicable to approximately 2,000 acres of land fronted relatively along New York State Route 25A from Briarcliff Road on the west, which is in the Hamlet of Shoreham, to Riverhead town line on the east which is the Hamlet of Wading River. You can see up on the display here that the moratorium runs essentially from the west to the east, this is the Riverhead Town line, and I say relatively affecting properties along Route 25A. You can see that some of the properties that do front on 25A are quite large and back up quite a distance off the corridor.

An analysis of the character of the area indicates that the affected lands include approximately 926 acres of institutional land belonging to LIPA and KeySpan, roughly 300 acres of Town of Brookhaven land, approximately 137 acres of US Government, New York State and Suffolk County land, and roughly -- I'm sorry, roughly 330 acres of residentially developed or agriculture production with some commercial strip development land and approximately 370 acres of vacant developable land in process. Zoning for the area essentially breaks down to the KeySpan and LIPA property being zoned roughly A-10 and some L-4. The Town of Brookhaven land is zoned anywhere between A-1 and A-10. The government lands have various zoning categories from A-1 to A-10 and the vacant developable land is roughly zoned A-1 with some small parcels a J-2 commercial zoning.

In accordance with a review by the Town of Brookhaven Planning Department staff, approximately 77% of the land within with the proposed moratorium area are already either owned by the Town of Brookhaven or outside local control or has the highest zoning category placed on it with the Town Board being the body to change this existing zoning. The remaining 23% within the study area is developed commercial, single-family residential, agricultural in production or vacant land.

When the staff took a look at this, the staff did refer to the commission bulletin on moratoria, so

some of this language you will recognize. The bulletin was derived from case law as well, so some of that language you will recognize. Staff begins by indicating that a moratorium is, from one perspective, the most extreme land use action that a municipality can take because it suspends completely the rights of land owners to use their property.

From the perspective of the Suffolk County Planning Commission, a moratorium generally does not involve regional or inter-community impacts of an adverse nature and generally are considered matters for local determination. Most moratoria involve local controversy due to their very nature of suspending development processes such as change of zone actions, variance proceedings and subdivisions.

Relatively unique to this proposed moratorium is a request by a landowner directly to the Suffolk County Planning Commission to intervene in the local process and reject the moratorium. Moreover, the local Planning Commissioner has advised the Town Board that the moratorium is unnecessary and has not -- it's a typo in the staff report -- and has not recommended adoption and has forwarded his staff report to the County Department of Planning, and that was included in the mail-out.

It is the belief of staff that the local controversy has raised to the level that the full body of the Suffolk County Planning Commission should deliberate on the merits of the proposed moratorium. The moratorium as proposed indicates that, "In order to identify and address present and future development needs with respect to the existing zoning, surrounding development, visual and other environmental impacts, the character of the neighborhoods, in order to better provide for future growth and development," the moratorium is proposed to update the comprehensive plan.

It is the belief of staff that this purpose is vague in light of three hamlet studies that have been done to the area. Seen in this light, it is advisable for the town to precede the adoption of moratoria by "findings" and these findings confirm the necessity or should confirm the necessity of the action. The findings should include what the conditions are that mandate the imposition of a moratorium, whether there are no other alternatives less burdensome on property rights, why existing land use plans and ordinances are not adequate, recent circumstances that have occurred that justify the adoption of the moratorium, how serious and urgent these circumstances are and what hard evidence there is to document necessity of the moratorium.

With regard to the report of the Town Planning Commissioner, certain points do warrant discussion by the commission. It is the opinion of the local Planning Commission that the study area is predominantly developed, is held by public or quasi-public agencies or is adequately zoned to preserve the character of the area; i.e., the character of the pattern -- in other words, the pattern of the area or the development pattern in this area is set. By the way, up on the board, this is the zoning map, Chris?

MR. WREDE:

Uh-huh.

MR. FRELENG:

I don't know if you can read that. While these points may be an accurate assessment of the current state, the Town of Brookhaven has not adopted any of the three hamlet studies that have been undertaken for this area. In addition, quasi-public and public entities have been known to excess land for development and change of zone applications to the Town Board are likely to note, these development applications to the Town Board are likely to note that the current Master Plan is dated and should accommodate state-of-the-art planning and land development techniques and trends. Staff would urge the adoption of some of these hamlet plans. These points should be noted with regard to the statements of the local planner, that while this is a snapshot in time and a development pattern may be set, some of these larger properties, though, could be excessed and could be subject to development and would be,

under the current -- it's just the opinion of the staff that some of these parcels that "may be set in stone" are not necessarily set in stone and could always come in for a change of zone or be exceeded by some of the quasi-public entities there.

While the commission has not served in the past as the arbitrator of whether a moratorium meets legal criteria, the issues raised by the Town Planning Commission are important and do warrant deliberation, especially when evaluated against the standards expressed in the commission's own advisory on this topic.

While the adoption of a moratorium is often considered a matter of local determination, the commission should consider a disapproval motion based on the above. Staff is recommending disapproval, primarily for the reason that the moratorium language is vague and that it should be preceded by findings, etcetera, conditions that mandate the imposition of a moratorium, whether there are other alternatives, why the existing ordinances are not adequate, the recent circumstances that have changed that would warrant the moratorium, how serious and urgent these circumstances are and what hard evidence there is to document the necessity of the moratorium. So staff is recommending to the commission disapproval for those reasons.

CHAIRMAN CARACCILO:

Thank you, Andy. I'll open it up for a discussion.

DIRECTOR ISLES:

If I can just ask one question --

CHAIRMAN CARACCILO:

Sure.

DIRECTOR ISLES:

-- before you open it up, Mr. Chairman. Just as a point of fact, we heard -- our records indicate that the hamlet study was not adopted, we heard testimony earlier that it was adopted and the answer is that it's not adopted? Okay. Here again, staff did review the three hamlet plans that we prepared, the most recent one in 2005. Here again, in terms of the test of dire necessity and emergency and so forth, we didn't see that in the facts that we reviewed and just confirming that there is not an adopted plan, as far as we know because we had heard that today. Nevertheless, the staff recommendation stays as it is.

I would like to comment, too, on Andy's final point dealing with his point that the fact that we're recommending disapproval of the plan is, number one, we site that there wasn't sufficient basis developed towards that. We do see some perhaps long-range issues with the KeySpan property, it's an A-10 zoning, it's ten acre zoning. We don't think that constitutes an emergency but we do think that, sure, that's something that certainly is a legitimate planning exercise that perhaps needs to be pursued further, but just as a further elaboration of the points Andy made as well. Thank you.

CHAIRMAN CARACCILO:

Thank you, Director Isles. I'll open up the discussion, just identify yourself prior to speaking.

COMMISSIONER HOLMES:

Commissioner Holmes, Shelter Island. My one greatest fear with moratoria, because we have seen some sad examples of moratoria on the east end, maybe one of the attorneys can confirm this for me, but our experience has been that when a town adopts a moratorium, announces that they are adopting a moratorium, there is a lead time before that moratorium is effective. This has been the case in the moratoria I have seen. I presume that all moratoria are constructed that way so that there is a lead time between the announcement of the moratorium and the effectiveness of it, or when it goes into effect. And what we have seen, several times sadly, is that once a moratorium is announced, people who only had vague plans of land use in that area

flock to the local town board and planning board, to the planning board of which I was a member on Shelter Island for several years, they flock to the planning board with plans for shopping centers, developments, whatever use they could make. People who really would not have probably tried to develop property in the area of the moratorium suddenly flock to do it and we get an excess of projects in the affected area, which to me undermines the purpose of a moratorium.

And I heartedly agree with the Town Planning Commissioner that the town would be better served by, number one, adopting the hamlet plans they've already developed, but allowing the local Planning Commission to undertake further studies and those would lead to findings which I think staff has made a very good recommendation about. So I certainly support the staff position and the positions of those who have spoken.

LEG. COOPER:

Thank you, Linda. Shirley?

COMMISSIONER BOLTON:

Commissioner Bolton. I had one question, actually, for Mr. Freleng. I wanted to find out, because it says in the summary in the -- on the face of the staff report that SEQRA information is pending, and I just wondered if there was a SEQRA review that was being done that has the promise of producing, you know, an adequate array of alternatives, really looking at the various impacts. You know, because quite honestly, it appears that that really is the right way to go.

MR. FRELENG:

We received in the transmittal material a full environmental assessment form, but we didn't have that indication of whether or not there was a determination of significance on the matter. So I believe that's still before the town board.

COMMISSIONER BOLTON:

But that's something that --

DIRECTOR ISLES:

Well, two things we're looking at; one is the SEQRA determination relative to the town board's consideration of the moratorium.

COMMISSIONER BOLTON:

Yeah, right. Okay, but also relevant to the --

DIRECTOR ISLES:

The second would be for the project that was spoken of earlier today, that if there is a requirement, of course, for compliance of SEQRA, it requires the draft environmental impact statement, the full review, it also requires an analysis of alternatives and cumulative impacts. So I think that, as you are probably suggesting then, is the real -- or perhaps a vehicle to consider the issues that were raised.

COMMISSIONER BOLTON:

The appropriate vehicle for really exploring things that it seems that this moratorium may have been a kind of quick answer to and proceed to be a quick answer to. Do you know whether there has been -- I mean, do you know the SEQRA status of the underlying action?

MR. FRELENG:

The Tallgrass application?

COMMISSIONER BOLTON:

Yes.

MR. FRELENG:

I do not know the exact SEQRA status.

DIRECTOR ISLES:

I believe it has been given a positive declaration and is proceeding through those steps. I'm not going to put the Commissioner on the spot, but --

MR. WOODS:

It's public knowledge.

DIRECTOR ISLES:

Do you care to make a statement?

MS. MAHONEY:

Please state your name.

MR. WOODS:

David Woods, Commissioner of Planning, Town of Brookhaven. The applicant has submitted a draft environmental impact statement, there has been a pier review from the consulting firm of AKRF and that's where we are right now.

COMMISSIONER BOLTON:

I assume as part of that you're doing -- you're looking at alternatives?

MR. WOODS:

Multiple alternatives, actually we've got eight?

MR. BARNET:

At least eight.

MR. WOODS:

At least eight alternatives that they've done through a visioning process.

COMMISSIONER ESPOSITO:

What was the length of time they're requesting a moratorium for?

DIRECTOR ISLES:

Twelve months, to my knowledge.

MR. FRELENG:

Yes, 12 months.

CHAIRMAN CARACCILO:

Any other comments?

COMMISSIONER HOLMES:

I just wondered if we could clarify, is there always a lead time between the announcement of a moratorium and the effective date of it? Am I correct that that has been true in the past.

DIRECTOR ISLES:

There is, because the Town Board must conduct a public hearing, must give notice, must conduct a public hearing before deciding on a moratorium and then they establish effective date. In this case, the Town Board apparently set a hearing in late August, there was a Public Hearing held on November 9th, the hearing has been adjourned by the Town Board, as I understand it and pending I believe the review of this commission, then they will make their decision.

COMMISSIONER HOLMES:

Okay, I see.

DIRECTOR ISLES:

So there is that lead time that's built into it in order for the public to be informed and given an opportunity to comment. Since it is considered to be a zoning action, it's subject to notification procedures.

CHAIRMAN CARACCILO:

Any other questions or comments?

COMMISSIONER BOLTON:

Can we appropriately note in our staff analysis that SEQRA is being conducted and that we feel this is an inappropriate vehicle?

DIRECTOR ISLES:

The moratorium encompasses many more parcels than just that one project you talked about.

COMMISSIONER BOLTON:

Right, yeah.

DIRECTOR ISLES:

So I'd be a little bit concerned about pointing out one project per se.

COMMISSIONER BOLTON:

Okay, okay.

CHAIRMAN CARACCILO:

Don?

COMMISSIONER FIORE:

Yeah, Commissioner Fiore. Does the town have that ability to not make a decision, push it off to the Suffolk County Planning Commission and let them make a decision?

DIRECTOR ISLES:

They cannot make a decision until it is reviewed by the County Planning Commission or there is no action by the Planning Commission after 45 days. So it is a required step in General Municipal Law.

COMMISSIONER FIORE:

Okay, because it sounded to me like they were just snuffing it off.

DIRECTOR ISLES:

I'm not going to characterize it.

CHAIRMAN CARACCILO:

I saw the town board hearing, yeah.

COMMISSIONER BOLTON:

They're not taking notes.

CHAIRMAN CARACCILO:

Any other comments?

COMMISSIONER PRUITT:

I'd like to make a motion to accept the recommendation of staff.

CHAIRMAN CARACCILO:

Thank you, Ed. And Andy, I think --

COMMISSIONER FIORE:

And I'll second.

CHAIRMAN CARACCILO:

I think, Andy, you did a great job on this and if we're going to act as an arbitrator, I think we did the right thing. So all those in favor of the staff report?

("Aye" said in unison)

Opposed? Abstention? ***The moratorium is denied, the staff report carries (VOTE: 10-0-0-1 Not Present: Lou Dietz).***

Next item on the agenda; Andy?

MR. FRELENG:

The next item on the agenda comes to us from the ***Town of Riverhead***, this is the application of ***Theodora Cohen***. Jurisdiction to the commission is that the subject property is adjacent to East Main Street, State Route 25.

Applicants seek Town Planning Board site plan approval for the conversion of a single-family dwelling into either office or residence use and the demolition of a second dwelling on-site to construct two two-unit rental apartment buildings, 14 parking spaces are proposed where two are indicated to be land-banked. Subject property is located on the south side of East Main Street which is New York State Route 25, approximately 285 feet east of Howell avenue which is a town road in the Hamlet of Riverhead.

A review of the character of the land use and zoning pattern in the vicinity indicates that the subject premises is situate in the DC-3 which is a Downtown Center Office, zoning category. The immediate area is zoned similarly, however, land further east is zoned commercial/residential campus. It's hard to see from the zoning map, but the subject property is pretty much right in here, so to the east is the CRC zoning category but for the most part the property is just at the edge of this DC Downtown Zoning category.

COMMISSIONER ESPOSITO:

Andy, just as a very small technical point, the staff report says that it's 26,995 acres.

CHAIRMAN CARACCILO:

That's a lot of land, Andy.

COMMISSIONER ESPOSITO:

I just wanted to mention that I think that's not correct.

CHAIRMAN CARACCILO:

Adrienne, you're always with those little details.

COMMISSIONER ESPOSITO:

That's because I read the things. If you read them.

MR. FRELENG:

The adjacent property to the west is residential dwelling converted to commercial use, adjacent to the east there's an apartment building complex. South and adjacent to the subject property is a residential dwelling and north of the subject site abuts New York State Route 25 which is East Main Street. Across East Main Street are retail -- there's a retail food, deli, and the Town of Riverhead Town Hall Complex, so this is Town Hall -- I'm sorry, this is Town Hall, that's the deli, this is the subject premises, there's a big apartment complex to the east, just south is a converted dwelling, Main Street.

Access to the proposed use will be from curb cuts to East Main Street to the north. It should be noted that the subject application is located in an economically distressed community, as defined by commission guidelines and required to be reported pursuant to Resolution 102-2006 of Suffolk County.

Comprehensive plan recommendations from the Town of Riverhead indicate that the Riverhead Comprehensive Plan recommends "Downtown Center" for this site. The proposed apartment uses are not consistent with the plan recommendations. Pursuant to Town of Riverhead Zoning Law, rental apartments are not a permitted use in the DC-3 zoning designation. Residential single-family dwellings are permitted by special permit. Two options for the remaining single-family dwelling is proposed, one being residential, one being office; office is a permitted use, however I indicated residential dwelling is not.

Parking requirements vary for each of the uses and it is not clear which parking standard is being applied to the site plan. There are several details of the site plan that are not in conformance with the DC-3 zoning requirements of the Town of Riverhead Zoning Law, particularly in the DC-3 zoning district, the principal building entrance and front must face the primary street and sidewalk. In this case, the units are behind another building and the principal entrance appears to be from the sidewalk facing the parking lot.

So taking a look at the site plan, this is the principal dwelling, its orientation is to the east or to this strip of asphalt, it's intended to be accessed. The two apartment structures as well face to the east or face this sidewalk, the code requires that all these buildings should be facing the main roadway so they are not in compliance with the fundamentals of the zoning component. Moreover, there are site plan elements including dumpster enclosures, parking amount and orientation, landscaping and lighting that are not in conformance with the requirements of the zoning designation. The New York State DOT has reviewed this and has requested cross access or future cross access to adjacent properties be shown on the plan, none is so indicated on this submitted plan.

Staff is recommending disapproval for the following reasons. Primarily, it is inconsistent with the Town of Riverhead Comprehensive Plan and Zoning Law designating this property as DC-3 Zoning; as such, it would tend to substantially undermine the effectiveness of the zoning ordinance. This is regarding the paragraph which follows, it's from the staff report, it speaks to residential apartments not being permitted in the zoning code, the parking requirements vary for each of the uses and it's not clear which use is being proposed for residential dwelling and that there are several details of the site plan that are not in conformance with the zoning requirement, as well that DOT has requested cross access and cross access is not shown. That is the staff report.

CHAIRMAN CARACCILO:

Thank you, Andy. Comments, questions?

COMMISSIONER GOODALE:

Commissioner Goodale from Riverhead. It's my opinion that this plan is not ripe, it is not sufficiently developed to deal with a very difficult piece of property. It just is not, in its present form, acceptable to me and should not be acceptable, in my opinion, to the commission.

CHAIRMAN CARACCIOLO:

As a representative of Riverhead, thank you. Any other comments or questions? Would you like to -- I'm sorry, sir?

COMMISSIONER LANSDALE:

Commissioner Lansdale. Was there any mention of workforce housing in the report?

MR. FRELENG:

No, not in the referral materials of the commission.

CHAIRMAN CARACCIOLO:

A motion is in order.

COMMISSIONER GOODALE:

Yes, so moved, to support the staff recommendation.

CHAIRMAN CARACCIOLO:

Second?

COMMISSIONER HOLMES:

I'll second.

CHAIRMAN CARACCIOLO:

Second was Linda, the first was Bobby. All those in favor? Opposed? ***Motion carries accepting of the staff report (VOTE: 10-0-0-1 Not Present: Lou Dietz).***

Okay, Andy?

MR. FRELENG:

The next matter before the commission comes to us from the ***Town of Smithtown***, this is the application of ***PJ Ventures Starbucks and Homegoods***. Jurisdiction to the commission is that the subject property is within 500 feet of Sagtikos State Parkway, NYS Route 495 and the Town of Islip. It's important to note at this point that this matter, as I'll indicate again in the staff report, is subject to the new Local Law which required referral to residences and businesses within a thousand feet of the subject application. That notification, that public notice has gone out, it has been reviewed by the Department of Law and found to be adequate for this meeting, therefore we will hear the matter today and staff will present its staff report.

The applicants are seeking Town Board site plan approval for a proposed 1,200 square retail building, referred to as Starbucks, and utilization of 25,000 square feet of vacant space on the second floor of an existing Homegoods Store for retail use. The subject shopping center is located on the northeast corner of the intersection of Crooked Hill Road which is County Road 13 and the Long Island Expressway North Service Road in the Hamlet of Commack.

A review of the character of land use and zoning pattern in the vicinity indicates that the subject application is situate in an existing 44 acre shopping center zoned Shopping Center Business. Zoning around the area is predominantly Shopping Center Business and light industrial, as you can see from the overhead. Land uses around the proposed uses include retail in the existing shopping center and industrial uses which is the Suffolk County Department of Public Works storage maintenance yard to the west. Across Sagtikos State Parkway to the east is residentially zoned and approved land. The subject proposed building and the existing Homegoods store is bound by parking area for the existing shopping center. The shopping center itself is bound by Crooked Hill Road to the west, the Long Island Expressway North Service Road to the south and Sagtikos State Parkway to the east. To the north, the site is bound by light industry and vacant R-43 property, a recharge basin is situated north and

abutting the shopping center.

Access to the proposed uses will be from existing parking fields associated with the shopping center. Access to the shopping center is from CR 13, Crooked Hill Road. The subject property is situated in Hydro-Geologic Ground Water Management Zone I, pursuant to Article 6 of the Suffolk County Sanitary Code. The property is located in the Oak Brush Plains Special Groundwater Protection Area. The SGPA plan recommends commercial and Planned Unit Development for the subject area.

The Town of Smithtown Comprehensive Plan is currently being updated. The proposed uses, however, are consistent with the predominant zoning in the immediate vicinity.

The proposed uses -- this is the staff analysis. The proposed uses will add 1,200 square feet of retail and utilize 25,000 square feet of existing space. The overall square footage of the shopping center is approximately 433,000 square feet and includes a Target, Expo Design Center, a Costco as well as other buildings. The addition of 26,200 square feet of retail space equates to an addition of approximately 6% of retail use to the site.

Pursuant to Local Law 29-2006, amending Section A14-15 of the Administrative Code, applicants proposing a commercial development in excess of 25,000 square feet, within 500 feet of a town or village boundary, shall provide written notice to all businesses and residences located within a thousand foot radius of the proposed development that the matter has been referred to the Suffolk County Planning Commission. Though part of the petition is to occupy existing space and not new development, the petition does involve the larger 44 acre shopping center. It is the belief of the staff that for commission purposes the application should be treated as being subject to the Local Law, it has been and it is being reviewed now.

A review of the Institute of Transportation Engineers Trip Generation Manual indicates that the overall shopping center may generate approximately 22,000 trips on an average Saturday. The proposed uses of 26,000 square feet would be anticipated to add approximately 866 trips for the Starbucks which was looked up as a fast-food drive through, and approximately 1,377 trips for the Homegoods store which was looked up as a free-standing discount superstore, for a total of 2,243 trips on an average Saturday; this would be an increase of approximately 10% in the overall trips. It is the belief of the staff that the impact of this increase in trip generation, in light of the proposed congestion improvements which were -- went over last month in the Growth Centers Report, particularly for the Commack Road area -- in light of those proposed congestion management improvements in the area, staff believes that this 10% increase in trip generation would be minimal and staff is recommending a local determination.

CHAIRMAN CARACCILO:

Thank you, Andy. Questions, comments? So moved -- I'm sorry, Ed.

COMMISSIONER PRUITT:

No, I'm not opposing, I'm trying to understand the local determination outcome on this particular one. If it was referred to the commission because, you know, it's roughly 25, because it met the criteria, why are we sending it back for local determination?

CHAIRMAN CARACCILO:

Andy, can you answer that?

MR. FRELENG:

It was staff's opinion that the Starbucks in and of itself and the filling of the 25,000 square feet which was already constructed and built and accounted for in the overall 44 acre plan, these were minimal additions to that 44 acre plan. And if it was not withstanding the fact that the

entire 44 acre parcel was subject to the Local Law and required the referral, this would have been a local determination. So it was the trigger of the Local Law that brought it to the commission, however, we feel that the merits of the application still warrant the local determination.

DIRECTOR ISLES:

Mr. Pruitt, we normally wouldn't bring this to the commission because we would review it based on the adopted guidelines of the commission and refer back as a routine matter; not having intermunicipal or County wide issues, that's the criteria. Given the fact that this was subject to the Local Law that required notice, it must come to you and that's what we have today. We had no testimony from the public today, but nonetheless, it does require your review.

So our recommendation is still a local determination because we don't find any significant intermunicipal or County wide issues. And as Andy has indicated, it comes to your attention now because of the notice retirement. So it's a little unusual, usually we don't bring these to you, but in this case and under these circumstances, it does fall in your jurisdiction.

CHAIRMAN CARACCILOLO:

So basically, Tom, if they were going to put a Starbucks up before local determine -- you know, this Local Law, this really wouldn't even be in our jurisdiction.

DIRECTOR ISLES:

Right; it would be in your jurisdiction but it would have been a staff level thing.

COMMISSIONER BOLTON:

I think, also, the fact that the trip generation really is undoubtedly going to be less due to the fact that the Homegoods store is expanding but it's still a Homegoods store, it's not an additional retail unit.

COMMISSIONER PRUITT:

Right.

COMMISSIONER BOLTON:

And it's highly unlikely that in this huge complex that more than a few trips a day business to the Starbucks is likely to be generated outside the existing, you know, trip generation.

COMMISSIONER PRUITT:

Right.

COMMISSIONER BOLTON:

So based on that --

CHAIRMAN CARACCILOLO:

Starbucks is not making or breaking this.

COMMISSIONER BOLTON:

I would move the staff report.

CHAIRMAN CARACCILOLO:

Linda had a comment?

COMMISSIONER HOLMES:

I just had a question; Commissioner Holmes, Shelter Island. Were we given any indication, since this notice requirement was what triggered this, were we given any indication of the neighboring people who had received notice, whether we have any feedback from them?

MR. FRELENG:

We did not receive any correspondence from any of the residences or businesses or property owners.

COMMISSIONER HOLMES:

So they all received notification and we have not received anything.

CHAIRMAN CARACCILO:

And they actually received it twice, correct?

COMMISSIONER HOLMES:

Yes.

CHAIRMAN CARACCILO:

I mean, we did it once and then -- three times.

COMMISSIONER ESPOSITO:

Yeah, we've seen this three times, this is the third time.

CHAIRMAN CARACCILO:

I'm confident everyone has been notified.

COMMISSIONER HOLMES:

Okay. I just wondered if we had heard any comment or feedback from those.

CHAIRMAN CARACCILO:

Everyone has been notified and had ample opportunity to speak if so desired.

COMMISSIONER PRUITT:

I hate to harp on -- Commissioner Pruitt. I'm still trying to understand this because this application came before us twice and we didn't act on it because we didn't have all the notices.

CHAIRMAN CARACCILO:

Well, we -- counsel had determined at that time that the notices weren't sent out correctly because it was the first time it was done that the Local Law was enacted. So we just wanted to make sure, because it was the first time, that we sent the notices out correctly, I think that's why this application -- Director Isles?

COMMISSIONER PRUITT:

If we have to assure that the notification was given, then is that not still local determination? I guess I'm confused about the terminology.

DIRECTOR ISLES:

So I guess in a way they're separate. One is we have to give notice, no question about it, and you've done that. And next you come to what is your determination, whether it be you can approve, disapprove or make a local determination.

COMMISSIONER PRUITT:

Okay.

DIRECTOR ISLES:

So that's where you have to make your decision on that. We recommended to you when we presented a local determination, you still have to make a decision. So the notice, there's a new thing that's been added on, that's been satisfied, that's why it's before you, but your decision still has to be made.

MR. FRELENG:

If I can just add to that.

DIRECTOR ISLES:

Sure, please.

MR. FRELENG:

County Charter and State Law requires that you give reasons for your approval or disapproval.

COMMISSIONER PRUITT:

Right.

MR. FRELENG:

Local determination would be the paragraph above the staff recommendation, I think would be the sufficient reason for the local determination.

COMMISSIONER PRUITT:

Okay, right. I'm satisfied.

CHAIRMAN CARACCILO:

Thank you. A motion is in order?

COMMISSIONER BOLTON:

I will move the staff report.

COMMISSIONER HOLMES:

I will second it.

CHAIRMAN CARACCILO:

Second by Linda. All those in favor? Abstentions? Opposed?

Motion carries. **Approved (VOTE: 10-0-0-1 Not Present: Lou Dietz).**

MR. FRELENG:

Okay, the next matter, regulatory matter before the Suffolk County Planning Commission comes to us from the **Town of Southampton**, the matter of **H.T.L. LLC**. The jurisdiction for the commission is that the subject property is adjacent to Seatuck Cove. The applicants are seeking Town Planning Board Site Plan approval for a 3,540 square foot catering hall on 34,106 square feet of land in the resort waterfront business zone. Forty-seven parking spaces are proposed, 37 spaces on-site and 10 spaces off-site at the adjacent marina to the north.

The subject property is located on the east side of Bay Avenue, approximately 1,100 feet south of River Avenue, North Road to Town Road in the Hamlet of Eastport. A review of the character of the land use and zoning pattern in the vicinity indicates that the subject premises is situated in a Resort Waterfront Business Zoning category. The immediate area is zoned similarly, however the predominant zoning in the vicinity is residential R-40. The area is developed along Bay Avenue with residential along the west side, a restaurant abutting the subject site to the south known as Trumpets LLC and a marina adjacent to the subject property to the north, known as Eastport Properties LLC. The subject property fronts on Bay Avenue to the west and Seatuck Cove to the east. Access to the proposed use will be from curb cuts to Bay Avenue to the west.

No State or Federal wetlands occur on or adjacent to the subject property. The parcel is bulkheaded and is adjacent to Seatuck Cove to the east. I just want to point out that Seatuck Cove is a regulated wetland by State and Federal, I just wanted to correct that statement.

The Comprehensive Plan Recommendations. It's indicated that the Town of Southampton,

1970 Comprehensive Plan recommends commercial for this site. The 1980 and 1997 Master Plan Updates have no specific recommendations for the subject property.

The subject matter was approved by the Town of Southampton Planning Board on May 23, 2002, subsequently constructed and the building and use received a Certificate of Occupancy from the town on December 6, 2004. The referral is before the Suffolk County Planning Commission because -- I'm sorry, the referral before the Suffolk County Planning Commission is being made as a result of local litigation and pursuant to a Decision & Order of the Supreme Court of the State of New York.

The requirement of referral for the above-referenced application is derived from the subject property being adjacent to Seatuck Cove, an estuary to Moriches Bay. In so much as the subject site is now developed and operational and that there has been and is a functional bulkhead along the shoreline, Suffolk County Planning Commission requirements with respect to setbacks from the most landward limit of wetlands are moot. However, the inter-community or regional component of the commission's jurisdiction is public access to waters of Suffolk County. It has been alleged by intervening parties that the town public access, which is boat launch and marina, to the bay is blocked by overflow street parking from the adjacent use to the south. It is alleged that the proposed on-site parking for this use is not adequate and that the proposed use will exacerbate the situation.

The review of the "as-built" site plan and town zoning regulations indicate that the minimum lot size in the RWB zone is 40,000 square feet. The subject property, however, is 34,107 square feet, 5,893 square feet short of the required minimum lot size. Prior to the application and construction of the subject catering facility before the commission, the site was improved with two structures, a two-family residence and an accessory building adjacent to Seatuck Cove. Commission staff is not in receipt of an area variance or minutes of deliberations of the Town Planning Board addressing the ability of the catering facility to be located on a substandard lot. It may be that the preexisting construction on-site grandfathered the current application or that the substandard lot is and has been "single and separate" prior to the current zoning. It is the belief of staff that the referral of said information is an oversight on behalf of the Town Planning staff and is easily rectified.

A more significant issue is the allowed occupancy of the catering facility as approved by the Town Planning Board and as allowed by the Town Fire Marshal as it relates to on-site parking. The two are not similar and may cause issues in terms of parking overflow in the future. Parking requirements for the catering facility is outlined in the Town of Southampton Zoning Law, Subsection 330-95 as outlined as such; "Restaurant standard, one per three persons of rated occupancy as determined by the Town Department of Fire Prevention, plus one per employee at the peak shift."

The Town Chief Fire Marshal has issued a Certificate for the maximum occupancy of Trumpets Catering Hall not to exceed 164; this was issued November, 2004. According to the Zoning Law, the required parking for the use would be 54.6 spaces plus one per employee, indicated to be nine in referral documents to the commission, for a total of 63.6 or 63 parking spaces. This would be 27 spaces short of what is proposed on-site or 42.2% and 17 spaces short or 26.6% of the total provided parking including an off-site accommodation.

The Town of Southampton Planning Board, in their approval of the proposed catering facility in May of 2002, limited the occupancy of the proposed use to 119 patrons or guests and nine employees. The parking requirement for this limitation would be 49 spaces; this is short for the provided parking of 47 spaces by two spaces. So they require 89 spaces, the applicant provides 47.

The question arises as to which of the occupancies between the Fire Marshal and the Town Planning Board is the occupancy to be referred to in the event that a function at the catering

facility causes a complaint that is responded to by the town. Notwithstanding the fact that only 37 spaces are provided for on-site and ten more off-site, it would appear that a crowded function relying on the Fire Marshal's rated occupancy would result in overflow on-street parking. It is not clear to commission staff what bearing the Town Planning Board's limitation on occupancy (119 plus 9 employees) would hold over the Town Fire Marshal. Moreover, it is not clear why the Town Planning Board required only 47 total spaces to be accommodated in the on-site/off-site parking plan when a minimum of 49 spaces appears to be required.

It is the belief of commission staff that the parking arrangements approved by the Town Planning Board is adequate by a minimum of two spaces and a worst case of 17 spaces. Overflow on-street parking may access -- I'm sorry, overflow on-street parking may make access to the town boat launch to Seatuck Cove problematic and therefore infringe on the public access to waters of Suffolk County. Staff is recommending approval of the map with the following conditions. One, that the Town Planning Board and/or the Town Zoning Board of Appeals remedy for the lot area and dimensional variances shall be included in the town referral to the Suffolk County Planning Commission. We indicated that we believe that was a staff oversight and that information is pending, it should be forwarded.

The second condition that would be attached to the approval is that the Town Planning Board shall direct the Town Chief Fire Marshall to re-issue the maximum occupancy certificate for Trumpets Catering Hall to 119 or shall have the overall parking plan amended to accommodate 164 patrons and nine employees. That is the staff recommendation with two conditions.

CHAIRMAN CARACCILO:
Comments? Yeah, Charla?

COMMISSIONER BOLTON:
One question. What -- under State Law, doesn't -- I mean, does the Planning Board have jurisdiction to approve a substandard lot?

MR. FRELENG:
Yes. I'm sorry, if the Planning Board makes the finding or the Zoning Board of Appeals makes the finding that the subject property is single and separate throughout all the zone changes up to a point of application, then they would be able to approve it on the substandard lot.

COMMISSIONER BOLTON:
Okay.

MR. FRELENG:
Our discussions with the Town of Southampton indicated that they did do a single and separate research, they just failed to forward that to the commission.

COMMISSIONER BOLTON:
Okay.

CHAIRMAN CARACCILO:
We're going to go around the table. Bobby?

COMMISSIONER GOODALE:
Yes, Commissioner Goodale. There's been representation that the size of the building is not as presented. Do we -- we are not, or are we, in a position that we can take that into account, or do we have to rely upon the representation from the Southampton Town Planning Board about the size of the building?

MR. FRELENG:
That's a good point. When staff went out there we did notice the size of the building, however

all the plans that were referred to us from the Town of Southampton, and that is the agency that we are linked up with for this application, indicated that it was a 3,500 square foot building.

CHAIRMAN CARACCILO:

You're saying, Andy, when you went out there it was not 3,500 square feet.

MR. FRELENG:

Well, I couldn't measure it, I couldn't get into the building. The plans indicate there is 3,500, but from the point of staff review, 3,500 square feet didn't meet the parking requirements, so anything in addition --

CHAIRMAN CARACCILO:

Right.

MR. FRELENG:

-- was just further --

COMMISSIONER GOODALE:

So therefore, since this is really -- in the end, in my mind, this is all about parking. If it is the case that the building is larger than as presented --

CHAIRMAN CARACCILO:

Thirty-five.

COMMISSIONER GOODALE:

-- could we make comment to the fact that we would expect that the size of the building, whatever it is, we would expect that to meet the criteria for the use of that size building?

CHAIRMAN CARACCILO:

And what Andy is saying is the parking doesn't even meet it if it's 35 or so, it's still short.

MR. FRELENG:

Certainly the commission can put a comment or a condition that the town re-examine the square foot of the building.

CHAIRMAN CARACCILO:

It's like a fraudulent application almost. John?

COMMISSIONER FIORE:

Yeah, I have several questions, because I was a little troubled by this whole thing --

CHAIRMAN CARACCILO:

Me too.

COMMISSIONER FIORE:

-- as it was being presented. And I would need -- Chris Kelly, just for a couple of comments, if you don't mind. Is that appropriate?

DIRECTOR ISLES:

Limited, I guess.

CHAIRMAN CARACCILO:

Okay, it's limited, Don.

DIRECTOR ISLES:

If you want to ask a question or two, but here again, this is not intended to be -- Mr. Kelley is not here as a witness.

COMMISSIONER FIORE:

Not a witness, it's how this whole thing took place in the first place, because we have a building here that was issued a permit to be built. There is no doubt, I believe knowing the Town of Southampton, that there was a set of plans, all right, that had to be approved. There are also, you know, inspectors, building inspectors that came and approved certain parts of that building, whether it be the foundation, the raw stage and then the finished stage and along with electrical and everything else that goes along with that. And if the Planning Board of the Town of Southampton and the Zoning Board approve this, then what we have here is a litigation that is saying this is not right; is that correct?

CHAIRMAN CARACCILO:

And Mr. Kelley, if you could just keep your comments just to answering the Commissioner's questions.

MR. KELLEY:

This never went to the Zoning Board, the Planning board said it didn't have to be at the Zoning Board, so it's only gone to the Planning Board. The Planning Board resolution, in the resolution itself which I know Andy's got a copy of it in the file, says this is 3,500 square foot building. The building permit application itself says it's 3,500 first floor, another 1,300 feet on the second floor, it's over 4,800 square feet that the building permit was approved for, okay. And in fact, it's beyond the 4,800 square feet when you see what's actually built, walk-in refrigerators and things.

COMMISSIONER FIORE:

Okay. Well, my thing there is that there was a permit issued to build this building as per the plans. Did they -- and I'll talk to the Commissioners here, did the Planning Board -- I mean, not the Planning Board, did the builder build something other than what was on the plan? And if he did, then there's a problem but it's not a problem here, it's the problem back at the Town of Southampton.

COMMISSIONER BOLTON:

Right.

CHAIRMAN CARACCILO:

Right, and what are we to do about that?

COMMISSIONER FIORE:

Yeah, what do we do about it?

DIRECTOR ISLES:

You're not an enforcement agency.

COMMISSIONER FIORE:

If they went and called and turned a blind eye to something like this, you know, Suffolk County Planning Commission I think is powerless.

CHAIRMAN CARACCILO:

We're not an enforcement agency on that.

COMMISSIONER FIORE:

Right, exactly.

CHAIRMAN CARACCILO:

You know, I think our determination has to be based on the facts that we have before us. And the facts that we have before us, that I can see, it's inadequate to begin with.

COMMISSIONER FIORE:
Right. And one other thing --

CHAIRMAN CARACCILO:
I mean, that's where we could act.

COMMISSIONER FIORE:
Right. And one other thing I looked at when we were looking at one of the slides that was presented to us, I was concerned whether this was a commercial area or a residential area. And one of the people that gave a presentation said that you can see the lights coming out from across the -- I guess there's a canal or a cove, creek, whatever you want to call it, but when I looked at the slide that was up there, I didn't see any houses there. Now, I'm not saying there isn't any houses but, you know, it's bothersome the way it was presented, all right. It's bothersome because I don't think we have the jurisdiction here at all, that's my personal opinion.

DIRECTOR ISLES:
Mr. Fiore, if I can just ask the question in terms of when you say it's bothersome the way it was presented --

COMMISSIONER FIORE:
Not by --

DIRECTOR ISLES:
Because Mr. Freleng can you give you testimony in terms of surrounding land uses if you want that.

COMMISSIONER FIORE:
No, not by Mr. Freleng, it wasn't Mr. Freleng.

DIRECTOR ISLES:
Okay.

COMMISSIONER FIORE:
It was the referral from --

DIRECTOR ISLES:
The town you're saying, okay.

COMMISSIONER FIORE:
Right. You know, it appears to be an operation that's been going on since the year 2002; here it is 2006, four years later and it's just coming up.

DIRECTOR ISLES:
It's actually -- I think it was permitted or approved by the Planning Board for 2002, issued the building permit later and then completed later.

MR. KELLEY:
The CO was issued in '04.

DIRECTOR ISLES:
Thank you.

COMMISSIONER BOLTON:
And the other --

CHAIRMAN CARACCILO:

We're going to go around the table. Adrienne?

COMMISSIONER ESPOSITO:

Okay, I have a number of problems. And I agree that parking is the issue, but the reason the size of the building is a key issue, too, is that it seems that this is what was used to perhaps circumnavigate the SEQRA process. And if the SEQRA process was applied to this project, it would have addressed any of the issues the community is now raising, unfortunately for the community and for us, I think, after the fact. It would have addressed the issue of storm water runoff which now has been testified is puddling, instead we would have -- SEQRA would have addressed how to address storm water runoff without impacting the wetlands in the cold, why is there more flooding of the street. It would have addressed the lighting issue, it would have addressed the traffic issue. So I think the size of the building is key here and I think it is a critical point for us because we should not at all be approving anything, even with conditions, that did not adhere to State Law.

CHAIRMAN CARACCILO:

Right.

COMMISSIONER GOODALE:

But again, on what basis are we as a commission to say that this building is larger than what is represented to us by the Town of Southampton?

CHAIRMAN CARACCILO:

We can't. We can't, Bobby, but we can -- what we can do is act on the information that's before us.

COMMISSIONER GOODALE:

Yes.

CHAIRMAN CARACCILO:

And I think that sends the message, after the information is before us we can disapprove this application.

COMMISSIONER ESPOSITO:

I have one more thing. Okay, that's that.

UNKNOWN AUDIENCE MEMBER:

Can I address that?

CHAIRMAN CARACCILO:

There is no more comments from the public, sir, I'm sorry.

COMMISSIONER ESPOSITO:

I thought you said, "No, Adrienne."

CHAIRMAN CARACCILO:

Adrienne, you can speak. You used your three minutes before. Go ahead.

COMMISSIONER ESPOSITO:

Let me just say one other thing about the parking issue. It seems to me that there was a numbers game played here, because when you allocate half a parking space per boat slip, you know you just did the wrong thing. You don't take your bike to your boat, you don't take the jitney and you don't take the train, you drive, so you can only really allocate one car per boat slip, not a half a car per boat slip. So right there it tells me that this was the main goal to meet a certain requirement that's not justifiable on a practical sense.

DIRECTOR ISLES:

The only comment I guess I would make on that is obviously we're basing the information we received from the town, you're basing it on the information you hear from the staff as well as the residents today.

We are not hearing today from the town about how they made that determination of point five, there may have been a perfectly sound basis for that, I don't know. I understand your point, but here again, in fairness to the town, I don't want to characterize that one either as to whether it was good, bad or indifferent.

COMMISSIONER ESPOSITO:

No, no.

DIRECTOR ISLES:

You're raising issues and I understand that.

COMMISSIONER ESPOSITO:

I was characterizing it as unusual and I don't see a clear justification for that.

DIRECTOR ISLES:

Right. In my experience, you know, there are studies that say, "Well, marinas, not everybody goes at the same time." Whether the town did that kind of study, I don't know.

COMMISSIONER ESPOSITO:

Well, in August.

DIRECTOR ISLES:

But here again, we have to be -- just be a little bit careful on the balance of information.

CHAIRMAN CARACCILO:

Right, and I think we can react on the facts that we have in front of us.

COMMISSIONER ESPOSITO:

Right.

CHAIRMAN CARACCILO:

I think we have A very good, you know, litany of facts to react on.

MS. ROBERTS:

Commissioner Roberts from the Town of Southampton. One, I noticed that this is referred from a court case, so I would like to understand a little bit more of what the court case was about. It's not mentioned at all.

DIRECTOR ISLES:

You want to comment?

MS. CAPUTI:

Really the only pertinent thing about the court case for your purposes is that it wasn't referred to the Planning Commission and it had to be. But the merits wouldn't really come in to your jurisdiction, that would be the town. So the decision is only really important that it had to come back here before the town could proceed with the permits.

COMMISSIONER ROBERTS:

And I'd also like to understand -- excuse my cold today, I apologize. I'd also like to understand better if we were to deny this how this could play out.

CHAIRMAN CARACCILO:

Counsel, could you answer that question for us?

MS. CAPUTI:

If you were to deny it?

DIRECTOR ISLES:

It would go back to the town, it would have to be taken into consideration by the town, if they act in accordance with the commission recommendation they can do so with a simple majority vote of the -- Planning Board or Town Board?

MR. FRELENG:

Planning Board.

DIRECTOR ISLES:

Planning Board. If they choose to go opposite the commission, let's say they want to approve it, the commission recommends denial, they would have to do so with a majority plus one vote of the board, a super majority as it's called. They must also state the reasons why they're overriding the Planning Commission.

MR. FRELENG:

Just to further elaborate on that. If the commission was to approve it with conditions, if the towns wants to go against one of the conditions, they would also have to override those conditions with a super majority vote as well as indicate the reasons for the override.

COMMISSIONER ROBERTS:

Then if we went with the approval route, is it possible to add phrases about the noise so late and issues that --

MR. FRELENG:

This is a draft staff report, the commission can make --

COMMISSIONER ROBERTS:

Would that be appropriate, to add statements about the noise and late issues?

MR. FRELENG:

If that's the pleasure of the commission, sure.

CHAIRMAN CARACCILO:

I'm sorry. Go ahead, Linda.

COMMISSIONER HOLMES:

Are you finished?

COMMISSIONER ROBERTS:

Yes, I'm finished.

COMMISSIONER HOLMES:

I was also concerned -- of course, being on an Island, the issue of access to town landings and town boat ramps is a very important one to me. And just on the face of it, if the parking is blocking public access, that's a Federal law. People in the -- that's why the Federal Law is that I believe every 2,000 feet you have to have access for town -- you know, blocking public access is a very important thing.

And I also am confused about the zoning here. If it is true, as has been stated, that the Town Zoning Code does not provide for a catering facility in this zone, is that something that was not

addressed simply because it's not prohibited or do we have any information on that?

MR. FRELENG:

Land use designations can often keep up with the types of land uses that are created. When I did my tour of duty as a Trustee in the Town of -- the Village of Port Jefferson, we had an oxygen bar that came in for approval, we couldn't figure out how to classify it. So typically a land use comes in and building, the Chief Zoning office with the town would classify it into a land use code. A catering facility, in this case has been classified as a restaurant or an eating establishment, so the Town of Southampton has classified this as a restaurant which is a permitted use of the RWB zone.

COMMISSIONER HOLMES:

I see, okay. Well, I do feel that what has been presented to us is very flawed and there is a lot of question about the accuracy of the information that's been given to us, so I'm very uncomfortable with it.

CHAIRMAN CARACCILO:

Any other questions or comments from the commission? A motion is in order.

COMMISSIONER BOLTON:

I have a motion to disapprove.

COMMISSIONER HOLMES:

I would second.

COMMISSIONER ESPOSITO:

I'll second it.

DIRECTOR ISLES:

Seconded by Commissioner Roberts.

CHAIRMAN CARACCILO:

All those in favor of disapproving this application?

("Aye" said in unison)

Opposed?

DIRECTOR ISLES:

We have to get a show of hands, we need a count.

CHAIRMAN CARACCILO:

All those in favor of disapproving, raise your hand.

MS. MAHONEY:

You know what, state your names out loud.

CHAIRMAN CARACCILO:

Okay, I'll start; Commissioner Caracciolo.

COMMISSIONER HOLMES:

Commissioner Holmes.

COMMISSIONER LANDSDALE:

Commissioner Landsdale.

COMMISSIONER ROBERTS:
Commissioner Roberts.

COMMISSIONER ESPOSITO:
Esposito.

COMMISSIONER PRUITT:
Pruitt.

COMMISSIONER BOLTON:
Bolton.

COMMISSIONER FIORE:
Excuse me, I would just like to ask a question before that vote is taken.

CHAIRMAN CARACCILO:
Okay, let's go back.

COMMISSIONER FIORE:
The approval and the disapproval, what would the approval do, what would the disapproval do? Because now I'm getting confused.

CHAIRMAN CARACCILO:
Okay. Tom, could you go over that?

DIRECTOR ISLES:
Okay, the motion has been put on the table to recommend to the Town of Southampton that they disapprove this application, that's the motion that's now pending. The effect of that would be as the Town of Southampton would get that, they would have to consider that, if they agreed with it they could then move ahead and disapprove this application upon a majority vote of the Planning Board of the Town of Southampton. If they say, "Well, we think this should be approved," they can only override the commission with a super majority. The Planning Board in the Town of Southampton, Mr. Kelley, is how many members?

MR. KELLEY:
Seven.

DIRECTOR ISLES:
Seven, so they would need four votes to carry a simple majority, they would need five votes to override the commission and they must state the reasons why they're overriding the commission. So the effect, therefore, is they need that extra vote to override the commission, should they choose to go opposite the commission.

COMMISSIONER FIORE:
I'm still a little lost on this.

DIRECTOR ISLES:
I'm sorry.

COMMISSIONER FIORE:
And maybe I'm just stupid.

DIRECTOR ISLES:
Maybe I'm not clear, I'm sorry.

DIRECTOR ISLES:

Well, let me just finish.

COMMISSIONER FIORE:

I'm sorry, go ahead.

COMMISSIONER KONTOKOSTA:

That's okay. Commissioner Kontokosta. I'm just as concerned about what other people have raised as well, there are definitely some issues here, but I'm concerned more about us acting as local building inspectors and also usurping local planning authority in this case. And I'm concerned about perhaps issuing a disapproval on this, I would assume that we would need to have reasons for that disapproval. So I don't know if we've expressed any direct reasons why we would disapprove of this from a Planning Commission standpoint.

COMMISSIONER ESPOSITO:

I think we should list the reasons before for the disapproval before the vote.

CHAIRMAN CARACCILO:

Well, I think Andy says it in here, it's alleged that the proposal, on-site parking for this application is not adequate for the proposal.

COMMISSIONER FIORE:

There was a reason for approval.

COMMISSIONER KONTOKOSTA:

But from our understanding of the application given, it's two spaces which is de minimus which is -- the history of the Planning Commission, in my short experience, is something that --

DIRECTOR ISLES:

Well, we said it was at least two space, maybe as many as 17. What we have suggested to you is that the town deal with that by either reducing the occupancy or getting more parking. Certainly, we respect your discretion in terms of --

CHAIRMAN CARACCILO:

You know, I just looked at --

COMMISSIONER ESPOSITO:

And I think we also said the way they got to two is a little questionable as well.

CHAIRMAN CARACCILO:

I mean, operating a catering hall for 119 people with nine staff members, I mean, I think that's a stretch, too.

COMMISSIONER ESPOSITO:

Don't go to that catering hall.

DIRECTOR ISLES:

So we have a motion. We're at Don.

COMMISSIONER FIORE:

Yeah, let me get back to me being stupid again.

CHAIRMAN CARACCILO:

That's Commissioner Fiore.

COMMISSIONER ESPOSITO:

We tried to save you from yourself.

COMMISSIONER FIORE:

That's all right, that's all right, I've been there before. I don't -- I think we're out of our venue here. I think what we're doing is we're taking it away from the town, which the town should make that determination; they're the ones that created the mess in the first place. They're the ones that their feet should be held to the fire.

I don't think the town -- the Suffolk County Planning Commission should pull their feet out of the fire. They're the ones that made the black -- you know, whatever they did. I mean, how do you take a building that's 5,000 square feet and say it's 3,700 square feet?

I don't know how they did that. I don't know they figured that out.

CHAIRMAN CARACCILO:

And how do you --

COMMISSIONER FIORE:

I deal in square foot in my head.

CHAIRMAN CARACCILO:

Right.

COMMISSIONER FIORE:

And you know, if there's a living space of 3,700 square feet and you've got another 1,300 on top of that, how do you just kind of, you know, make that go away?

CHAIRMAN CARACCILO:

Right.

COMMISSIONER FIORE:

So something is going on in the town there that we're not being -- you know, I don't have that information right now. So my thought is that should go back to the town, they should handle their mess and not --

DIRECTOR ISLES:

Well, I think that's what the Chairman has said, too, is that that's information we've heard today, we don't know if it's true or not true, we haven't heard from the town.

COMMISSIONER FIORE:

Right.

DIRECTOR ISLES:

But the Chairman, as I understand it, is suggesting that we stick to what was presented to us on that basis. And certainly, if you want to make a comment, whether you recommend approval or disapproval, that there are questions that appear to be raised about the size of the building, conformance with the code, certainly you can do that as a comment back to the town.

CHAIRMAN CARACCILO:

I agree with you, Don, that, you know, we're not an enforcement agent and I don't want to get into that either. I'm just trying to say what's the most powerful message that we can send back --

COMMISSIONER HOLMES:

Right, that's the question.

CHAIRMAN CARACCILO:

-- based on the information that we have in front of us. Yes, it's short parking, don't tell me that you're operating a facility for 119 people with nine staff members. I have some questions about

how they calculated the parking.

COMMISSIONER FIORE:
Right.

CHAIRMAN CARACCILO:
So what's the most powerful message? And I agree with you, if it's approval with comments or is it disapproval; what's the most powerful message we can send back to them?

COMMISSIONER FIORE:
I don't know.

MR. FRELENG:
If I could just jump in and confuse things even more. It was just brought to my attention that the site plan did indicate 3,500 square feet but there was support material that I forgot that did have layouts of the other floors. So if I would have added up the floors I would have seen that there would be more square footage than what's shown.

CHAIRMAN CARACCILO:
And the parking deficiency would have been greater?

MR. FRELENG:
It would have raised the issue.

COMMISSIONER HOLMES:
Okay. I agree with Commissioner Esposito, that if we -- if the majority of us do vote to disapprove, that we should state at least some of our reasons. Parking, inadequate parking is one, but also our staff's site inspection of the site indicated that the building was larger than 3,500 square feet.

COMMISSIONER BOLTON:
Could have been.

DIRECTOR ISLES:
Could be.

COMMISSIONER HOLMES:
Could be, but because they were not -- did not have access to do a measurement. But a visual inspection by the staff was that the building appeared to be larger than 3,500 square feet, which as some of us have pointed out would also be --

COMMISSIONER ESPOSITO:
I think what we're saying is a visual inspection of the site plan.

COMMISSIONER HOLMES:
Yeah, the visual. Now, you went out and visited the site.

MR. FRELENG:
We did the site inspection, we did look at the building.

COMMISSIONER HOLMES:
They visited the site.

MR. FRELENG:
Yes, we did do a site inspection. I can combine the comments of Commissioner Holmes with the other comments of the commission, as well as the fact that we did have the layouts of all the floors that we should have added up. So I can make the observation of the commission that the

building is greater than 3,500 square foot.

COMMISSIONER HOLMES:

Yes, that I would be comfortable with.

COMMISSIONER FIORE:

We have a motion?

CHAIRMAN CARACCILO:

Yeah, we have a motion by Charla, seconded by Barbara that is pending right now. So do we need more discussion or can we vote on this?

UNKNOWN SPEAKER:

Can I just confirm? So now it's the staff's opinion that the building is actually larger than the 3,400 square feet? I just want to base my judgment on --

MR. FRELENG:

Yes, I would say that.

CHAIRMAN CARACCILO:

Can we try to vote again?

COMMISSIONER HOLMES:

Yes.

CHAIRMAN CARACCILO:

Okay. So we have a motion for disapproval --

DIRECTOR ISLES:

Go around.

CHAIRMAN CARACCILO:

Yeah, we have a motion for disapproval, so we'll just go around.

MR. FRELENG:

Who made the motion, please?

CHAIRMAN CARACCILO:

I'm sorry?

MR. FRELENG:

Who made the motion?

CHAIRMAN CARACCILO:

Charla made the motion, seconded by -- oh, I'm sorry.

COMMISSIONER HOLMES:

Barbara Roberts seconded it.

CHAIRMAN CARACCILO:

Barbara seconded. All right, so we'll just go around the table for disapproval.

COMMISSIONER HOLMES:

Disapproval.

COMMISSIONER PRUITT:

Say your name.

CHAIRMAN CARACCILO:

Name.

DIRECTOR ISLES:

Yeah, all those in favor of voting for disapproval, please raise your hand. You do want to call out the names?

COMMISSIONER HOLMES:

Commissioner Holmes.

COMMISSIONER LANSDALE:

Commissioner Lansdale.

COMMISSIONER ROBERTS:

Commissioner Roberts.

COMMISSIONER ESPOSITO:

Commissioner Esposito.

COMMISSIONER FIORE:

Commissioner Fiore.

COMMISSIONER GOODALE:

Commissioner Goodale.

COMMISSIONER PRUITT:

Commissioner Pruitt.

COMMISSIONER BOLTON:

Commissioner Bolton.

COMMISSIONER KONTOKOSTA:

Commissioner Kontokosta.

CHAIRMAN CARACCILO:

Commissioner Caracciolo.

COMMISSIONER ESPOSITO:

You could have just said unanimous.

CHAIRMAN CARACCILO:

Unanimous, all right. *Disapproved (VOTE: 10-0-0-1 Not Present: Lou Dietz).*

All right, can we get to the easy stuff now? Bobby, you've got to go? Do we still have a quorum?

DIRECTOR ISLES:

We have a quorum. Thank you.

COMMISSIONER ROBERTS:

Can we have a break?

CHAIRMAN CARACCIOLO:

No, no break.

COMMISSIONER BOLTON:

John?

CHAIRMAN CARACCIOLO:

Yes, you need to take a break?

COMMISSIONER BOLTON:

No, I need to leave. I need to go back to my office.

CHAIRMAN CARACCIOLO:

How are we doing? Let me see if Bobby can --

DIRECTOR ISLES:

We have a quorum, so.

CHAIRMAN CARACCIOLO:

We do?

DIRECTOR ISLES:

If you leave we have a quorum, as long as we have unanimous votes we're okay. Can we just --

CHAIRMAN CARACCIOLO:

We've got easy ones here, right? I'm going to go right through them, go right through them.

COMMISSIONER LANDSDALE:

How many do we have?

DIRECTOR ISLES:

We have like two or three, and they're easy.

MR. WREDE:

The next application Daniel Birkmire referred by the Town of Brookhaven EPA. The applicant seeks a variance to utilize the entire dwelling for office use which is depicted on the aerial. This is a very similar application to last month's, also from Brookhaven.

CHAIRMAN CARACCIOLO:

Yeah, that was the one that Adrienne loved.

MR. WREDE:

The property is located on the south side of 25A, 125 feet west of Huck Finn Road in the Hamlet of Shoreham. The property is 30,000 square feet in the area and approved with one-story residence. The parcel is located in the A-1 Zoning District, access to the proposed via an existing driveway to State Route 25A. Planning Commission jurisdiction is within 500 feet of the State Road.

It allows for accessory uses when such uses are incidental to the residents and that the use shall be within the main building and occupying not more than one-third of the first floor area. The applicant is seeking relief from the Zoning Board of Appeals to convert the entire dwelling for office use.

An inspection was made on the property, there is a dental office currently on the premises, but I did not go in for a cleaning and I don't know whether they exceeded the one-third floor ratio. We're recommending a disapproval of the variance, it's inconsistent with the 1996 Town of Brookhaven Comprehensive Land Use Plan which designates this area for single-family residence and it would establish a precedent for similar variance requests that would reintroduce business type uses in the locale which may alter the essential character of the neighborhood. That is the recommendation of staff.

CHAIRMAN CARACCILO:

Thank you, Chris. A motion is in order.

COMMISSIONER PRUITT:

Motion to accept.

CHAIRMAN CARACCILO:

First Commissioner Pruitt, second Commissioner Fiore. All those in favor? Opposed? Abstained? ***Motion carries (VOTE: 10-0-0-1 Not Present: Lou Dietz). CHECK VOTE WITH ANDY!!!!***

All right, Chris.

MR. WREDE:

Lastly, the application of Henry Oman referred by the Town of Southold Zoning Board of Appeals. The applicant proposes to subdivide a 71,316 square foot parcel of land into two lots and seeks area variances for the proposed lots. The property is located in Cutchogue. Our jurisdiction for the application is within 500 feet of an Agricultural District.

The subject property is improved with an existing house as depicted on the aerial. The applicant seeks variances to subdivide the property into two lots where lot one would provide for the existing house on a 40,000 two-foot square foot lot and lot two is proposed for the construction of a single-family dwelling on a 31,314 square foot lot. That's a copy of the site plan showing the subdivision of the lot.

The property is located in the R80 Zoning District which requires 80,000 square feet for a single-family dwelling. The requested relief is indicated in the staff report. The proposed subdivision of the property results in the creation of two non-conforming lots in accordance to the minimum requirements of the R80 Zoning District and is an over intensification of the use of the premises.

We're recommending disapproval. The requested variance is substantial. The lots are 50 and 61% deficient in lot area in accordance with the R80 zoning. Granting a variance would establish a precedent for similar variances requests in the locale resulting in an undesirable change in the character of the neighborhood. The practical difficulty was self-created. The applicant is subdividing the lot and creating two non-conforming lots. And granting relief would essentially be a circumvention of the town board's actions over the past years to upzone the area in order to bring it more into conformity with the locale and to limit density. That's the recommendation of staff.

CHAIRMAN CARACCILO:

Thanks, Chris. A motion is in order?

COMMISSIONER HOLMES:

I have a question.

COMMISSIONER ESPOSITO:

I just --

CHAIRMAN CARACCIOLO:

Oh, I'm sorry.

COMMISSIONER HOLMES:

Go head, Adrienne.

CHAIRMAN CARACCIOLO:

You have a question?

COMMISSIONER ESPOSITO:

I was going to make a motion, Linda.

COMMISSIONER HOLMES:

Oh, I was going to just comment that being very familiar with this colonial hamlet, my house used to be in Cutchogue before we moved into Shelter Island, there's been a great deal of over building there recently and squeezing houses onto property, and I certainly would agree. I would second your motion.

CHAIRMAN CARACCIOLO:

That's why you got out of there and moved to Shelter Island, all right.

COMMISSIONER PRUITT:

Second.

CHAIRMAN CARACCIOLO:

So Commissioner Esposito was the first, Commissioner Holmes was the second.

COMMISSIONER ESPOSITO:

So the motion is to accept the staff recommendation of disapproval.

CHAIRMAN CARACCIOLO:

Okay. All those in favor? Opposed? Abstentions? ***Motion carries (VOTE: 10-0-0-1 Not Present: Lou Dietz).*** So ends our -- now we have --

DIRECTOR ISLES:

Just one subdivision.

CHAIRMAN CARACCIOLO:

One subdivision; Peter, right; sorry, Peter.

MR. LAMBERT:

Hi, there. We have one subdivision for your consideration, the applicant name is Norris Lane Realty Corp in the Town of Southampton. The location is on the west side of Norris Lane, 375 feet north of Sawasett Avenue in the Hamlet of Bridgehampton. Our jurisdiction is that the property is within 500 feet of a County Road, namely Bridgehampton/Sag Harbor Turnpike.

The applicant proposes to subdivide approximately two acres of land into two lots in the R-20 Residence Zone in the Town of Southampton. The R-20 Residential Zoning District permits single-family residential development on the minimum lot size of 20,000 square feet. The subdivision map of the subject property consists of two tax map parcels, one would be landlocked. The other parcel is currently approved with a single-family residence in an accessory building.

The character of the area surrounding subject property is predominantly residential with some agricultural uses. So the applicant is proposing to abandon the existing point of access to Norris Lane, which is here, and that's a public street, and they want to create a common point of access to Norris Lane which is up here. It is proposed that lot two will have a shared access with lot one along a common driveway easement, which is this whole area here.

Subject property is located within Hydrogeologic Groundwater Management Zone V pursuant to Article 6. Within this zone, a minimum lot size of 40,000 square feet is required; the proposed subdivision lots do meet this standard. The Town of Southampton 1970 Comprehensive Plan recommended "Single-Family Village Residence" land use for this site, but the 1997 Master Plan Update has no specific recommendation for this property.

So our analysis of this proposal is that it will create two residential lots of .981 and 1.036 acres, including the access of easement. Road frontage is adequate along a public street. And contained within the boundaries of lot one is a 20 foot wide common driveway easement that I pointed out with a common point of access; both lots will have a common point of access here on to Norris Lane. Since lot two will only be accessible via this proposed common driveway access easement, it is by commission definition landlocked and a landlocked parcel, as we know, is one that does not have frontage on an existing or proposed public road. The creation of such lots is contrary to commission guidelines and the creation of a landlocked lot is contrary to good subdivision layout principals and creates access problems for emergency and service equipment. This lack of access could result in health, safety and welfare problems for the future residents of the landlocked lot and potential disputes over the use and maintenance of any right-of-way over an adjacent parcel may arise. So the map should be redrawn to show lot two as a flag lot with a minimum of 15 feet of frontage along Norris Lane, capable of accommodating access for emergency and service vehicles.

So the staff is recommending conditional approval of this proposal, subject to the condition that the subdivision be redrawn so the proposed common driveway easement on lot one is replaced with an access strip reconfigured as part of proposed lot two, making lot two a true flag lot. That is the staff report.

CHAIRMAN CARACCILO:

Thank you, Peter. Any questions or comments? A motion is in order.

COMMISSIONER HOLMES:

I move the adoption of the staff report.

COMMISSIONER LANDSDALE:

Second.

CHAIRMAN CARACCILO:

Commissioner Holmes, seconded by Commissioner Lansdale. All those in favor? Opposed? Abstentions? ***Motion carries. Thank you. (VOTE: 10-0-0-1 Not Present: Lou Dietz).***

COMMISSIONER HOLMES:

Now Charla can leave.

CHAIRMAN CARACCILO:

Now you can go.

COMMISSIONER HOLMES:

You're allowed.

CHAIRMAN CARACCILO:

We'll go back to the top of our agenda to the ***Director's Report.***

DIRECTOR ISLES:

Okay. We'll do this very quickly given the late hour. Number one is to obviously welcome new member Barbara Roberts, she was confirmed by the Legislature I guess about a week -- two weeks ago and we welcome her on the commission.

Also, to bring you up-to-date, commission member Lou Dietz representing the Town of Babylon had hoped to be with us today, due to a medical problem he was not able to table. He is now -- his term expires at the end of this year, so he will not be rejoining us in January. There are two names that have been put forward by the County Executive for commission appointments in Babylon to replace Mr. Dietz, and also in the Town of Smithtown.

I also have enclosed to you in our package correspondence from two Legislators, Legislator Romaine dealing with the issue of the vacancies in the commission which we certainly have spoken about and certainly the County Executive is aware of. The other issue he brought up is the issue of mileage reimbursement for the commission members. We have been discussing this with the Comptroller's Office. The information we now have is that you are eligible for mileage reimbursement should you seek to obtain it. You must complete a W-9 Form, which we provided to you. And then if you would like to proceed, we do have County -- well, we have the County form you can fill out, too, and we'd be happy to provide those to you if you want to do that.

The next item is a Legislator from Legislator Kennedy that was sent to us talking about PJ Venture's application which of course we've heard today, he was expressing his concern for the delays in the review of the application. I also included in the newspaper article that came out wherein there was some complaint about the County and the County Planning Commission and department regarding PJ Ventures, I did do a letter of reply back.

CHAIRMAN CARACCILO:

Which I thought was too nice.

DIRECTOR ISLES:

Okay. I have not heard a word from them.

COMMISSIONER LANDSDALE:

Yes, let the record show it was too nice.

CHAIRMAN CARACCILO:

Let the record show that.

DIRECTOR ISLES:

But it was a response nonetheless, right.

CHAIRMAN CARACCILO:

You take the high road.

DIRECTOR ISLES:

Most of the time. So I haven't heard anything further so I think we're okay on that.

We are still working on the guidelines. I would like to introduce to you today, since we kind of started this meeting kind of backwards a little bit, as you know, Cary Meek-Gallagher served her last meeting last month, replacing her is Dan Gulizio who is with us today. Dan is an accomplished -- 20 year accomplished planner on both the town and County level, has a Planning Degree as well as a Law Degree and we're happy that he's with us today. I worked

with Dan for 13 years and know his capabilities and skill and dedication to public service, so I welcome him to the department as well.

I'm also providing to you today something we presented at the last meeting which was the Growth Center Study right here and it was released by the County Executive on Monday and we are providing copies to you. Let me express my appreciation to the County Planning Department in the preparation of the report, especially to Peter Lambert who was the principal author of the report, Cary Gallagher was involved in the coordination of the report and I appreciate that as well.

MR. LAMBERT:

We have other copies here.

DIRECTOR ISLES:

We have copies, take my copy. I would also like to thank the Clerk's Office for adjusting to the problem we had today with meeting. Alison is a great County employee, somebody I work with a lot and we appreciate that she stepped in without any notice today.

CHAIRMAN CARACCILO:

Put that on the record.

MS. MAHONEY:

Oh, I will.

DIRECTOR ISLES:

So I appreciate it very much and thank you.

CHAIRMAN CARACCILO:

That's it. Commissioner's Round Table; I'm good.

COMMISSIONER HOLMES:

I would like to comment on --

CHAIRMAN CARACCILO:

Of course you would.

COMMISSIONER HOLMES:

On the letters to Mr. Isles, from both the Legislator and the town.

I was very offended to think that the County Planning Commission was being blamed for deliberately postponing PJ Venture's application.

And I was very offended by my assumption that Mr. Baker had not been forthcoming with both his Legislator and his town representatives, that he arrived only five minutes before the meeting last September and we didn't have the opportunity to find out whether all of his paperwork was in order.

In the informal conversation I had with him as we were waiting to start our meeting, I learned that he had never been notified that this requirement for notifying adjacent property owners was part of his -- part of the process which had to be referred to us. And so now I'm puzzled as to whose responsibility was it to notify him that he had to show proof of giving notice; was that the local planning board that should have notified him that way?

DIRECTOR ISLES:

Refresh me, Andy.

MR. FRELENG:

I don't know when Mr. Baker started his application at the local level.

COMMISSIONER HOLMES:

He said August.

MR. FRELENG:

Okay. When it was referred to the Planning Commission, though, that is when the Local Law was triggered. I believe he started his process before the Local Law went into effect.

COMMISSIONER HOLMES:

I see.

MR. FRELENG:

However, when it was referred to the commission, that's when we reviewed it. It is the commission's responsibility, ultimately, to advise the locality that referred the matter that the subject matter was incomplete subject to the Local Law. The towns and villages can, as a courtesy, indicate, "You know, we're going to have to refer this to the commission, it's going to fall under their Local Law, you're going to have to do a public notification," but it is the commission's ultimate responsibility to review that matter and determine that it's a commercial development of 25,000 square feet long and it would be subject to that law.

COMMISSIONER HOLMES:

Is there something in writing that -- a list, a checklist that is provided to a developer when something like -- when they have to be referred, when their project has to be referred to us?

MR. FRELENG:

Well, in the first instance, the Director of the department, Tom did send out a letter to all forty some-odd municipalities that this law went into effect. Number two, as we revise the guidelines, that will certainly be in the guideline, it's in the draft copy of the guidelines already.

COMMISSIONER HOLMES:

Yes

MR. FRELENG:

And certainly, number three, as the town gets more savvy with this requirement, they're going to know, just like when they have an application in the Pine Barrens, that they've got a commercial development that's 25,000 square feet more and it's within 500 feet of the adjacent municipality, so they're going to be subject to the law. It's a matter of time before we go through a couple of these before the towns advise the applicants, "You know you're going to be subject to this."

COMMISSIONER HOLMES:

I see. So from what we can gather, the town did not, in a timely way, notify Mr. Baker that this requirement was part of his process with us.

MR. FRELENG:

I wouldn't say that. I would say, just for the record, that the town and the County learned together the proper procedure for this.

CHAIRMAN CARACCILO:

That was very diplomatic, Andy. That was very good.

MR. FRELENG:

You got that right.

COMMISSIONER HOLMES:

Thank you very much.

COMMISSIONER ROBERTS:

Nothing to report.

COMMISSIONER BOLTON:

I'm just looking forward to working with you and getting to know all of you.

CHAIRMAN CARACCILO:

I'm confident you really enjoyed this first meeting. Counselor, thank you for your input today. Dan, welcome aboard.

DEPUTY DIRECTOR GULIZIO:

Thank you.

COMMISSIONER ESPOSITO:

Nothing to report.

CHAIRMAN CARACCILO:

Don?

COMMISSIONER FIORE:

Nothing to report.

CHAIRMAN CARACCILO:

Commissioner Pruitt?

COMMISSIONER PRUITT:

Nothing to report.

CHAIRMAN CARACCILO:

Sir.

COMMISSIONER GOODALE:

Nothing to report.

DIRECTOR ISLES:

Those of you who want to join the CEQ meeting, it's still going on.

CHAIRMAN CARACCILO:

Motion to adjourn, second. The meeting was adjourned; Commissioner Fiore, second by myself. We're good. Thank you.

(*The meeting was adjourned at 2:45 PM*)