

NEW YORK STATE COURT OF CLAIMS  
HAUPPAUGE PART

-----x  
GYRODYNE COMPANY OF AMERICA, INC.

Claim Number  
112279

Claimant,

- against -

Trial  
Appropriation

STATE OF NEW YORK,

8:12:11 a.m.

Defendant.

(DAY-2)

-----x

August 14, 2009

State Office Building, 3rd Floor  
Veterans Memorial Highway  
Hauppauge, New York 11787

Monitor: Susan Mauro

BEFORE: HONORABLE JAMES J. LACK  
Judge

APPEARANCES: JOSEPH L. CLASEN, ESQ.  
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**A SWIFT SCRIPT**

201 S. Research Place, #102, Central Islip, New York 11722  
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<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<b>For the Claimant:</b>				
Alan King, Jr. (cont'd.)				
By Mr. Clasen	179		305	
By Mr. Ryan		236		
Gary P. Taylor				
By Mr. Clasen	322		443	
By Mr. Ryan		383		

## CLAIMANT EXHIBITS

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>E.V.</u>
1	Zoning Analysis / Prepared by Daniel J. Gulizio (24 pp)	10	40
2	Town of Brookhaven, Long Island, Final 1996 Comprehensive Land Use Plan	10	10
3	Self-Contained Appraisal Report / Prepared by Rogers & Taylor Appraisers, Inc.	10	40
4	Traffic Impact Study / Prepared by Cameron Engineering & Associates, LLP	10	10
5	Synchro Video Simulation of Traffic (CD) / Prepared by Cameron Engineering & Associates	10	10
6	Net New Trips Figure Chart / Prepared by Cameron Engineering & Associates, LLP as set forth in Exhibit 3	10	10
7	"Mailer" from SUNY Stony Brook regarding construction / placing an entrance for the Center for Excellence in Wireless & Information Technology on Stony Brook Road	10	10
8	Ecological Investigation of the Proposed Marriott Site Property of Gyrodyne Property Inspected by Orland J. Blanchard (18 pp)	10	10
9	Suffolk County Dept of Health Services, Sanitary Code Article 6, Groundwater Management Zones	10	10
10	Suffolk County Dept of Health Services, Sanitary Code Article 7, Groundwater Mgmt Zones and Water Supply Sensitive Area	10	10
11	Suffolk County Sewer Maps	10	10
12	Gyrodyne's Notice of Claim dated 4/27/06, including a true and correct copy of the Acquisition Map filed by the State of New York around 11/2/05	10	10

13	2/1/00 Resolution Adopted by Brookhaven Town Board granting Gyrodyne's request to re-zone 10 acres from L-1 Industrial to PRCHC Resolution (3 pp)	10	10
14	11/13/02 Letter from Brookhaven granting Gyrodyne's Request to withdraw zoning application	10	10
15	Uniform Standards of Professional Appraisal Practice a/k/a USPAP Guidelines, 1/1/08-12/31/09 Edition	10	10
16	Photos and Deed of Comparable Land Sale 8510 as identified by the State's Appraiser, Kenneth L. Golub	10	10
17	Photos and Deed of Comparable Land Sale 8514 as identified by the State's Appraiser, Kenneth L. Golub	10	10

## STATE EXHIBITS

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>E.V.</u>
A	Laws of Suffolk County / Updated 7/30/09 / Part II Administrative Code Article XXX Code of Ethics A-30 (15 pp)	8	8
B	Laws of Suffolk County / Updated 7/30/09 / Part II Administrative Code Article XIV Department of Planning A-14 (23 pp)	8	8
C	Town Board of the Town of Brookhaven / Application of Gyrodyne to amend the zoning ordinance	143	145
D	Cameron Engineering & Associates LLP - Memorandum dated 6/21/04	245	252
E	Letter by American Property Counselors re Gyrodyne Condemnation (8 pp)	260	319
F	Environmental Analysis and Permitting Review Assessment for Gyrodyne Property / Towns of Brookhaven and Smithtown / dated 1/09	260	319
G	Traffic Assessment Report by Fitzpatrick Engineering / dated 11/08 (35 pp)	260	319
H	American Property Counselors Appraisal Rpt.	260	319
I	Final Generic Environmental Impact Statement for Stony Brook University Research & Development Campus Stony Brook / Volume I / Date of Acceptance by lead Agency 8/23/04	257	260

**A SWIFT SCRIPT**

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1 THE MONITOR: Today's date is August 14, 2009.  
2 This is Day-2 of the trial of Gyrodyne vs. the State of New  
3 York, Claim Number 112279. And my name is Susan Mauro.  
4 And this is for the Honorable J. Lack presiding.

5 Testing Mic-1. Testing Mic-2. Testing Mic-3.  
6 And finally testing Mic-4.

7 (Off the record.)

8 THE COURT: Mr. Ryan?

9 MR. RYAN: Thank you, Your Honor.

10 THE COURT: Okay. Are you in good voice and  
11 ready to go?

12 MR. RYAN: I shall try my best.

13 THE COURT: Please proceed.

14 A L A N K I N G J R , was recalled as a witness to continue  
15 his testimony herein after having been duly sworn  
16 and testified as follows:

17 CROSS EXAMINATION

18 BY MR. RYAN:

19 Q. Mr. King, you've been involved in the development of  
20 numerous properties, correct?

21 A. That's correct.

22 Q. And in the processes of developing those properties  
23 before towns?

24 A. That's correct.

25 Q. And traffic studies are necessary for a development of

1 any magnitude, correct?

2 A. The civil engineering associated with those  
3 developments, yes.

4 Q. To get a traffic study?

5 A. Correct.

6 Q. I'm not talking about drainage; I'm not talking about  
7 the strength of the foundation or mechanics, but the impacts on  
8 traffic.

9 A. That's correct.

10 Q. And why is that?

11 A. Can you rephrase your question? I apologize.

12 Q. Sure. Why do the towns insist on traffic studies for  
13 the development?

14 A. To understand what the effects of the traffic would be  
15 after the development was in place.

16 Q. Now, the study that you've done, and that you  
17 testified about, Exhibit 4; is that the type of study that would  
18 be submitted to the town to explain the impacts of a  
19 development?

20 A. As I stated previously, this study was unique because  
21 we had to project backwards. We had to project the traffic that  
22 would occur in November of 2005. So, that's what we did.

23 Q. All right. Now, answer my question; is this the type  
24 of -- other than --

25 THE COURT: Mr. Clasen?

1 MR. CLASEN: He's answered the question.

2 MR. RYAN: All right.

3 Q. I assume --

4 THE COURT: Hold on.

5 Q. you're submitting this study --

6 THE COURT: Hold on. Time out. Time out. Thank  
7 you. You know, Mr. Ryan, that is a very good tactic, but  
8 obviously it's not succeeding in this trial. There  
9 probably are times when witnesses do you not give the  
10 response which you expected from your question. My only  
11 suggestion to you, sir, and I do it out of all instances,  
12 instead of just saying now answer my question, is why don't  
13 you try first rephrasing your question. Or if you didn't  
14 like the answer, come up with a question and try to elicit  
15 the information you were looking for rather than -- excuse  
16 my putting it this way -- the aggressive technique which is  
17 just going to make your adversary stand up and get into a  
18 conversation which results in what I'm saying.

19 MR. RYAN: I will --

20 THE COURT: However, if you can't do that, we can  
21 do it the other way and do it adversarial. But as I said,  
22 there's no jury to impress. I mean if we're just looking  
23 at the counsels here, and I'll include myself, it's the  
24 three of us. So, I just pass it on to you. You don't have  
25 to follow the suggestion because I can do it the other way

1 also. I just thought it's much more convenient for all of  
2 us if we try the --

3 MR. RYAN: I will try to take Your Honor's  
4 suggestion and advice to heart.

5 THE COURT: Thank you.

6 MR. RYAN: Let me rephrase.

7 THE COURT: Thank you, sir.

8 Q. Mr. King, if this study were to be submitted to a town  
9 in 2005 for a development of the entire Gyrodyne property, would  
10 it be adequate?

11 A. Would it be adequate? I mean that question it depends  
12 on what is ultimately scoped by the town as a requirement for  
13 the study. The science that went into that particular document  
14 is completely adequate.

15 Q. Well --

16 A. It derived conclusions on levels of service changes  
17 that occurred based on the different scenarios.

18 Q. Well, let me -- the town's concern, you indicated, is  
19 the impact of the proposed project, correct?

20 A. It's one of the town's many concerns, I'm sure.

21 Q. Well, if this was submitted to the town in 2005 for  
22 consideration of what the impact will be --

23 A. Mm-hm.

24 Q. -- does it tell them that?

25 A. Yes.

1 Q. Well, it tells them as of 2005. But the project  
2 doesn't exist in 2005, does it?

3 A. That's correct.

4 Q. The project is a future event?

5 A. My understanding and my charge was to equalize  
6 everything to November of 2005, which is what we do.

7 Q. My question to you now, though, Mr. King, is whether  
8 this study would have been adequate for the purposes of the town  
9 in 2005 in considering the affects on traffic of a development  
10 of the Gyrodyne property.

11 A. Yes, it would if the development were to be in place  
12 at that time in 2005.

13 Q. Well, if the development were in place, the town would  
14 not have anything to consider; would it, Mr. King?

15 A. If they had granted the approvals to development the  
16 property in 2005, then they wouldn't have anything further to  
17 consider.

18 Q. Understand me. Let me rephrase.

19 A. Please.

20 Q. I am asking you whether if you were employed by  
21 Gyrodyne in 2005 and you had to go before the Town of Brookhaven  
22 and the Town of Smithtown to propose a development to be built  
23 on all 308 acres of Gyrodyne's holdings, would this study,  
24 Exhibit 4, be adequate?

25 A. Typically, we would include a projection into the



1 future.

2 Q. Thank you. And why is that?

3 A. Because typically a development takes time to build.

4 Q. It doesn't exist in 2005, otherwise there'd be no need  
5 for the board to reconsider the traffic impact on a potential  
6 development, correct, Mr. King?

7 A. That's correct.

8 Q. Thank you. So, this study is not the type of study  
9 that would be considered by the town in determining whether to  
10 allow that impact to occur.

11 A. If the development could be built within a one-year  
12 timeframe, then it would be.

13 Q. Do you suspect for a moment that the development of  
14 308 acres in whatever use in Long Island in the Town of  
15 Brookhaven and the Town of Smithtown, can obtain a zoning change  
16 and actually be constructed within a year?

17 A. No.

18 Q. So, what you just said is fantasy, correct? I mean  
19 that's just a theoretical potential that has no touch in the  
20 real world.

21 A. If we were to prepare a traffic study, we would  
22 project the traffic based on a growth rate.

23 Q. Correct.

24 A. That growth rate would be applied to two scenarios;  
25 the no-build and the build.

1 Q. Right.

2 A. So, the comparison of whether you're comparing no-  
3 build and build in 2005 or you were to project to a build year  
4 of 2006 or '07 for the no-build and the build would be the exact  
5 same comparison, because you look at the effects of the change  
6 in your build year. In this particular case, our charge was to  
7 make the build year 2005.

8 Q. Right.

9 A. Which is what we did.

10 Q. But that's not what I'm asking, Mr. King. I  
11 appreciate that you have to use a growth rate. You've used the  
12 growth rate in Exhibit 4, have you not? You've used it in  
13 reverse.

14 A. No, we used it in both directions.

15 Q. Well, you didn't use it in reverse?

16 A. We used it in reverse for --

17 Q. Thank you.

18 A. -- the traffic counts that were in reverse, and we  
19 used it in forward for the ones that had to go forward. As I  
20 stated yesterday, we had traffic counts in 2004 and traffic  
21 counts in 2006. We adjusted them and normalized them to  
22 November of 2005. That was our charge.

23 If our charge was to project a future development year  
24 of 2006 or 2007 or beyond, we would have done that for the no-  
25 build and the build. So, the comparison of the scientific model

1 would have been the same.

2 Q. You used the growth rate to project forward and  
3 backward to make a comparison that you were given as a charge,  
4 correct?

5 A. To normalize to November of 2005.

6 Q. Right. But November of 2005 is the no-build situation  
7 for an application before the towns, correct?

8 MR. CLASEN: Objection, Your Honor; is this a  
9 hypothetical or is he saying this happened? Nothing  
10 happened in November of 2005. There was no application in  
11 November of 2005 to the Board to do either.

12 THE COURT: I think that's the point he's trying  
13 to make.

14 MR. RYAN: That is the point.

15 MR. CLASEN: Okay.

16 MR. RYAN: Thank you.

17 MR. CLASEN: Yeah, obviously they --

18 THE COURT: Okay. Now, that we have it --

19 MR. CLASEN: Obviously there wasn't. I'll  
20 stipulate there wasn't if that's the point we're trying to  
21 get.

22 THE COURT: I think we understand. If you're  
23 also asking have we covered all of this; yes, we have. And  
24 I think Mr. Ryan knows that so --

25 MR. RYAN: Yes.

1 Q. Mr. King, how long have you been with Cameron  
2 Engineering & Associates?

3 A. 5½ years.

4 Q. And when did you join them?

5 A. January of 2004.

6 Q. In your report, what growth rate is it that you use to  
7 adjust the traffic counts?

8 A. It's a New York State published rate for 2005/6. If  
9 you want the precise one, I would like to refer to the document.

10 Q. Sure.

11 MR. RYAN: Thank you. If you can hand it to Mr.  
12 King?

13 A. Yes. Thank you.

14 (Whereupon, the witness reviews the document at  
15 this time.)

16 A. It was 1.3 percent per year.

17 Q. All right. Do you know who John D. Cameron, Jr. is?

18 A. Yes, I do.

19 Q. And who is that?

20 A. That would be the Managing Partner of Cameron  
21 Engineering & Associates. My partner.

22 MR. RYAN: May I have a document marked, Your  
23 Honor?

24 THE COURT: Sure.

25 MR. RYAN: Your Honor, it's in a bound volume,

1 but I'm only referring to a particular document. It's  
2 listed as Exhibit 12B in the document. How do you want  
3 this handled?

4 THE COURT: It probably would be easier if you  
5 removed it. Is it removable?

6 MR. RYAN: I'll do that.

7 THE COURT: Okay. I don't know what the bound  
8 document is, but if we don't want all of it. The one page  
9 you're referring to. Off the record.

10 (Off the record.)

11 (Whereupon, Defendant's Exhibit D was marked for  
12 I.D. purposes only.)

13 THE COURT: Okay, Mr. Ryan, proceed.

14 MR. RYAN: Thank you, Your Honor.

15 Q. Exhibit D for identification is a memorandum prepared  
16 by John D. Cameron and Janice Jaghena, is that?

17 A. Jaghena.

18 Q. Is Ms. Jaghena also with your firm?

19 A. She is a partner of the firm.

20 Q. You were aware of this, weren't you, Mr. King?

21 A. This memorandum was prepared during the time I was at  
22 Cameron Engineering, yes. I did not partake in the preparation  
23 of it.

24 THE COURT: Mr. Clasen, why are you arise?

25 MR. CLASEN: I'm standing, Your Honor, because

1 yesterday I raised the issue of -- or your order I believe  
2 was exchange exhibits ahead of time. We did, they didn't  
3 and these are trickling in at this point in time. Now, if  
4 I had had this beforehand, right, and that he intended to  
5 use it, much like what I'm going to be using with their  
6 people, we're able to show it to the witnesses ahead of  
7 time, and discuss it with them. Okay --

8 THE COURT: Understood.

9 MR. CLASEN: -- I didn't have that luxury. I did  
10 anticipate some things being asked and some things not  
11 being asked, no doubt about it, okay. But I think at this  
12 point in time, we're starting to have a problem.

13 THE COURT: Mr. Ryan?

14 MR. RYAN: If I may, Your Honor; my understanding  
15 is that documents intended to be introduced on direct are  
16 to be exchanged. Documents shown witnesses on cross  
17 examination which may or may not be admitted --

18 THE COURT: Mr. Ryan, I think the understanding  
19 particularly for kind of a trial is that things should be  
20 exchanged between the parties. Mr. Clasen I think has  
21 certainly followed that procedure. And are there other  
22 things that you have to come --

23 MR. RYAN: Yes, Your Honor. One is a traffic  
24 study by the Town of Brookhaven, which I just obtained a  
25 copy of, dated November 21, '96 or thereabouts.

1 THE COURT: Is that it?

2 MR. RYAN: That's the only one that comes to  
3 mind, Judge.

4 THE COURT: Mr. Clasen, unfortunately, I don't  
5 know what it is we're about to discuss because I haven't  
6 seen it. So, I'm just going to let Mr. Ryan proceed. And  
7 if we get into it, we'll see what it is and we'll go from  
8 there.

9 If it's something you need time to digest or  
10 discuss or what not, then I will see to it that that's  
11 done.

12 MR. CLASEN: I certainly appreciate that, Your  
13 Honor, the opportunity. And I'm not suggesting I may, on  
14 some of these, even need an opportunity. I'd like to think  
15 I can --

16 THE COURT: You're looking at it from a  
17 logistical point of view and it's and file structure, I  
18 understand.

19 MR. CLASEN: That is fine, at some point in time.

20 THE COURT: Yeah, all right.

21 MR. CLASEN: This is Day-2 of a trial that will  
22 last for several days, and I'm getting them a couple of  
23 minutes before we're asking the witness.

24 THE COURT: I appreciate it.

25 MR. RYAN: Your Honor, if we can be clear, the

1 SUNY FGEIS was provided in discovery.

2 THE COURT: I'm sorry?

3 MR. RYAN: The document --

4 THE COURT: I don't know what this document is  
5 yet.

6 MR. RYAN: No, I'm sorry. The document that Mr.  
7 Cameron is reviewing now.

8 THE COURT: Mr. King is reviewing --

9 MR. RYAN: No, I'm sorry; Mr. King.

10 THE COURT: -- from Mr. Cameron. Right.

11 MR. RYAN: From Mr. Cameron.

12 THE COURT: That much I do know.

13 MR. RYAN: Right. And I know it too, Judge, I  
14 just misspoke.

15 THE COURT: Yes, understood.

16 MR. RYAN: Is reviewing now. It was part of a  
17 document that was exchanged in the course of discovery. I  
18 appreciate that I should have identified it, but I came  
19 across this last night while I was reading. I didn't know  
20 that I had intended to use it in the cross examination of  
21 Mr. King until I heard Mr. King testify.

22 THE COURT: All right. Let's continue and see  
23 what we got. Go ahead, Mr. Ryan.

24 BY MR. RYAN:

25 Q. Mr. King, the state growth rate, is that the only



1 growth rate that can be applied to the consideration of the  
2 potential traffic impact of a proposed project?

3 A. There are potentially others. I mean you could use  
4 any number. But that's the most documented.

5 Q. Are adjustments ever made to that growth rate to  
6 reflect local conditions?

7 A. As I stated yesterday, the way the growth rates are  
8 determined is based on 176 locations throughout New York State  
9 where there are 24/7, 365-day traffic monitoring stations. So,  
10 they are continually updated, and continually adjusted.

11 Q. Okay. Referring you to Page 12 of 17 of Exhibit D for  
12 identification -- withdrawn. That document was prepared by your  
13 firm in the course of its usual activities --

14 A. Excuse me; excuse me, this is out of order. So, give  
15 me a second. 12 of 17?

16 THE COURT: No, he withdrew the --

17 Q. I withdrew the question, Mr. King.

18 THE COURT: And now he has another question.

19 THE WITNESS: Oh. I'm sorry.

20 Q. Was that document prepared by Cameron Engineering &  
21 Associates LLP in the usual course of its business?

22 A. Yes, I was.

23 Q. And Cameron LLP maintains copies of the documents it  
24 creates in that manner, correct?

25 A. Normally.

1 Q. It's part of the normal functioning and  
2 responsibilities of the office, right?

3 A. We often maintain record files, yes.

4 Q. And do you have any question that the document you're  
5 reviewing was produced by Cameron Engineering & Associates LLP?

6 A. It appears to be prepared by Cameron Engineering, yes.

7 MR. RYAN: I would offer it, Your Honor.

8 THE COURT: Mr. Clasen?

9 MR. CLASEN: Your Honor, although I don't  
10 normally make an objection to something along these lines,  
11 I would in this particular case say if we're talking about  
12 this document, the second one and the third one, and that's  
13 it, okay, then you know what, I'm not going to object  
14 because I still haven't seen them.

15 If instead the rules are going to be, that he'll  
16 continue to do this, then I would object, and I'll object  
17 to each one of them. Okay. And I apologize for doing  
18 something like a contingent objection, but that is the  
19 nature of these two documents. This document I know. The  
20 next one I know. The third one I think I know. Okay. But  
21 again, I think there is a valid objection that supposed to  
22 do something you didn't do. So, if this is it, Your Honor,  
23 no objection to this one. If it isn't, I object.

24 THE COURT: Without objection -- we'll get that  
25 out of the way first. Without objection Defendant's D for

1 identification is "D" in evidence.

2 (Whereupon, Defendant's Exhibit D was admitted in  
3 evidence.)

4 Mr. Ryan, it is Friday. My suggestion is during  
5 the lunch break or thereafter, empty out any other pockets  
6 you have in your suit. If you have other things that you  
7 think are coming up, even prior to marking them here,  
8 please have a discussion with Claimant's counsel and go  
9 from there. Then utilize time, and at least mark them for  
10 identification. If you use them, you use them. If you  
11 don't, you don't.

12 MR. RYAN: I will try to do that, Your Honor.

13 THE COURT: Thank you very much.

14 MR. RYAN: It is a voluminous file and I pour  
15 over it continuously, but I will make the effort to  
16 identify everyone I think may be useful.

17 THE COURT: And because it is a voluminous file,  
18 the Court was very happy to schedule the trial of this  
19 matter way in advance of the trial actually occurring to  
20 allow for logistically all this to be done prior to the  
21 commencement of the trial.

22 While I appreciate your diligence and of course  
23 that you were spending your evenings reviewing obviously  
24 what happened during that day's trial, please empty your  
25 pockets. Thank you. Oh, and please continue.

1 MR. RYAN: Thank you.

2 Q. Exhibit D in evidence, Mr. King, recommends a  
3 different growth rate, does it not?

4 A. Is there a particular page that you're referring to?

5 Q. Yes, it was -- I believe it was --

6 A. As I stated --

7 Q. I'll get to it in a moment.

8 A. -- this document was prepared while I was at Cameron  
9 Engineering, but I was not involved in the preparation of it.

10 Q. I'm sorry, Mr. King, you were asking for a specific  
11 reference?

12 A. Correct.

13 Q. I'll give that to you in a moment as soon as I find  
14 it.

15 THE COURT: Did you say something before --

16 Q. Page 12 --

17 THE COURT: Page 12.

18 Q -- of 17, paragraphs number 3.

19 MR. CLASEN: Now, if I could just understand the  
20 question; it's a growth rate for what period of time?

21 MR. RYAN: I'll clarify it if the witness needs  
22 it.

23 THE COURT: Well, why don't you clarify it for  
24 your adversary since --

25 MR. RYAN: Okay.

1 THE COURT: -- he hasn't had the chance you had  
2 to review the document.

3 MR. RYAN: The growth rate would have been  
4 applicable to 2005 through 2017 compound.

5 A. This document, which I believe was prepared to point  
6 out all of the inadequacies of the DGEIS that was prepared,  
7 references that the incorrect growth rates were utilized in the  
8 document; in the DGEIS that was prepared for SUNY.

9 Q. Perhaps you misunderstood my question, Mr. King.

10 A. Apparently.

11 Q. My question to you --

12 A. Yes.

13 Q. -- was whether this document at that site I gave you  
14 recommends a different growth rate than the one that you  
15 utilized.

16 A. It appears that way, yes.

17 Q. And what is the growth rate that Mr. Cameron, your  
18 managing partner, recommends to be appropriate for application  
19 to the Gyrodyne property?

20 MR. CLASEN: Objection. For what period? He  
21 used 2005 for just those two. We're talking apples and  
22 oranges.

23 MR. RYAN: All right.

24 MR. CLASEN: That's why I want him to be  
25 specific.

1 MR. RYAN: I'll withdraw and clarify.

2 Q. What is the date that this is prepared --

3 A. The memo?

4 Q. -- this document?

5 A. This memorandum? June 21, 2004.

6 Q. And what is it commenting on?

7 A. I'm sorry?

8 Q. What does it comment on? What's the purpose of the  
9 memorandum?

10 A. The purpose of this memorandum as stated in the  
11 beginning was a broad review of the SUNY DGEIS that was prepared  
12 previous to that. And it says that this is one of two  
13 documents. The second would follow.

14 Q. Okay. What's the purpose of the review?

15 A. The review is to point out the inadequacies of the  
16 DGEIS that was prepared.

17 Q. Well, not the whole DGEIS, correct?

18 A. No, the entire document, yes.

19 Q. Or it's traffic assessment, correct?

20 A. No, this document points out all of the inadequacies  
21 of that document as it was prepared.

22 Q. Oh, okay. But including it's traffic --

23 A. That's why it has categories for water usage and land  
24 use and all sorts of items.

25 Q. All right. And among it is traffic?

1 A. That's correct.

2 Q. And you utilized the final version of that document,  
3 correct? You used the traffic counts from it?

4 A. From the DGEIS or the SUNY study?

5 Q. Yes.

6 A. We utilized only the existing traffic counts from  
7 2004; February of 2004.

8 Q. So, you had that document available to you; you know  
9 what it said?

10 A. Correct.

11 Q. And that document did it review the impacts of the  
12 development of the Gyrodyne property proposed by the state?

13 MR. CLASEN: Objection. That document, he's not  
14 talking about the document in front of him, he's talking  
15 about another document.

16 MR. RYAN: No, no, that document, the one  
17 available to him, DGEIS.

18 THE COURT: No, wait a minute. I agree, I'm not  
19 following.

20 MR. RYAN: All right.

21 THE COURT: Which document, Mr. Ryan, are you  
22 going to refer to --

23 MR. RYAN: Okay.

24 Q. The Document being reviewed was prepared for what  
25 purpose?

1 THE COURT: The document being what --

2 MR. RYAN: Reviewed by Mr. Cameron and --

3 THE COURT: Again, excuse me because I don't have  
4 this exhibit either before me, so --

5 MR. RYAN: Your Honor, counsel --

6 THE COURT: It's not that I want. You've got to  
7 just explain it a little bit. Mr. Cameron is reviewing a  
8 document and writing a memorandum with respect to that, is  
9 that what we're taking about?

10 MR. RYAN: Yes.

11 THE COURT: Okay. Well, I mean I'm trying to  
12 understand it myself. So, you're talking about the  
13 document that Mr. Cameron was reviewing which resulted in  
14 the memorandum. And Mr. King is now looking at.

15 MR. RYAN: Yes.

16 THE COURT: Okay.

17 A. Can you please repeat the question?

18 (Laughter.)

19 Q. No.

20 (Laughter.)

21 Q. I will withdraw that question and start again.

22 A. I don't know what it was.

23 MR. RYAN: Do you have that copy of it? I'll  
24 have this marked now.

25 MR. CLASEN: Copy of what? That's the new --



1 MR. RYAN: Mm?

2 MR. CLASEN: That's the different one. That's  
3 not "D".

4 MR. RYAN: What?

5 MR. CLASEN: This is "D" you're talking about  
6 now. That's not "D".

7 MR. RYAN: No. I want to make this --

8 MR. CLASEN: You're going to mark that?

9 MR. RYAN: I'm going to have it marked at this  
10 point. Your Honor, may I have another document marked?

11 THE COURT: Whatever you want.

12 (Whereupon, Defendant's Exhibit I was marked for  
13 I.D. purposes only.)

14 THE COURT: Go ahead, Mr. Ryan.

15 MR. RYAN: Thank you. Counsel, can we submit or  
16 agree to put that in evidence?

17 THE COURT: Mr. Clasen?

18 MR. CLASEN: Your Honor, can I impose upon  
19 counsel that I could get a copy on Monday of the exhibit.  
20 I like to have a -- it's one of these things, I like to  
21 have a complete set of the exhibits while I'm trying the  
22 case?

23 MR. RYAN: Your Honor, it has been exchanged in  
24 discovery all volumes of the environmental impact study  
25 done by the state university in connection with this

1 appropriation. And counsel does have a copy available to  
2 him. I am remote from my office, but I can try to make  
3 arrangements, but not over a weekend.

4 THE COURT: Mr. Clasen?

5 MR. CLASEN: Your Honor, can I just --

6 THE COURT: Yes, you may.

7 MR. CLASEN: -- whisper to Mr. Ross for a second?

8 THE COURT: You may check with Mr. Ross  
9 (inaudible).

10 MR. CLASEN: I'm not sure we produced -- I cannot  
11 guarantee that we did not produce another version of this  
12 document. When we produce documents we Bate's number them.  
13 This one is not Bate's numbered. So, this one is not ours,  
14 okay, number one. Number two, Mr. Ross informs me he  
15 doesn't think we necessarily produced this.

16 I am willing to do this. Over the weekend we  
17 will check whether we produced this document if he'll at  
18 least give me the first page of it. Okay? If we have I'll  
19 deal with it. I'll use the one I got. If I don't, we'll  
20 send him an email. And I'd like a complete copy. There's  
21 Kinkos and things like this that can do this thing over the  
22 weekend.

23 THE COURT: Okay. Mr. Ryan, part of it is just  
24 again, you're just showing up with it now. There have been  
25 a lot of things that have been exchanged, and perhaps it

1 got lost somewhere among the volumes, and not knowing it  
2 was going to be needed for trial. So, they will do just  
3 that. If they have it, they have it. If not, they are  
4 going to email you and notify you --

5 MR. RYAN: All right. Very good.

6 THE COURT: -- and please produce a copy.

7 MR. RYAN: Your Honor --

8 THE COURT: You're now actively using it in  
9 trial.

10 MR. RYAN: Correct, Your Honor. And it may be  
11 easier than I had anticipated. Counsel for the university  
12 is here and they may have a copy available that I could  
13 provide Mr. Clasen. And if they do we'll make an effort to  
14 do so.

15 THE COURT: That would be very accommodating of  
16 you. Thank you, sir.

17 MR. RYAN: Sometimes, Judge, yes.

18 THE COURT: Please proceed. Now, wait a minute.  
19 Mr. Clasen, are you --

20 MR. CLASEN: Otherwise, Your Honor, we've  
21 already --

22 THE COURT: All right.

23 MR. CLASEN: It would be the same objection as  
24 before so I'm not even going to do it again.

25 THE COURT: Understood.

1 MR. CLASEN: Okay.

2 THE COURT: And we'll just put you on the record  
3 for continuing it with respect to this in terms of -- yeah,  
4 understood.

5 MR. CLASEN: Thank you.

6 THE COURT: So, then this is "E" in --

7 THE MONITOR: It's "I".

8 THE COURT: Huh?

9 THE MONITOR: It's "I" because I have other ones  
10 here.

11 (Whereupon, Defendant's Exhibit E through H were  
12 marked for I.D. purposes only.)

13 THE COURT: Oh. Oh, well you've marked -- "I"  
14 for identification?

15 THE MONITOR: Yes.

16 THE COURT: All right. "I" for identification is  
17 in evidence as "I".

18 (Whereupon, Defendant's Exhibit I was admitted in  
19 evidence.)

20 THE COURT: Continue, Mr. Ryan.

21 MR. RYAN: Thank you, Your Honor.

22 Q. Mr. King, what rate of growth is suggested by Mr.  
23 Cameron in his letter of June -- memorandum of June 21 --

24 THE COURT: I think Mr. Clasen is standing, you  
25 know, for what period of time.

1 MR. CLASEN: Right. This is a 2004 document.

2 THE COURT: What rate of growth for what time?

3 MR. RYAN: Well -- all right.

4 THE COURT: I'm sorry. I just in advance --

5 MR. RYAN: Sure.

6 THE COURT: -- that's why he stood up.

7 MR. RYAN: Well, let me ask the witness. I'll  
8 lay a foundation.

9 THE COURT: Lay a foundation. That's what I  
10 think. Please lay the foundation and everybody will be  
11 happy.

12 MR. RYAN: Okay.

13 Q. Mr. King, the rate of growth, what is that? I mean  
14 how does it function?

15 A. Well, there can be a rate of growth for anything.  
16 There can be a rate of growth for a particular development.  
17 There could be a rate of growth for a roadway. There could be a  
18 rate of growth -- I mean what exactly -- are you asking as it  
19 relates to traffic engineering?

20 Q. Yes, I am. In relation to traffic; background  
21 traffic.

22 A. Background traffic, there is a roadway growth rate  
23 that is based on natural growth that occurs within a region.

24 Q. Can that growth rate be modified to reflect particular  
25 conditions in a particular region?

1 A. Of course.

2 Q. And does the growth rate apply to a particular period  
3 of time?

4 A. Yes.

5 Q. And what period of time does the growth rate apply to?

6 A. As it relates to a project it would be utilized for  
7 its no-build conditions.

8 Q. All right. Now, this document is prepared by your  
9 office on June 21 of 2004, correct?

10 A. That's correct.

11 Q. Now, growth rate, you applied a growth rate in reverse  
12 from 2007 to 2005, correct, in your processes?

13 A. That's incorrect.

14 Q. Excuse me?

15 A. From 2006 to 2005.

16 Q. 2006 to 2005. Does a background growth rate change  
17 dramatically year to year?

18 A. It can.

19 Q. And what factors would change it?

20 A. If there was a significant type of change within the  
21 area.

22 Q. Well --

23 A. A development or --

24 Q. -- what type of significant change would affect the  
25 growth rate?

1           A.    If there was, for instance, a regional mall built  
2 there or something like that. That would drastically change the  
3 traffic patterns.

4           Q.    Now, the growth rate that is referenced in Mr.  
5 Cameron's letter or memorandum --

6                   MR. RYAN: I'm sorry, I forgot the exhibit  
7 number.

8                   THE COURT: "D."

9                   MR. RYAN: "D"?

10          Q.    Exhibit D, that speaks to its being applied for a  
11 period that would include what years?

12          A.    It's not clear. It's whatever the SUNY DGEIS had  
13 projected to it. It may be 2013.

14          Q.    From when?

15          A.    The publishing of the document.

16          Q.    From 2004 to 2013? 2013, was that what you said?

17          A.    Well, this particular memorandum is reviewing the  
18 draft generic environmental impact statement. The document "I"  
19 that you handed to me is the final generic environment impact  
20 statement. So, they're not reviewing the same document.

21          Q.    Well, my question to you though, Mr. King, is the  
22 period of time.

23          A.    The period of time that this is referring to here?

24                   MR. CLASEN: For what?

25                   THE COURT: Excuse me, Mr. --

1 Q. Correct.

2 THE COURT: I'm sorry, Mr. Clasen, he's getting  
3 it.

4 MR. CLASEN: Okay. Well, he started --

5 THE COURT: I understand. Go on, Mr. Ryan.

6 Q. Mr. Cameron makes a recommendation that a particular  
7 growth rate should be applied. I want to know what years Mr.  
8 Cameron is suggesting that this growth rate be applied to.

9 A. It appears, because as I said, I did not author this  
10 document. It appears that the recommendation would have been to  
11 utilize a 1.15 percent for the background traffic growth and an  
12 additional 2 percent for the 5,000 students that were projected  
13 to be increased for SUNY. That's the way this document reads.

14 Q. Mr. Cameron, did you not understand my question? Mr.  
15 King, I'm sorry, did you not understand my question?

16 A. I think I answered my question.

17 Q. My question to you, and I'll repeat it again; was Mr.  
18 Cameron recommends a particular growth rate in this document,  
19 Exhibit D, correct?

20 THE COURT: Mr. Clasen?

21 MR. CLASEN: Your Honor, at this time you know  
22 what, I didn't think we were going to go through this level  
23 of detail, I object to this question as no foundation. He  
24 hasn't established that this gentleman knows anything about  
25 this particular document that he's reading other than



1 reading it to us. And if his answer is just he's reading  
2 what paragraph 3 says, it's in evidence. Okay, it says  
3 what it says.

4 If he's speculating as to what Mr. Cameron did  
5 and is not fully familiar with this document, then we have  
6 nothing, Judge. So, unless he lays a foundation, I think  
7 the question is inadmissible. The answer could be  
8 inadmissible, the question is improper.

9 THE COURT: I'm going to overrule you and let Mr.  
10 Ryan proceed for the moment if Mr. King can answer the  
11 question from the document prepared by his company. And  
12 the question is for what years. Can you tell from the  
13 document, not having prepared it yourself, what years are  
14 involved in predicting the growth rate? Do I have that  
15 right, Mr. Ryan?

16 MR. RYAN: Your Honor, I will -- perhaps if I --  
17 I'll try to rephrase it.

18 THE COURT: You can go ahead, Mr. Ryan.

19 MR. RYAN: Thank you.

20 Q. Mr. King, Mr. Cameron is reviewing in this document  
21 and memorializing shortcomings in New York State University's  
22 environmental review of this property, correct?

23 A. In the draft generic environmental impact statement,  
24 that is correct?

25 Q. That is the document that is produced in the State

1 University's environmental review, correct?

2 A. It was the initial document, that's correct.

3 Q. Right. And that document, as you had indicated  
4 earlier, projects forward for purposes of evaluating the traffic  
5 impact?

6 A. That's correct.

7 Q. Now, that projection forward is for years from the  
8 proposed taking is what you're assessing the traffic impact in  
9 that period, correct?

10 MR. CLASEN: Your Honor, what period? And now  
11 we're moving from Cameron's to his? I don't understand.  
12 The question is -- if we get it read back, Your Honor,  
13 you'll see it doesn't make any sense the way it's done.

14 MR. RYAN: Withdrawn; I'll ask it again.

15 THE COURT: Go ahead.

16 Q. The document that Mr. Cameron is reviewing here,  
17 studies traffic impact over a period of years, is that so, Mr.  
18 King?

19 A. That's correct.

20 Q. Do you know what period of years is being considered?

21 A. Offhand, no.

22 Q. From looking at the final impact statement, can you  
23 tell us to a reasonable degree of certainty what years are being  
24 considered?

25 A. Yes.

1 Q. And what years were those?

2 A. It appears to be 2004 is the existing condition, 2007  
3 and 2017.

4 Q. All right. All right. So, would a growth rate used  
5 in that traffic impact analysis cover from 2004 out to 2017?

6 A. It can.

7 Q. Well, in the course of this analysis, is the growth  
8 rate that Mr. Cameron is recommending to be applied to that  
9 entire period?

10 MR. CLASEN: Your Honor, which exhibit? He was  
11 looking at Exhibit I to answer the question he just did,  
12 and now we're referring back to "D". They're two different  
13 things.

14 THE COURT: Mr. Ryan?

15 MR. RYAN: Your Honor, the witness has indicated  
16 that the time period is the same.

17 THE WITNESS: No, I haven't.

18 MR. RYAN: All right.

19 THE COURT: Therefore, Mr. Ryan, you'd better  
20 clarify between "D" and "I" what you're referring to.

21 Q. Would the growth rate that Mr. Cameron is suggesting  
22 in Exhibit D be applied for 2005?

23 A. There are two growth rates that Mr. Cameron is  
24 discussing. If you're referring to Page 12, Chapter 14, Comment  
25 3, where it discusses growth rate, there are two separate and

1 distinct growth rates that he is referring to. One is a  
2 university specific growth rate for 5,000 additional students,  
3 and the other one is a background roadway growth rate. So,  
4 which growth rate --

5 Q. Sure.

6 A. -- are you asking me about?

7 Q. Since SUNY is the largest single site employer on Long  
8 Island, their growth rate will govern, especially for  
9 intersections at or close to the campus. All of the analyses  
10 should be revised using an appropriate growth factor at least  
11 3.22 percent (1.15 percent plus 2.07 percent). Did I read that  
12 correctly, Mr. King?

13 A. Yes.

14 Q. Is that a statement that Mr. Cameron made in Exhibit  
15 B?

16 MR. CLASEN: Your Honor, the document speaks for  
17 itself.

18 MR. RYAN: All right.

19 Q. Is that--

20 THE COURT: Mr. Ryan, I'm beginning to agree.

21 MR. RYAN: Withdrawn.

22 Q. Is that a recommendation of a growth rate at minimum  
23 of 3.22 percent?

24 MR. CLASEN: Your Honor, it speaks for itself.

25 This isn't his document, okay. It says what it says.

1 THE COURT: Mr. Ryan, you put it in evidence, it  
2 will be evaluated, can we move on? He didn't prepare the  
3 document.

4 Q. Would that 3.22 percent growth rate be applicable for  
5 the development of this property in 2005, Mr. King?

6 A. For SUNY, which is projecting to have 5,000 additional  
7 students throughout its -- in this particular case -- 2013  
8 projection, which was changed in the other document that you  
9 handed me to 2017. At that projection for that particular  
10 development, they should have increased it. That's what Mr.  
11 Cameron's recommendation is, yes.

12 Q. Mr. King, this growth rate applies not just to SUNY  
13 property, does it?

14 A. It is a function of the fact that SUNY projected in  
15 their document to increase their enrollment by 5,000 students.

16 Q. Well, that may explain Mr. Cameron's reasoning in  
17 recommending the growth rate, but the growth rate doesn't just  
18 apply to SUNY's property, does it, Mr. King?

19 A. No.

20 Q. The growth rate recommended by Mr. Cameron, applies to  
21 the intersection of Stony Brook Road and 347, does it not?

22 A. I believe -- Stony Brook Road and 374, is that what  
23 your question is?

24 Q. Have you forgotten it?

25 A. Can you rephrase it, please? Yes.

1 Q. My question is does the growth rate recommended by Mr.  
2 Cameron --

3 A. Yes.

4 Q. -- in his letter of June 21, 2004, a growth rate of  
5 3.22 percent, apply to the analysis of traffic conditions at the  
6 intersections of Stony Brook Road and Route 347?

7 THE COURT: Mr. Clasen?

8 MR. CLASEN: Apply to what?

9 MR. RYAN: Gasping.

10 THE COURT: Overruled. He can answer.

11 MR. CLASEN: All right.

12 A. Can you rephrase the question, please.

13 MR. RYAN: (Laughing.)

14 Q. Certainly, Mr. King.

15 A. Thank you.

16 Q. The growth rate of 3.22 percent proposed by Mr.  
17 Cameron in his memorandum in Exhibit D in evidence, does that  
18 apply to the intersection of Stony Brook Road and Route 347?

19 A. It would appear that Mr. Cameron is suggesting a  
20 growth rate be utilized, yes.

21 Q. Again, does the growth rate that Mr. Cameron proposes  
22 in this memorandum apply to the particular intersection of Stony  
23 Brook Road and Route 347?

24 A. If the author of the document were to accept Mr.  
25 Cameron's suggestions, then it would be utilized, yes.

1 Q. Yes. That's the answer?

2 A. Yes.

3 Q. Would it apply, the same rate, the same memorandum,  
4 the same author, the same date of preparation, the same --  
5 withdrawn. Would this same rate apply to any consideration of  
6 traffic impact at the intersection of Stony Brook Road and Route  
7 25A?

8 A. In which document were you referring to?

9 Q. (Laughing.) I was afraid of that. The recommendation  
10 by Mr. Cameron --

11 A. Yes.

12 Q. -- of a 3.22 percent growth rate applies to the  
13 analysis of traffic conditions on a roadway, on roadways,  
14 correct?

15 A. No. It applied to the traffic conditions of the SUNY  
16 DGEIS. The draft generic environmental impact statement.  
17 That's what Mr. Cameron was referring to.

18 Q. And the SUNY DGEIS is reviewing what and assessing  
19 what, Mr. King?

20 A. The environmental affects of the research and  
21 development park that was proposed on 245 acres.

22 Q. And in order to do so it develops a no-build scenario?

23 A. I believe it does, yes.

24 Q. And the growth rate applies to a no-build scenario,  
25 Mr. King?

1 A. A growth rate does, yes.

2 Q. Does Mr. Cameron's recommendation limit itself to a  
3 build scenario?

4 A. Which recommendation of Mr. Cameron's? Are you  
5 referring to the -- I don't know what you're referring to.

6 Q. Do you not understand, Mr. King?

7 A. I do not understand your question.

8 Q. Sure. Okay. Mr. Cameron's June 21, 2004 statement in  
9 Paragraph 3 that you have read --

10 A. Yes.

11 Q. -- is made in response to an environmental impact  
12 study done by the State University of New York relating to a  
13 potential development on property that belongs to Gyrodyne,  
14 correct?

15 A. On the draft of that document, yes.

16 Q. The study related --

17 A. No, Mr. Cameron's memo is a critique of the draft of  
18 that document.

19 Q. And the draft of that document was a study of the  
20 traffic impact, part of it, was this -- this comment?

21 A. Among many other things, yes.

22 Q. This comment --

23 A. This particular comment was --

24 Q. -- is in response to the traffic evaluation, is it  
25 not?



1           A.    It was in Chapter 14 of the traffic and transportation  
2 section of the draft environmental impact statement.

3           Q.    And Mr. Cameron is commenting on the traffic  
4 assessment in the environmental assessment -- environmental  
5 review, is he not?

6           A.    Correct.

7           Q.    That traffic assessment --

8           A.    Yes.

9           Q.    -- considers both a no-build and a build scenario,  
10 correct, Mr. --

11          A.    I believe it does, yes.

12          Q.    Well, to a reasonable degree of certainty, does it  
13 not, Mr. King?

14          A.    I am not the author of that document. I am not the  
15 author of this Exhibit D. So, I will say --

16          Q.    Correct.

17                   MR. CLASEN: He wasn't done. I would say -- he  
18 started it, Your Honor, and then he got cut off.

19                   THE COURT: Yes. Mr. Ryan, could you please move  
20 on?

21                   MR. RYAN: I'm sorry, I thought he was done, Your  
22 Honor.

23                   THE COURT: Can you please move on? I mean if  
24 you're making a point, let's make the point and then move  
25 on.

1 MR. RYAN: Your Honor, can I ask for a five  
2 minute break?

3 THE COURT: Five minutes.

4 MR. RYAN: Thank you.

5 (Off the record.)

6 THE COURT: Okay.

7 Q. Mr. King, is it fair to say that Mr. Cameron's  
8 proposed growth rate would apply to all the intersections around  
9 the Gyrodyne property?

10 A. Are you referring to Mr. Cameron's suggested growth  
11 rate for the draft generic environmental impact statement?

12 Q. That's the one I'm referring to, yes.

13 A. Okay. And as I stated before he has two growth rates  
14 in there. One refers to the site specific SUNY school, and one  
15 refers to the area background, which as I took the five minute  
16 recess to review, the final generic environmental impact  
17 statement utilized at 1.15 for it's 2017 projection.

18 Q. Mr. King?

19 A. Yes.

20 Q. My question relates to Mr. Cameron's recommendation.

21 A. Okay. What was your question?

22 Q. Do you understand, Mr. Cameron's recommendation?

23 A. It appears to me that Mr. Cameron has made a  
24 recommendation of two items.

25 MR. RYAN: Move to strike. The question related

1           only to whether or not he understood it.

2                   MR. CLASEN: I think it was answered.

3                   THE COURT: Strike the remark. Please answer it  
4 with a yes or no if you understood Mr. Cameron's  
5 recommendation.

6                   THE WITNESS: I do.

7                   MR. RYAN: All right.

8                   THE COURT: Continue, Mr. Ryan.

9           Q.     Can you answer, yes or no, Mr. King, whether or not  
10 Mr. Cameron recommends using a growth rate of 3.22 percent for  
11 studying the traffic impacts on the properties around the  
12 Gyrodyne parcel; the intersections around the Gyrodyne parcels?

13                   THE COURT: Mr. Clasen?

14                   MR. CLASEN: Objection to the form of his  
15 question.

16                   THE COURT: Overruled.

17                   MR. CLASEN: I mean, it's --

18                   THE COURT: Overruled.

19           A.     I'm sorry, could you repeat the question?

20           Q.     Yes, certainly, Mr. King. Does Mr. Cameron, in his  
21 memorandum of June 21, 2004, recommend using a growth rate of  
22 3.22 percent for an assessment of the traffic impact that will  
23 occur at the intersections surrounding the Gyrodyne property?

24           A.     As it relates to Mr. Cameron's critique of the draft  
25 generic environmental impact statement, yes.

1 Q. Thank you. You studied the intersections around the  
2 Gyrodyne property in your report, Mr. King.

3 A. That's correct.

4 Q. And were all of the intersection around -- well,  
5 withdrawn. Did your report include a study of the same  
6 intersections that were studied in the Stony Brook evaluation?

7 MR. CLASEN: Your Honor, the Stony Brook  
8 evaluation is what; "I", "D" or the DGEIS?

9 THE COURT: Mr. Ryan?

10 MR. RYAN: Either one.

11 THE COURT: Wait a minute, there were three of  
12 them?

13 MR. RYAN: Excuse me?

14 THE COURT: He said Exhibit I, Exhibit D or the  
15 DGEIS.

16 MR. RYAN: Oh, no, I'm sorry. That would be --

17 THE WITNESS: This is "I"

18 MR. RYAN: -- Exhibit I.

19 A. Can you repeat the question?

20 Q. Did your study, Mr. King, include an evaluation of the  
21 same intersections that were considered by the State University  
22 of New York as documented in Exhibit I?

23 A. I am reviewing figure 14.1 of Exhibit I on page 14.2.  
24 And it appears to contain of the intersections that were studied  
25 within our document, but not all of them.

1 Q. Let me ask the question again, Mr. Cameron --

2 THE COURT: He answered the question. Mr. Ryan,  
3 move on. The answer was some of them, not all of them. If  
4 you want the yes or no answer, the answer is no, they  
5 didn't include all the same, obviously.

6 MR. RYAN: Your Honor, perhaps you misunderstood  
7 my question too and for that reason, I --

8 THE COURT: Well, then in that case, we all have  
9 a problem.

10 MR. RYAN: It seems so.

11 Q. Mr. King?

12 A. Yes.

13 Q. Did your study include every one of the intersections  
14 that were studied in Exhibit I?

15 A. Yes.

16 Q. Exhibit I studies fewer intersections than were  
17 covered in your study, correct?

18 A. That's correct.

19 Q. The growth rate in your study, if a growth rate of  
20 3.22 percent were applied, would it impact the no-build  
21 condition?

22 A. It would not impact, it would change it.

23 Q. Well -- if a 3.22 percent growth rate were used in  
24 your study, would it change the assessment or would it have any  
25 affect on the assessment of the functioning of the intersections

1 you did study?

2 A. Yes.

3 Q. Is it likely, Mr. King, that a higher growth rate  
4 would result in demonstrating a greater impairment of function  
5 for those intersections?

6 A. Under which scenario?

7 Q. Under either scenario, Mr. King.

8 A. As I stated yesterday, when we do a traffic impact  
9 assessment, we build a model of the no-build condition and the  
10 build conditions and then we compare them. If we were to  
11 utilize a different growth rate, the no-build would elevate and  
12 the build would elevate because what you're looking at is not  
13 the operation but the difference between the two.

14 MR. RYAN: Your Honor, I would ask to strike  
15 everything that's not responsive to my question.

16 THE COURT: No.

17 MR. CLASEN: Your Honor --

18 MR. RYAN: Okay.

19 THE COURT: I found it to be responsive. Which  
20 by the way doesn't stop you from asking further questions.  
21 I just found --

22 MR. RYAN: Oh, no, I certainly didn't take it  
23 that way, Your Honor.

24 THE COURT: Okay.

25 Q. Now, your report, Mr. Cameron, determined the level of

1 service for no-built as of 2005, correct?

2 A. that's correct.

3 Q. And in 2005, there were -- withdrawn. The  
4 consideration by the town of a proposed residential development  
5 if such an application were made in 2005, would require a no-  
6 build assessment as of what year?

7 A. Is your question if a development were to be put forth  
8 to the town, what year would the no-build be?

9 Q. Well, specifically a residential development, Mr.  
10 King.

11 A. A residential development, okay.

12 Q. What year would be assessed in regard to the  
13 intersection functioning in the no-build scenario?

14 A. In the residential developments that I have been  
15 involved with if it's a large scale development, it could be  
16 phased.

17 Q. It could be what?

18 A. Could be phased.

19 Q. Okay.

20 A. So, then it would be multiple no-build analysis. But  
21 it certainly would be, one of them would be the final year that  
22 it's developed.

23 Q. Okay. So, the no-build condition that the town is  
24 interesting in assessing in the course of its review is the year  
25 in which it is projected that all instruction under the proposed

1 plan would be completed, is that so?

2 A. Typically.

3 Q. In your scenarios, no-build scenario, nothing has been  
4 -- do you project out to the year in which a proposed  
5 residential development would be completed?

6 A. As previously stated we do a no-build of 2005 and a  
7 build of 2005.

8 Q. Assuming an application to the town boards, Smithtown  
9 and Brookhaven, in 2005, does your traffic analysis project out  
10 to a date of completion of a residential development?

11 A. No.

12 Q. Does your analysis, Mr. King, project out to a date of  
13 completion in any of it's scenarios?

14 A. Again, the analysis is for 2005 with a no-build and  
15 with the property completely developed. That was our charge.  
16 That's what we prepared.

17 Q. But what any town would be assessing is a different  
18 year if an application --

19 THE COURT: Yes, Mr. Clasen?

20 MR. CLASEN: Well, first of all, this has been  
21 asked several times before, Your Honor. Okay.

22 THE COURT: If you're asking if it's asked and  
23 answered, it's sustained.

24 Q. Now, the growth rate that would be applied, is that a  
25 simple background or is it compounded?



1 MR. CLASEN: The growth rate to what?

2 Q. The traffic growth rate that would be relevant to your  
3 assessment of the functioning of traffic on the nearby  
4 intersections.

5 MR. CLASEN: To what? Are we now projecting --  
6 if I understand where he seems to be going -- I could be  
7 incorrect -- we're now projecting that a hypothetical  
8 proposal was made to a town -- which one I don't know,  
9 Smithtown or Brookhaven -- in 2005 to develop something in  
10 the future, I'm not sure when. Okay, is that what he's now  
11 being asked to answer, what would you do under those  
12 hypothetical circumstances? And if that's the case, Your  
13 Honor, that's totally irrelevant. So, I'd object because  
14 we're talking about highest and best use, okay, as of 2005.

15 THE COURT: Mr. Ryan?

16 MR. RYAN: Certainly, Your Honor. We are talking  
17 about the likely -- the town's consideration of a change of  
18 zone in 2005 and what the perception could be by anyone in  
19 the marketplace viewing this property. That is a relevant  
20 inquiry.

21 THE COURT: As to years in the future, is that  
22 what you're talking about?

23 MR. RYAN: Correct.

24 THE COURT: Then I'm going to sustain the  
25 objection because we've already gone over this three or

1 four times. And I've heard it and I know we've gone -- and  
2 I know whether or not what the answer is what you're trying  
3 to do. So, we can move on from there because we've covered  
4 all this already.

5 MR. RYAN: With the Court's assurance that I've  
6 made an adequate record of it, I will move on.

7 THE COURT: Thank you.

8 Q. Now --

9 MR. RYAN: I'm sorry, what's the exhibit?

10 THE COURT: You're talking about some kind of  
11 (inaudible)?

12 MR. RYAN: Yes, Judge.

13 THE COURT: I think it's five, isn't it?

14 MR. RYAN: Five.

15 THE MONITOR: It's Exhibit 6.

16 THE COURT: What?

17 THE MONITOR: Six.

18 THE COURT: Six, okay.

19 Q. Six is a graphic bar chart representation of your  
20 projection of the difference between the traffic generated by a  
21 residential development and a full build out of industrial  
22 development on the entire property --

23 MR. CLASEN: That was --

24 Q. -- at its A.M. and P.M. peak hours, correct?

25 MR. CLASEN: First of all, I apologize for

1 interrupting, Your Honor, I thought he was done. This has  
2 been asked and answered and it might, according to my notes  
3 since I timed him when we started, about 4:10/4:15  
4 yesterday afternoon. We did go through these. In fact if  
5 you remember, we did the numbers --

6 MR. RYAN: Your Honor, this is the foundation for  
7 another line of questioning. If I --

8 THE COURT: Well, why don't you just go right to  
9 the questioning and if you haven't done the proper  
10 foundation, I'm sure Mr. Clasen will ask you to go through  
11 it all again. But why don't we just waive that and go  
12 right to the questioning.

13 MR. RYAN: All right.

14 THE COURT: If we don't like the foundation,  
15 we'll come back.

16 MR. RYAN: Sure.

17 MR. CLASEN: Whatever he's asked before I kind of  
18 take as foundation already. You know I wouldn't object  
19 again and make him do it again.

20 THE COURT: I understand. Let's go to the  
21 questioning and we'll see if it's necessary.

22 MR. RYAN: Very good.

23 Q. Your trip generation was based on square footage of  
24 industrial and business usage for this property, the blue bars??

25 A. Office and industrial space, correct?

1 Q. Right. And what was the total office and industrial  
2 space --

3 THE COURT: Mr. Clasen, that we did go through  
4 all yesterday afternoon. We went through the page  
5 numbering, we divided it out.

6 MR. RYAN: All right.

7 THE COURT: It's all set forth there. I don't  
8 remember the exact numbers, but I remember listening to it.  
9 A million something and then two million and something, and  
10 it added up to just under four million if I remember by  
11 about 60 or 70,000 square feet. I could be off a little,  
12 but I'm not looking at notes, yet.

13 Q. Now, the report that you used as a basis for those  
14 numbers, you identified yesterday as Mr. Gulizio's?

15 A. I identified that I utilized the various expert  
16 reports that were available to me.

17 Q. All right.

18 A. Including the appraisal, Mr. Gulizio's report, and the  
19 BFJ Planning Studies.

20 Q. Showing you Exhibit 1 in evidence, that's Mr.  
21 Gulizio's report, isn't that?

22 A. Yes.

23 Q. Show me where it reflects a industrial space of  
24 2,300,000 -- oh, I wanted the precise number.

25 MR. RYAN: I'll find it, Your Honor.

1 THE WITNESS: I believe you were confirming the  
2 number.

3 THE COURT: Yeah, Mr. Ryan, we're waiting for  
4 you.

5 Q. 2,230,000 square feet of industrial space.

6 MR. CLASEN: Your Honor, could we have a -- I  
7 don't -- could we have a site to where he's pointing?

8 THE COURT: I'm sorry?

9 MR. CLASEN: Could we have a to the fact --

10 MR. RYAN: Certainly.

11 MR. CLASEN: If he's using industrial to include  
12 industrial and commercial, I don't know what he's --

13 MR. RYAN: No, Your Honor.

14 THE COURT: No, we went over this yesterday, Mr.  
15 Clasen.

16 MR. RYAN: I just read a number --

17 MR. CLASEN: I know we went through all these  
18 numbers.

19 MR. RYAN: I'll clarify, Your Honor.

20 Q. I read a number from Page IV of Mr. King's Executive  
21 Summary.

22 A. Okay.

23 Q. Where in Mr. Gulizio's report is an indication that  
24 the Gyrodyne property could be utilized for development of  
25 2,230,000 square feet of industrial space?

1           A.    As I stated previously, I utilized the documents  
2 provided to me.  One of Mr. Gulizio's references on page 5 is  
3 the yield analysis provided by BFJ Planning.

4           Q.    Does Mr. Gulizio give a different indication as to the  
5 square footage of industrial space on the Gyrodyne property, Mr.  
6 King?

7           A.    Yes, he does.

8           Q.    And what square footage of industrial space, does Mr.  
9 Gulizio indicate?

10          A.    Of industrial development, 1,320,000 square feet.

11          Q.    A million square feet less than in your report.

12          A.    Actually 910,000 square feet which is the remainder.

13          Q.    I'm showing you Exhibit 3 in evidence.  You also used  
14 for the industrial space, correct?

15          A.    That's correct.

16          Q.    And where do you find an indication of industrial  
17 space in that report?

18          A.    The Rogers & Taylor appraisal references and includes  
19 the Gulizio Report.  The Gulizio Report references and includes  
20 the BFJ Planning Report.  The BFJ Planning Studies were the  
21 basis for my analysis.

22          Q.    Mr. Gulizio uses a different number than you do, Mr.  
23 King --

24          A.    He recommends slightly less.

25          Q.    Correct?

1 A. That's correct.

2 Q. Almost a million square feet less, correct, Mr. King?

3 A. 910,000 square feet less, that's correct.

4 Q. The Rogers & Wells (sic) appraisal recommends or  
5 indicates a different square footage of industrial space then  
6 you've used?

7 A. That's correct.

8 Q. Do you see among any of the exhibits the report that  
9 you relied on in preparing your --

10 A. I do see the American Property of Counselors Appraisal  
11 which used approximately 4 million square feet; 4.1 I believe  
12 actually.

13 Q. Did you rely on that as a --

14 A. I did not.

15 Q. Okay. So, my question to you again, Mr. King, do you  
16 have with you any document that you relied in arriving at that  
17 number for industrial space on the Gyrodyne property?

18 A. No.

19 Q. But you're relying on someone else's development of  
20 that number and you did not use your own expertise to develop  
21 that, correct, Mr. King?

22 A. I relied on the information provide to me by the other  
23 experts involved.

24 Q. Someone else's expertise, not your own?

25 A. That's correct.

1 Q. You did not develop that number yourself?

2 A. I did not.

3 Q. You did not have anyone in your office confirm its  
4 feasibility or reliability?

5 A. I did not.

6 Q. Okay. Would reducing the number of square feet of  
7 industry space by -- well, going back to -- Mr. King you  
8 indicate that you used Mr. Gulizio's numbers other than the  
9 industrial space number?

10 A. I used all of the information provided to me.

11 Q. Okay. The difference in industrial space between your  
12 report and Mr. Gulizio's report, if you could compare the two of  
13 them, please?

14 MR. CLASEN: Your Honor, we've already done that.  
15 It's 910,000 square feet.

16 THE COURT: Yes.

17 MR. CLASEN: Six or seven times.

18 MR. RYAN: Okay.

19 THE COURT: (Inaudible.)

20 MR. RYAN: Very good. I'll go on.

21 Q. If you were to reduce your number of square feet for  
22 industrial space on the Gyrodyne property, Mr. King, would it  
23 reduce the number of net trips generated?

24 A. Of course. As demonstrated within our document when  
25 we did the remainder. It would have a significant impact on the



1 roadways. We analyze 910,000 square feet of industrial space,  
2 the remainder, and it still had an impact at eight locations.

3 Q. It would impact. Would it lessen it, Mr. King?

4 A. Yes.

5 Q. Now, Mr. King, your analysis indicates that mitigation  
6 of traffic impact is required at Mills Pond Road, correct, at  
7 it's intersection with Route 25A?

8 MR. CLASEN: Yes, Your Honor, for what scenario?

9 MR. RYAN: For any scenario.

10 A. At Mills Pond and 25A?

11 Q. Yes.

12 A. As I stated yesterday, our analysis based on  
13 discussions with the Department of Transportation, the Town of  
14 Smithtown has included in all scenarios. So, all of the models  
15 have the same exact criteria for Mills Pond and 25A. We have a  
16 traffic light and we have a turn light. Both of them are in the  
17 no-build and all of the build scenarios. So, the model is  
18 exactly the same for those locations.

19 Q. But that intersection has no traffic light currently,  
20 correct?

21 A. That's correct.

22 Q. This is a projected one?

23 A. That's correct.

24 Q. All of your other evaluations of intersections, Mr.  
25 King, did they involve -- or were they of the actual conditions

1 existing?

2 A. Yes.

3 Q. So, the intersection of Mills Pond Road and 25A was an  
4 assessment of a condition that doesn't exist?

5 A. That's correct. And if we had done that under the  
6 present condition, it would have shown significant failing in  
7 all scenarios.

8 MR. RYAN: Move to strike.

9 THE COURT: It's struck.

10 Q. The report that you've prepared does it consider the  
11 feasibility of the installation of a traffic signal at the  
12 intersection of 25A and Mills Pond Road?

13 A. No.

14 Q. Do you know if right-of-way exists for the addition of  
15 lanes on 25A?

16 A. Yes.

17 Q. Is that detailed in your report, Mr. King?

18 A. It is not.

19 Q. The proposed signal that you evaluated, Mr. King,  
20 involved what alterations at that intersection?

21 MR. CLASEN: Your Honor, I think we've done this  
22 a couple of times.

23 THE COURT: I think we have, Mr. Ryan. If you're  
24 to lay a foundation, we'll accept the foundation that's  
25 been laid.

1 MR. RYAN: All right.

2 THE COURT: If you've got a new question you want  
3 to ask --

4 MR. RYAN: Okay.

5 THE COURT: -- pertaining to this intersection,  
6 please do so. And then move on.

7 Q. How wide a turn lane was proposed Route 25A proceeding  
8 eastbound, Mr. King?

9 A. I do not recall the precise number. I can review the  
10 document and let you know if you want me to.

11 Q. Is that in your report?

12 A. Of course.

13 Q. Please, if you can identify where?

14 A. It's contained within the appendix.

15 Q. And if you -- well, that's a big appendix, correct,  
16 Mr. King?

17 A. Yes, it is.

18 Q. If you can be a little more specific than that.

19 A. It's contained within the capacity analysis printouts  
20 for the various scenarios for the intersection of Mills Pond  
21 Road at Route 25.

22 Q. But your appendix is un-paginated. I'll need a little  
23 direction, Mr. King.

24 A. Actually, I apologize, it's Appendix A, as all of the  
25 existing conditions. And then the proposed condition is the

1 third page of Appendix A. And the left-turn lane would be ten  
2 feet wide. It is also contained within the simulation analysis  
3 too.

4 Q. When you put a turn lane into the intersection on its  
5 easterly approach, approaching from the east, do you have to  
6 widen the west side?

7 A. Of course.

8 Q. And what is the width by which that would be widened?

9 A. It would be variable. It would vary from ten feet  
10 wide to zero.

11 Q. That's what's called a bull nose?

12 A. It has a lot of terms, shadow.

13 Q. Right. And that's so the vehicle approaching on the  
14 main line would not have to adjust their direction to avoid  
15 vehicles stopped in the turn lane?

16 A. When you do an auxiliary lane widening, you can do it  
17 symmetrically or you can do it asymmetrically. Symmetrical  
18 widening would have a tapering on both sides of an equal  
19 distance in order to deflect the through-traffic in this case  
20 east and west bound directions around that left turn lane.

21 Asymmetrically would move it all on one side of the  
22 roadway. We would propose in this scenario to be asymmetrical.

23 Q.

24 And you indicated that the video product that you created shows  
25 this asymmetrical?

1 A. No, I never represented that.

2 Q. Okay. Well, you have recommended it, correct?

3 A. The Sim. Traffic, which was the basis of the video  
4 contains a turn lane for westbound 25A onto Mills Pond Road. It  
5 is not in any way intended to be a graphical representation of  
6 the exact geometric conditions that would be required. I never  
7 represented that.

8 Q. There's no shadow or bull nose opposite the left turn  
9 lane in your visual representation of this intersection in the  
10 document that you created, Mr. King?

11 A. Because the simulation software does not consider it;  
12 it doesn't need it.

13 Q. I didn't ask you why. There is none?

14 A. No.

15 Q. Okay. So, your video simulation would show this  
16 need for motorists to adjust to avoid striking the vehicles  
17 stopped in the left turn lane on Route 25?

18 A. Of course. But it actually does.

19 Q. Okay. Which is not a reflection of the circumstances  
20 that would ever exist there?

21 A. Again, the software is not showing --

22 Q. Yes or no?

23 A. -- the design of the geometry.

24 Q. Yes or no; does the video representation of this  
25 intersection that you have offered as an exhibit of your work,

1 reflect something that could never exist at this location?

2 A. The software does not show the shadowing.

3 Q. I did not ask anything about the software. I asked  
4 about this video projection that we all sat for here and watched  
5 yesterday, Mr. King.

6 A. Right. And this video production --

7 Q. And my question is a simple one.

8 A. The video production --

9 Q. If you don't --

10 A. -- comes from the traffic simulation.

11 Q. My question is a simple, Mr. King, if you can answer  
12 it, please do.

13 A. All right.

14 Q. All right?

15 A. I would be glad to.

16 Q. My question is does this video represent a condition  
17 that could never -- as to this intersection -- that could never  
18 actually exist at that intersection?

19 A. Yes.

20 Q. Thank you. Now, in your investigation -- well,  
21 withdrawn. Mr. King, are you aware that Brookhaven Town studied  
22 the need for an overpass on Route -- I'm sorry, on Stony Brook  
23 Road back in the 1990?

24 MR. CLASEN: I objection, Your Honor, I never  
25 asked a single question.

1 MR. RYAN: I don't think I'm limited by --

2 THE COURT: Sure you are. But where are we  
3 going? What's this have to do with anything that's the  
4 subject matter of this proceeding.

5 MR. RYAN: Well, it goes to the town's concern  
6 for traffic on Stony Brook Road.

7 THE COURT: The town's concern for traffic on  
8 Stony Brook Road?

9 MR. RYAN: Yes. Which has been evaluated by Mr.  
10 King.

11 THE COURT: Well, the traffic usage has. I don't  
12 know about if -- are you talking trying to improve Stony  
13 Brook Road? That wasn't the subject of anybody's direct  
14 testimony.

15 MR. RYAN: No, Your Honor, the study relates to a  
16 proposed development of Gyrodyne's property by Gyrodyne.

17 THE COURT: Yes. Which never took place.

18 MR. RYAN: And that if the proposed development  
19 were to proceed in order to relieve Stony Brook Road of the  
20 projected traffic condition, a connector road would be  
21 necessary between South Campus Drive --

22 THE COURT: And how does this involve Mr. King?

23 MR. RYAN: Mr. King is the engineer for Gyrodyne  
24 in his submission of a traffic impact analysis for the  
25 development of the remainder --

1 THE COURT: No. Mr. Ryan if you want to ask him  
2 whether or not he gave any consideration to something that  
3 happened in 1990 with respect to his report, go on. If he  
4 answers, yes, you can look into. If the answer is no,  
5 we'll move onto something else.

6 MR. RYAN: That's all I was doing, whether he  
7 knew about it.

8 THE COURT: Okay. I'll ask. Mr. King, did you  
9 know about it?

10 THE WITNESS: The study prepared by the Town of  
11 Brookhaven; no.

12 MR. RYAN: Okay. Thank you.

13 THE COURT: Well, I just wanted to --

14 MR. RYAN: That's all I was doing.

15 THE COURT: -- save you a lot of questions to get  
16 the same answer.

17 Q. Now, your assessment, Mr. King, was that Route 347  
18 intersects with Stony Brook Road, with Moriches Road, and all of  
19 those that you studied, Mr. King. Are they failing?

20 MR. CLASEN: Your Honor, he studied a lot of  
21 intersections.

22 MR. RYAN: Just the Route 347 ones, Your Honor;  
23 that's all.

24 MR. CLASEN: Any intersection with 347, that's  
25 the question. I was objecting, Your Honor, I didn't know



1 what he was asking.

2 THE COURT: No, I understand. He's talking about  
3 any of the roads involved in Mr. King's study to the extent  
4 that they interacted with 347.

5 MR. RYAN: Right.

6 THE COURT: Nesconset Highway, are they failing?

7 MR. RYAN: Right.

8 MR. CLASEN: Okay.

9 A. In which scenario?

10 Q. Well, are they failing in any -- are movements at  
11 those intersections failing in the no-build scenario?

12 A. In the AM peak hour, the overall level of service at  
13 347 and Moriches Road is a C and at 347 and Nichols is an F and  
14 at 347 and Stony Brook Road, is also an F.

15 Q. All right. So, we have --

16 A. During the AM peak hours.

17 Q. Okay.

18 A. During the PM peak hours --

19 Q. So, as to that intersection, the answer is yes?

20 MR. CLASEN: Your Honor?

21 THE COURT: No, wait, he didn't finish.

22 MR. RYAN: Your Honor, I didn't ask for which  
23 ones were failing. My question was a simple one as to  
24 whether any of them were.

25 THE COURT: Okay. The answer was yes. Go on,

1 Mr. Ryan.

2 MR. RYAN: Thank you.

3 Q. How many of them are failing, Mr. King?

4 THE COURT: You could have done this all by  
5 letting him answer.

6 MR. RYAN: Perhaps. But this is my questioning,  
7 Your Honor. I'd rather do it by questions, then the  
8 witness volunteering it all.

9 MR. CLASEN: Your Honor, we actually looked at  
10 this yesterday. What we specifically did was, we went  
11 through the two charts that are on the Executive Summary V  
12 and the Executive Summary VI to show what we're talking  
13 about here. That's what we did yesterday. We went through  
14 those.

15 MR. RYAN: I didn't go through them, Your Honor.

16 MR. CLASEN: I didn't, you did. Your Honor, I  
17 apologize. My notes, aren't when I'm talking.

18 THE COURT: I'm going to let him go on for a  
19 little while, Mr. Clasen. Continue, Mr. Ryan. His  
20 question was simple. How many, not which ones. How many  
21 were failing? And he didn't ask whether it's AM or PM peak  
22 hours. We'll get to that too I assume. He just wants to  
23 know how many failed.

24 THE WITNESS: Nor which scenario did he ask  
25 either.

1 THE COURT: How many are failing? And you didn't  
2 ask him which scenario.

3 THE WITNESS: 17

4 Q. Would those intersections have any impact from a build  
5 condition at Gyrodyne's, either the entire property or -- well,  
6 just the entire property. that's all I'm interested in. Either  
7 residential or industrial.

8 A. Can you rephrase your question, please?

9 Q. Were those intersections that are failing be impacted  
10 by a build scenario at the 308 acre Gyrodyne property, whether  
11 that build is -- and I'm talking about the entire parcel.  
12 Whether that build was residential or industrial.

13 MR. CLASEN: Objection, Your Honor. The question  
14 before was tell me all the failed intersections, okay.  
15 This question seems to be saying I think the ones that were  
16 already failing, now look at what happens when we build  
17 there. Is that the question or otherwise I don't  
18 understand his question.

19 THE COURT: Well, he first asked the number of  
20 intersections that were failing under any scenario.

21 MR. CLASEN: Right.

22 THE COURT: Or all scenarios.

23 MR. RYAN: With Route 347.

24 THE COURT: Mr. Ryan. And got an answer of 17.

25 MR. CLASEN: Right.

1 THE COURT: Now, he wants to know that either  
2 under a residential or industrial build-out the impact of  
3 that, Mr. Ryan?

4 (No response.)

5 THE COURT: Hello, Mr. Ryan?

6 MR. RYAN: Yes.

7 THE COURT: Thank you. You can consult later.  
8 He wants to know the impact of that on an residential or  
9 industrial build-out over the entire track.

10 MR. CLASEN: Right. And here's the issue

11 THE COURT: Right.

12 MR. CLASEN: You said 17 failed, some of them are  
13 failing because of an as-build situation. So, what's the  
14 impact of an as-build? That's where I'm at a loss.

15 MR. RYAN: Your Honor, I object to a speaking  
16 objection in front of the witness as to that.

17 THE COURT: Yeah, Mr. Clasen, it doesn't matter.

18 MR. CLASEN: Okay.

19 THE COURT: He's asked the question, he'll get an  
20 answer. You're asking for the probative value it. That's  
21 for me to determine and I will --

22 MR. CLASEN: Okay.

23 THE COURT: -- when I get an answer and we'll go  
24 on from there.

25 A. Can you repeat the --

1 Q. Do I need to repeat the question?

2 A. -- question. I want to be clear on exactly what it is  
3 if I can be.

4 Q. If you can, Mr. King, please answer.

5 A. Yes.

6 Q. Whether any of the 17 failing intersections on 347  
7 that you looked at will be impacted by a development on the  
8 entire 308 acres of the Gyrodyne property, whether that  
9 development is residential or industrial.

10 A. We did not look at 17 intersections. You asked a  
11 question of how many failed in all scenarios. You did not  
12 clarify whether it was AM, PM, what scenarios. You asked how  
13 many failures there were. My answer was 17 because that's what  
14 the document demonstrates. You're asking different questions  
15 here.

16 Q. I have to start again, Mr. King.

17 THE COURT: No, I think he's saying he can't  
18 answer the question.

19 MR. RYAN: I know.

20 THE COURT: All right, so --

21 MR. RYAN: And he misunderstood the questions  
22 that had been asked him. So, we'll have to start again.

23 Q. Mr. King?

24 A. Yes.

25 Q. How many of the intersections that you looked at on

1 Route 347 for your study were failing in the no-build condition?

2 A. 2 in the AM peak hour.

3 Q. I'm not asking, Mr. King, when. I'm just asking the  
4 ones that had unacceptable capacity indications at all.

5 MR. CLASEN: Your Honor, if I could understand  
6 that question. If it failed in the AM and the PM, is that  
7 two or is that one under his analysis?

8 THE COURT: I don't think Mr. Ryan cares, he just  
9 wants to know.

10 MR. RYAN: I don't.

11 MR. CLASEN: Okay.

12 MR. RYAN: Well, actually, I do, Your Honor. I  
13 would have to clarify that.

14 THE COURT: All right.

15 MR. RYAN: I am looking --

16 THE COURT: By the way you asked it, you didn't.  
17 But go ahead.

18 MR. RYAN: Well, no, because my question related  
19 to the intersections; the number of intersections that had  
20 failures that existed.

21 Q. Now, how many intersections on Route 347 did you  
22 study, Mr. King?

23 A. Three.

24 Q. All right. Of those three intersections, is there  
25 anyone of them that did not have a failure at some point in its

1 operations?

2 A. Yes.

3 Q. Which one?

4 A. 347 and Moriches Road.

5 Q. Okay. The other two intersections were already  
6 failing or had failures?

7 A. In the AM peak?

8 Q. At any time.

9 A. Yes.

10 Q. Now, would those intersections be impacted those two  
11 intersections with failures be impacted by a development of  
12 Gyrodyne's 308 acre parcel in either a residential or an  
13 industrial use?

14 A. Yes.

15 Q. Your report suggests no mitigation for that impact,  
16 correct, Mr. King?

17 A. My report recognizes that there is a need for  
18 mitigation at those locations under the industrial as-of-right  
19 development.

20 Q. For the residential development, does it suggest any  
21 mitigation for the impact on those intersections?

22 A. There is no impact in the residential scenario.

23 Q. The residential scenario will produce additional  
24 vehicles?

25 A. That's correct.

1 Q. And those additional vehicles are in addition to the  
2 growth rate, whatever that might be?

3 A. That's correct.

4 Q. And we don't know what the conditions at the time that  
5 you would ultimately be -- withdrawn. How could the number of  
6 vehicles added not have an impact on the traffic condition?

7 A. Very simple.

8 Q. Please explain.

9 A. You have 300 vehicles over a one hour period. Not all  
10 300 of them are occurring at the exact same time. They're  
11 spread out over 60 minutes. They are further spread out  
12 throughout the entire network. There are 13 study locations  
13 here. Obviously the 300 as it gets closer to the property more  
14 of them would go through any intersection close. But when you  
15 get to 347, which has thousands of vehicles per hour traveling  
16 through it, and you add a couple of vehicles over an hour period,  
17 the effect is not measurable. But when you add \$5,000, it's  
18 significant as documented in the study.

19 Q. All right. There is an increase in traffic, correct?  
20 And an increase on the effect from Gyrodyne's development. You  
21 just can't measure it's impact?

22 THE COURT: Mr. Clasen?

23 MR. CLASEN: The question, Your Honor, is there  
24 an increase as for Gyrodyne's development. We're talking  
25 about scenarios. He hasn't identified which scenario. If



1 he's asking about the same scenario, you just asked about,  
2 it's asked and answered. He's already answered what the  
3 change was in the residential.

4 THE COURT: Sustained. We're gone over all that,  
5 Mr. Ryan.

6 MR. RYAN: Excuse me, Your Honor?

7 THE COURT: We've gone over all that.

8 Q. Mr. Cameron, you're -- well --

9 MR. RYAN: Nothing further, Your Honor.

10 THE COURT: Redirect, sir?

11 MR. CLASEN: Yes, a little bit, Your Honor.

12 MR. RYAN: Mr. King, I apologize.

13 THE WITNESS: It's okay.

14 THE COURT: Proceed.

15 MR. CLASEN: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. CLASEN:

18 Q. You have your report in front of you, sir?

19 A. Yes, I do.

20 Q. Let's go to the executive summary if you could.

21 A. Okay.

22 Q. Roman Numeral V and Roman Numeral VI.

23 A. Okay.

24 Q. Do you see those?

25 A. Yes, I do.

1 Q. Now, can you tell us what these two charts depict?

2 A. The first chart which is on "V" is the AM peak hour,  
3 levels of service for each of the 13 intersections under five  
4 scenarios. The no-build scenario, the 62 acres as-of-right, the  
5 308 acre as-of-right, the 62 acre residential, and the 308 acre  
6 residential. The second chart does it all for the PM peak hour  
7 analysis.

8 Q. Looking at the first chart, which is on "B", okay?

9 A. Yes.

10 Q. Now, let's take a look at one of the intersections  
11 that we were just dealing with, 347 and Stony Brook Road. Do  
12 you see that?

13 A. Yes, I do.

14 Q. In the morning, right, for a no-build scenario what is  
15 the level of service?

16 A. It is an "F" with 102.2 seconds of delay per vehicle.

17 Q. Okay. Now, if you build it out fully as residential,  
18 what is the level of service?

19 A. It would be the same "F" and it would be 102.8 seconds  
20 per vehicle.

21 Q. So, the difference between it's current situation and  
22 building it out fully as residential, is .6 it out fully as-of-  
23 right, what's the level of service at this point seconds?

24 A. That's correct.

25 Q. Okay. Now, if instead we were to build in time?

1 A. It would also be an "F" but it would be 133.4 seconds  
2 per vehicle of delay.

3 Q. So, you've added another 33 seconds, is that correct?

4 A. 31.2.

5 Q. Pardon me, 31.2.

6 A. Per vehicle.

7 Q. If we look at -- let's look at 347 at CR 97. That's  
8 the last one underneath here. That's an "F" also in the  
9 morning, right?

10 A. Are we on the AM peak hour still?

11 Q. AM peak still.

12 A. That is an "F" in the no-build scenario of 89 seconds  
13 per vehicle.

14 Q. Okay. And in the no-build as residential is it still  
15 an "F"?

16 A. It is an "F". It is 89.7 seconds per vehicle.

17 Q. So, we picked up a .7 second delay, right?

18 A. That's correct.

19 Q. If we build it out as industrial, what's the delay?

20 A. 170.7 seconds per vehicle. Also a level of service  
21 "F".

22 Q. Creating 81 seconds to the delay here, is that  
23 correct?

24 A. Yes.

25 Q. Let's talk about this shadow, what is a shadow?

1           A.     When you design a left-turn lane at an intersection on  
2 a T-intersection. In other words a three-way intersection where  
3 you don't have an opposing fourth leg, and you need to build a  
4 left-turn lane. On the opposite of the intersection, there is a  
5 need to create a shadow or a bull nose or with it's many terms  
6 that it's called. The purpose of that is because the through  
7 traffic has to shift in order to open up to allow that lane to  
8 occur. So, under the geometric design of that engineered  
9 document, you would have this taper rate and you would have  
10 created a shadow which commonly is hatched out on the roadway.  
11 So, if you're driving down the roadway and you come to a T-  
12 intersection that has a left turn lane, you will see a hatched  
13 out area on the opposite side.

14           Q.     What's a hatched out area?

15           A.     It is a set of -- it's an area that is designated for  
16 vehicles not to really go into. It's guiding the through  
17 traffic movements to shift over to allow to open up that storage  
18 lane for the left turns.

19           Q.     Now, your video of the intersection -- which  
20 intersection again were we dealing with, sir?

21           A.     I believe the question was Mills Pond Road at 25A.

22           Q.     At Mills Pond Road and 25A, yours did not show the  
23 shadow, is that correct?

24           A.     That's correct.

25           Q.     Why?

1 A. Because the simulation software does not do it.

2 Q. Does it matter to any of the traffic flow that we saw?

3 A. Absolutely not.

4 Q. Would it have any impact on any of the delays we saw  
5 here?

6 A. No, absolutely not.

7 Q. Okay. There was some mitigation at this intersection,  
8 Mills Pond Road and 25A that you applied in your video, right?

9 A. We applied the same mitigation to all the scenarios.

10 Q. Right. But this is the only one you actually did a  
11 mitigation, right?

12 A. That's correct.

13 Q. Okay. And what was the basis for your belief that a  
14 mitigation would be approved here?

15 A. Because I have had various discussions with the New  
16 York State Department of Transportation Traffic Engineering and  
17 they have given me the assurances that this location meets the  
18 traffic signal warrants that would allow it to have a traffic  
19 light constructed.

20 Q. And that's the mitigation that you put in your  
21 vehicle, right?

22 A. Because we knew of that mitigation. We included it in  
23 all scenarios.

24 Q. Now, jumping if I may to another issue that was dealt  
25 with by Mr. Ryan. You mentioned before that here was

1 approximately 910,000 square feet of industrial that you  
2 included in your as-of-right scenario that was not included in  
3 Gulizio's report. Do you remember that?

4 A. That's correct.

5 Q. First of all, where does that 910,000 square feet come  
6 from?

7 A. The 910,000 square feet is -- well, the 910,000 or the  
8 total number that I used?

9 Q. The 910.

10 A. The 910 is actually industrial space for the  
11 remainder.

12 Q. And Mr. Gulizio's report actually didn't include that  
13 additional space that would have to be done on the remainder,  
14 isn't that right?

15 A. That's correct.

16 Q. And if you look at Rogers & Taylor, they're not also  
17 adding that 910,000 in, right?

18 A. That's correct. They have less than what could be  
19 built there.

20 Q. Now, as you've demonstrated before, putting that  
21 910,000 additional industrial space, when you're analyzing the  
22 entirety makes the traffic situation a lot worse.

23 A. Yes.

24 Q. It makes it worse, not a lot worst. It makes it  
25 worse.

1 A. It makes it worse, yes.

2 Q. It makes it worse. But you included it because Mr.  
3 Gulizio had not actually even added this into his analysis.

4 MR. RYAN: Objection.

5 THE COURT: Yeah, for leading I would assume.  
6 Yes, sustained.

7 Q. Why did you include it?

8 A. We included it because we --

9 MR. RYAN: Judge?

10 THE COURT: Yeah, lay a better foundation.

11 MR. RYAN: Is the question why --

12 THE COURT: Lay a better foundation.

13 Q. Your analysis is what's the total number you included?

14 A. In the as --

15 Q. For the entire -- as-of-right entirety.

16 A. As-of-right entirety we used 1,710,000 square foot of  
17 office and 2,230,000 square foot of industrial space.

18 Q. And what was the basis for the figures that you used?

19 A. The analysis of the total as-of-right that could be  
20 built on the property.

21 Q. You were asked a whole lot of questions about Exhibits  
22 -- I believe it's -- D and I which had to do with questions  
23 involving growth rates. Do you remember that?

24 A. Yes, I do.

25 Q. Now, first of all, Exhibits D and I were reports

1 prepared by Cameron & Associates, is that correct?

2 A. That's incorrect.

3 Q. Okay. What were they?

4 A. Exhibit D was a memorandum prepared by John Cameron  
5 critiquing the draft environmental impact statement that was  
6 prepared on behalf of SUNY for the research and development  
7 campus.

8 Q. This was a proposal that SUNY had made at some point  
9 in time to expand their campus and do various things, right?

10 MR. RYAN: Objection.

11 Q. If you know?

12 THE COURT: You can answer.

13 A. Yes.

14 Q. And if you know, Mr. Cameron is then taking that  
15 proposed expansion and projecting what the implications are  
16 should that expansion happen, isn't that correct?

17 MR. RYAN: Objection.

18 THE COURT: Overruled.

19 A. He was critiquing the adequacy of the document.

20 Q. And the document had been projections as to the impact  
21 as to what would happen if they developed it as they were  
22 proposing?

23 A. That's correct.

24 Q. Okay. Now the proposal that Stony Brook was doing,  
25 right, is that a scenario that you critiqued at all?



1 A. That I critiqued?

2 Q. Yeah.

3 A. No.

4 Q. Does your report deal with that scenario?

5 A. No.

6 Q. Is your understanding that that scenario is close to  
7 any of the scenarios that you actually reviewed?

8 MR. RYAN: Objection.

9 THE COURT: Overruled.

10 A. No.

11 Q. Now, in the Stony Brook scenario of the research park  
12 and increasing their students, right --

13 A. Yes.

14 Q. -- as part of that Stony Brook had to project out the  
15 anticipated additional traffic, is that correct?

16 MR. RYAN: Objection.

17 THE COURT: Now, that I'll sustain.

18 MR. CLASEN: Okay.

19 Q. What were they trying to do here in 2004?

20 A. (No response.)

21 Q. With respect to traffic?

22 A. They were analyzing scenarios of development of the  
23 property for a research and development park and they had a  
24 first phase building, and then they had multiple phases --  
25 multiple buildings on the campus projected for I believe to

1 2013.

2 Q. So, these were projections for the future, is that  
3 correct?

4 A. That's correct.

5 Q. Now, when you were applying a growth rate to the 2004  
6 and 2006 numbers that you used to bring it back to 2005 --

7 A. Yes.

8 Q. -- okay, you weren't projecting into the future,  
9 right?

10 A. As it related to the February 2004 traffic counts that  
11 were obtained from the SUNY DGEIS, we had projected a year  
12 forward. As it related to the 2006, counsel, that we did, we  
13 projected a year backwards, but we did not in any way take into  
14 account the future 5,000 students that SUNY had projected in  
15 their study.

16 Q. In their study which was also a research and  
17 development park and some other things, right?

18 A. That's correct.

19 Q. Okay.

20 MR. RYAN: Objection, Your Honor. Your Honor,  
21 first of all it misstates a negation. It is Mr. Cameron  
22 who is indicating that the increase of SUNY students should  
23 be taken into account. It is not the state's analysis that  
24 asks that.

25 THE COURT: Fair enough. Now, you've set the

1 record straight. Continue.

2 Q. When you're doing your calculations, though, you knew  
3 what actually happened between 2004 and 2006, right?

4 A. Yes.

5 Q. So, you're not projecting into the future you're  
6 actually going back and making alterations based on real numbers  
7 as to really what happened.

8 A. That's correct.

9 Q. Okay. And the numbers you used to make that type  
10 calculation of what really happened based on what the actual  
11 counts were in 2005 and 2006 and 2004, where did you get the  
12 numbers to make the adjustment for the growth rate?

13 A. From the New York State Department of Transportations  
14 published growth rates.

15 Q. And when you're looking at them, they're telling you  
16 what already happened, right?

17 A. We had the benefit in this particular case because we  
18 were doing our analysis in 2008 and looking back to 2005 of  
19 using historical data, which is more accurate than predicted  
20 data.

21 Q. But when you did your analysis, right, under all three  
22 scenarios, you assumed that scenario actually existed as of  
23 November 2005, is that correct?

24 A. That is correct.

25 Q. So, when you did the no-build you assumed, as it

1 actually existed in that point in time, no-build in November  
2 2005, right?

3 A. That's correct.

4 Q. Okay. And when you did the as-of-right, you assumed a  
5 full build-out as of November 2005, right?

6 A. That's correct.

7 Q. The same thing with the residential, right?

8 A. Yes.

9 Q. Now, when you were asked --

10 THE COURT: You don't have to take that up there.

11 MR. CLASEN: I can put it here?

12 Q. When you were asked before whether there was a  
13 document in here that also had that same approximately 4 million  
14 dollar number of the industrial space, do you remember that?

15 A. Four million square feet.

16 Q. Four million square feet, pardon me.

17 A. Yes.

18 Q. You mentioned there was --

19 MR. RYAN: Objection, Your Honor, it misstates  
20 the question. The question was there a document he relied  
21 on.

22 THE COURT: Rephrase.

23 MR. CLASEN: I apologize.

24 Q. I would like to refer to an answer you gave. The  
25 answer you gave earlier today referred to a document that also

1 contained approximately a four million square foot number, do  
2 you remember that?

3 A. Yes.

4 Q. What document was that, sir?

5 A. It was the appraisal prepared on behalf of the State.

6 Q. Okay.

7 MR. CLASEN: Where are the exhibits?

8 Q. Okay. Show us what exhibit number it is, sir. What  
9 exhibit number you were referring to. It should be here.

10 A. No, it's there.

11 Q. No, it's here. It's here.

12 A. It's there.

13 Q. What am I talking about, it's right here, yeah.

14 A. Yes, it's there.

15 THE MONITOR: Can I just note it's not I.D.'d  
16 yet.

17 THE COURT: I'm sorry?

18 THE MONITOR: It was not I.D.'d on the record.

19 THE COURT: That's marked for identification,  
20 isn't it?

21 THE MONITOR: It's not on the record yet though.

22 MR. CLASEN: It's here.

23 THE MONITOR: We never put that on the record --

24 THE COURT: Oh, I understand. But it's marked  
25 for identification.

1 THE MONITOR: Yeah, it is.

2 THE COURT: All right.

3 THE MONITOR: It is marked.

4 THE COURT: Fine. And what is it? I understand.

5 Q. What exhibit number is that, sir?

6 A. Defendant's Exhibit H.

7 MR. RYAN: What?

8 MR. CLASEN: And Your Honor --

9 THE COURT: For identification.

10 MR. CLASEN: -- we had stipulated from earlier,  
11 the first day, that we didn't object to that document  
12 coming into evidence.

13 THE COURT: That's correct.

14 MR. CLASEN: So, I'm assuming at this point in  
15 time what I'm referring to isn't in evidence. That's why I  
16 did it that way.

17 THE COURT: Come on. Whether it's for  
18 identification or evidence, it's going into evidence.

19 MR. RYAN: Right. Your Honor, I've got to come  
20 around, I can't hear counsel when he speaks.

21 THE COURT: What he's trying to say that Mr. Ryan  
22 that you I assume will have no objection to his referencing  
23 Defendant's H which is just for identification that you  
24 haven't put into evidence as yet. But that it will be  
25 coming into evidence.

1 MR. RYAN: Okay.

2 THE COURT: I don't see any way you're obviously  
3 going to keep it out --

4 MR. RYAN: That's fine.

5 THE COURT: -- in this trial, is that correct?  
6 So, he can go ahead and talk about it at this point.

7 MR. CLASEN: Okay.

8 MR. RYAN: Your Honor, then we can we can have it  
9 deemed in evidence now.

10 THE COURT: Fine. Let's put "H" marked for  
11 identification into evidence. We just haven't gotten  
12 around to doing it --

13 MR. RYAN: Right.

14 THE COURT: -- because you didn't produce the  
15 documents before the trial started and just came to do it  
16 now. So, "H" -- what others are there? Why don't we do  
17 them all. I assume these are all the reports, right?

18 MR. RYAN: Yes.

19 THE COURT: Yeah.

20 THE MONITOR: There is E through H that's marked.

21 THE COURT: E through H without objection from  
22 Claimant marked for identification and now in evidence is E  
23 through H.

24 (Whereupon, Defendant's Exhibit E through H were  
25 admitted in evidence.)

1 MR. RYAN: Thank you, Judge.

2 THE COURT: Fair enough.

3 MR. CLASEN: Your Honor, would you just indulge  
4 me for just a couple of minute break here? I want to talk  
5 to Mr. Ross about something. Maybe five minutes.

6 THE COURT: Sure, why don't we take five minutes?

7 MR. CLASEN: Thank you very much, Your Honor. I  
8 appreciate it.

9 (Off the record.)

10 MR. CLASEN: After, conferring, I don't have any  
11 further questions.

12 THE COURT: Fine.

13 MR. CLASEN: Thank you very much. I appreciate  
14 the --

15 MR. RYAN: Nothing further, Your Honor.

16 THE COURT: Fine. You're excused, Mr. King.  
17 Thank you very much.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Well, it's now noon, are you putting  
20 your appraisal on next?

21 MR. CLASEN: I thought so, Your Honor.

22 THE COURT: Why don't we break for lunch and come  
23 back at one o'clock and we'll go straight through and go  
24 from there?

25 MR. CLASEN: Sure.



1 THE COURT: All right.

2 MR. CLASEN: Thank you very much, Your Honor.

3 THE COURT: Mr. Ryan, that's okay with you?

4 MR. RYAN: That's fine with me, Judge.

5 THE COURT: Fine. So, we'll be adjourned till  
6 one o'clock.

7 (Off the record.)

8 THE COURT: Mr. Clasen?

9 MR. CLASEN: May I call my next witness, Your  
10 Honor?

11 THE COURT: You most certainly can.

12 MR. CLASEN: Mr. Taylor.

13 THE COURT: Good afternoon.

14 THE MONITOR: Please raise your right hand.  
15 (Whereupon, the witness complies.)

16 THE MONITOR: Do you solemnly swear that the  
17 testimony you're about to give is the truth, the whole  
18 truth and nothing but the truth, so, help you God?

19 MR. TAYLOR: I do.

20 THE MONITOR: Thank you. Please be seated. For  
21 the record, in a loud clear voice, please say and spell  
22 your name, and also state your business address

23 MR. TAYLOR: Gary P. Taylor, T-A-Y-L-O-R. 300  
24 Wheeler Road, Suite 302, Hauppauge, New York.

25 THE MONITOR: Thank you.

1 MR. TAYLOR: 11788.

2 MR. CLASEN: If may proceed, Your Honor?

3 THE COURT: Sure.

4 MR. CLASEN: Thank you.

5 G A R Y P T A Y L O R , was called as a witness herein after  
6 having been duly sworn and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. CLASEN:

9 Q. Good afternoon, Mr. Taylor.

10 A. Good afternoon.

11 Q. Tell me a little bit about yourself, your education,  
12 and then give me your job history.

13 A. Okay. Currently I'm a certified general real estate  
14 appraiser. I graduated from Trinity College in 1973. Started  
15 my appraisal career in 1969 on a part-time basis. So,  
16 unfortunately unlike the first two witnesses, who only had 22  
17 years experience, I have 36 at this point. I wish I only had  
18 22, but I've got 36.

19 Once I graduated college, I began studying to get  
20 designations in what was then two appraisal organizations.  
21 There was a the Society of Real Estate Appraisers and the  
22 American Institute of Real Estate Appraisers. I went through  
23 and got the SRPA designations with the Society of Real Estate  
24 Appraisers, and then got my MAI designation with the American  
25 Institute of Real Estate Appraisers shortly thereafter. Those

1 two organizations subsequently merged in and around 1991.

2 At that time I was appointed chair of the Curriculum  
3 Committee and from there served various positions within the  
4 appraisal institute up and through 2004 where I served as the  
5 National President; 2005, immediate past President, and then I'm  
6 now known as just a past president of that organization.

7 Subsequent to that I became a member of the Appraisal  
8 Qualifications Board with an organization known as the Appraisal  
9 Foundation, which is located in Washington, D.C. It's a not-  
10 for-profit board authorized by congress to set standards and  
11 appraisal qualifications for appraisers in the United States.

12 I've been practicing as I said for about 36 years. My  
13 office was originally located in Bay Shore, subsequently moved  
14 to the Hauppauge area. And have prepared most of my appraisal  
15 reports and the reviews on appraisal reports that are done  
16 primarily in Nassau/Suffolk region. And I'd say with probably  
17 the highest percentage in Suffolk County, which is where we were  
18 based.

19 I moved to Setauket, which is part of the Three  
20 Village Area, in 1977. And I've testified in court on numerous  
21 occasions, in numerous courtrooms, Court of Claims, Bankruptcy  
22 Courts, Supreme Courts, Nassau and Suffolk County, etcetera.

23 Q. Okay.

24 A. And I think probably the most --

25 Q. I think we've got the idea.

1 A. Okay.

2 Q. You did an appraisal for the Gyrodyne property, is  
3 that correct?

4 A. That's correct.

5 Q. Okay. Tell me about the Gyrodyne property just  
6 generally.

7 A. The Gyrodyne property is located on the south side of  
8 25A, bounds on the East by Stony Brook Road, bond on the west by  
9 Mills Pond Road. And it's southerly boundary is formed between  
10 Mills Pond Estates Community and University Heights.

11 On the eastside of Stony Brook Road is the University  
12 itself. As well, along in that area, there are some single  
13 family residences.

14 The property consists of 308 acres of land, mostly  
15 undeveloped vacant acreage. There is a small amount of  
16 development over on the western side of the property, near Mills  
17 Pond Road, and there is a 45,000 square foot building that is  
18 south of the railroad tracks, again towards the westerly side of  
19 the property.

20 The breakdown is that the property straddles two  
21 townships. The township of Smithtown and the Town of  
22 Brookhaven. It's approximately 182 acres in the Brookhaven  
23 Township and 126 acres in the Smithtown Township. Again, this  
24 area surrounding the property as I indicated, is primarily  
25 residential. It's a really residential location.

1 North of the property on the opposite side of 25A is a  
2 large farm that's there and immediately across Mills Pond Road  
3 is Mills Pond, and the Mills Pond House which is a historic  
4 site.

5 So, again, the character in here is residential, both  
6 Stony Brook Road, Mills Pond Road and actually 25A are what I  
7 would call country kind of bucolic roads winding, going through  
8 some contours. 25A goes through some contours as it goes down  
9 and around from the property.

10 Q. Okay. Now, you prepared an appraisal for this case,  
11 is that correct?

12 A. That's correct.

13 Q. Can I show you Exhibit 3?

14 A. Thank you.

15 Q. Is that the appraisal that you prepared in this case?

16 A. Yes, it is.

17 Q. Okay. Now, what I'd like to do is walk through what  
18 you did here in kind of steps, okay? So, I may -- I apologize,  
19 I may cut you off if you jump in too many steps.

20 The first thing you had to do is you had to apply some  
21 sort of methodology is that correct?

22 A. Correct.

23 THE COURT: One moment. Mr. Ryan would like to  
24 move his seat over.

25 MR. RYAN: Thank you, Your Honor. I can hear Mr.

1 Taylor fine. I can't hear Mr. Clasen.

2 THE COURT: Mr. Clasen is very apologetic about  
3 that.

4 MR. CLASEN: I've always thought it cuts down on  
5 the objects when they can't hear me, Your Honor.

6 (Laughter.)

7 THE COURT: I can understand. That's why I'm  
8 wearing a hearing aid.

9 MR. CLASEN: I'll try to speak up. I'm sorry.

10 THE COURT: I guess you hear that.

11 Q. What methodology did you apply here at the outset?

12 A. At the outset, the first thing is we had an appraisal  
13 which was the Debtor of vesting, November 2, 2005. Knowing that  
14 we had to appraise the property both before and after the  
15 acquisition by the State of New York.

16 I looked at the property. It's a large currently  
17 industrial zoned property. It's 308 acres of L-1 zoning and  
18 that would be L-1 Smithtown/L-1 Brookhaven. They both picked  
19 the same zoning classification for this location.

20 So, we looked at that, looked at the general character  
21 of the area, and my experience and again having lived up here  
22 for 30 some odd years and driven by the property almost every  
23 day on my way to and from work, in contemplating the uses for  
24 it, it seemed a more appropriate location for residential use,  
25 then it did for industrial use.

1 Q. Why?

2 A. Well, the road system that feeds into this area is  
3 pretty limited. As I said 25A is a limited roadway, it's a  
4 state roadway, but again kind of winding in front of the  
5 property, comes down around a fairly steep curve as you head  
6 towards the eastern side of the property. And both Mills Pond  
7 Road and Stony Brook Road are narrow winding roads coming  
8 through this particular area, running down towards Nesconset  
9 Highway. Actually, Mills Pond Road eventually runs into  
10 Moriches Road, which then turns down to Nesconset Highway or  
11 347.

12 So, I look at that, and from looking at it, it would  
13 seem like it was a prime piece for development for residential  
14 purposes. And looking at it from an industrial purpose, I have  
15 to say it is an extremely poor location.

16 Q. Why?

17 A. It's remote. It's remote from the main thoroughfare.  
18 It's remote from easy transportation in and out of the site.  
19 And the main thoroughfares I'm talking about is primarily if one  
20 looks at Long Island -- and I saw the map that was up yesterday  
21 also from the Town of Brookhaven, which kind of plays that out  
22 even more, is if one looks at Long Island, the Long Island  
23 Expressway is the main corridor for commercial uses; for  
24 commercial industrial uses. Most of the parks are located along  
25 that roadway. Again, provides easy access in for automobiles

1 and trucking. And as you go from west to east, you will notice  
2 that there are parks all along there and the development has  
3 primarily been from west to east.

4           The Melville area developed and then from Melville  
5 they moved into Hauppauge. Hauppauge is not fully developed as  
6 of yet. Then there's a location out on William Floyd Parkway  
7 which has been out there for a number of years, and has not been  
8 developing that well.

9           Again, from an appraisal point of view, we talk about  
10 what's know as friction of space. And friction of space rally  
11 is how easy is it to get from Point A to Point B. When you're  
12 looking at commercial property you want to be able to move goods  
13 in and out products in and out and people in and out. And the  
14 Expressway, as bad as it can be at times, as we all know, is the  
15 best thoroughfare for doing that movement.

16           Other main corridors that you'd have would be 110,  
17 Veterans Memorial Highway, 454, particularly as it goes down  
18 towards the industrial area by the airport and Sunrise Highway  
19 as well, because there are some limited access areas on Sunrise  
20 Highway that also make for some pretty good transportation.

21           So, looking at all of that, and looking at the  
22 property itself which has been described as pristine and I would  
23 describe it as pristine, it is a very bucolic setting. And it's  
24 set in a neighborhood that is surrounded by fairly expensive  
25 living and located within two very good school districts. So



1 one would imagine --

2 Q. What are the school districts?

3 A. You've got the Smithtown School District on the  
4 Smithtown side, the Three Village School District on the Eastern  
5 Side, Three Village School District again having one of the best  
6 reputations probably in the state.

7 Q. Okay. Now, you started out you said as looking at the  
8 property as zoned. Why do you start looking at it as zoned  
9 first?

10 A. Well, there are a couple of reasons. One is there are  
11 few cases that if you're looking at an acquisition, one of the  
12 things you must do, is required, is appraise the property as it  
13 currently exists which is vacant, raw, industrial acreage. And  
14 then appraise it as a potentially re-zoned. The process then is  
15 to take the differential between those two valuations and find a  
16 probability of gaining that re-zoning and multiplying that  
17 difference and adding it back to the as-zoned value.

18 And that case as I recall is Masiolli. We also looked  
19 at the Hewitt case which came in on this as well, which said if  
20 it's raw acreage we have to appraise it as raw acreage and add  
21 an increment to the value for potential for development.

22 Q. Listen, is this raw acreage? I mean it does have some  
23 development, doesn't it?

24 A. It's got about 5 percent development which again in my  
25 analysis was a development with properties that were built early

1 1950s. They're old industrial properties, manufacturing  
2 facilities that were subsequently cut-up into what we would call  
3 in appraisal terms incubator space.

4 Incubator space is for a small company starting out  
5 that can't afford a 10,000 square warehouse so they're looking  
6 for 2,500 square feet with some office, maybe some  
7 manufacturing. Other kind of small operations where people are  
8 not looking for big space yet. And I didn't consider that the  
9 highest and best use.

10 In my opinion, this property should be -- again,  
11 taking in it's limitations -- if it were going to be developed  
12 under the industrial zoning, someone coming in there would  
13 probably level the buildings that are there and build something  
14 more current.

15 Because again, square footage wise, as I said, you've  
16 got about 151,000 square feet on the northern parcel which is  
17 all within the Town of Smithtown and 49,000 Square feet, plus  
18 or minus on the southern piece. And even the 45,000 square foot  
19 building, although it might have had some utility, I didn't  
20 consider it to really contribute that much to the value.

21 Q. Okay. So, once you decided to look at it as raw  
22 undeveloped land, what was the first step you did--

23 A. The first step I did --

24 Q. -- in appraising the property as zoned?

25 A. In appraising the property as zoned, once I looked at

1 it as raw industrial acreage, I began to look for other raw  
2 industrial acreage sales. Again, I'm dealing with a property  
3 that's 300 acres. So, I started looking for as large as sales  
4 as we could find out there. Unfortunately I didn't find any 300  
5 acres sales. It would have been great had I found it. And I  
6 was also dealing with the fact that I was dealing with a large  
7 industrial property that was very poorly located. Which would  
8 necessitate location adjustments for anything I did find because  
9 most of the larger sales that you would find would be somewhere  
10 in proximity to these corridors that I mentioned previously.

11 Q. Okay. But let's take step by step. You're looking  
12 for the sales of raw industrial land, right?

13 A. Correct.

14 Q. And what geographic location are you looking for these  
15 sales?

16 A. I stayed primarily -- not primarily. I stayed within  
17 Suffolk County.

18 Q. Okay.

19 A. Again, similar municipalities, similar structures,  
20 zonings. Although there are some variations in the various  
21 zonings, it's not that significant.

22 Q. How about time period; did you limit the time period  
23 that you were looking for?

24 A. Time period again as in most appraisals is you don't  
25 want to go back too far if you don't have to. So, I went back a

1 couple of years from the vesting date 2005. I think if I can  
2 look at this, I think it was --

3 Q. Yeah, go ahead.

4 A. I went back to '03.

5 THE COURT: Let me interrupt you for a moment.  
6 Are we going to be using these for --

7 MR. CLASEN: Oh, no, no.

8 THE COURT: I have no view to Mr. Ryan in his  
9 current position.

10 MR. RYAN: I can move, Judge.

11 THE COURT: No, no, it's quite all right, Mr.  
12 Ryan. I just don't like to be out of your view in case you  
13 need me for some reason and now at least I can see the top  
14 of your head.

15 MR. CLASEN: I'm sorry about those, Your Honor.  
16 I'm going to leave -- if it's all right with Your Honor,  
17 I'm going to leave them up.

18 THE COURT: Oh, no problem. Oh, sure.

19 MR. CLASEN: I may use the.

20 THE COURT: I had it positioned there so I could  
21 see everybody, but Ryan has moved out of position.

22 MR. CLASEN: I can actually put it down there if  
23 you want.

24 THE COURT: That's okay, it won't matter. I just  
25 realized that I was out of view.

1 MR. CLASEN: There we go.

2 MR. RYAN: How is this, Judge?

3 THE COURT: Wonderful.

4 MR. RYAN: I'll try to keep smiling.

5 THE COURT: Worth the picture that was on the  
6 machine.

7 (Laughter.)

8 Q. I think you just said the time period you looked at  
9 was sales from '03 to 2005, right?

10 A. Correct.

11 Q. And that was in Suffolk County?

12 A. Yes.

13 Q. Of raw industrial land, right?

14 A. Yes.

15 Q. Did you identify any of them any such sales?

16 A. Yes. I identified seven sales. They're located in  
17 the addendum of my report.

18 Q. What page is that?

19 A. Those sales, the first sale would start on page 96.

20 Q. Did you identify any sales of raw industrial land for  
21 this time period in Suffolk that you didn't include in your  
22 report?

23 A. Not that I'm aware of. I think we got all of the  
24 large industrial acreage sales that were out.

25 Q. Okay. Now, if we look at your report on page 62, can

1 you tell us what that is?

2 A. Yes. This is the breakdown of the selling and  
3 characteristics of each one of the sales and the associated  
4 adjustments to those various sales for the variance differences  
5 that I identified between the sale properties and the subject  
6 properties.

7 Q. Okay. I'm going to have to keep those pages kind of  
8 going together as we go through this.

9 A. Yes.

10 Q. Tell me about the one that you refer to as market data  
11 sale number one on page 97.

12 A. Market data sale number is located in the Hamlet of  
13 Bayport and is actually on the south service road of Sunrise  
14 Highway and on the -- that would be the southeast corner of  
15 Sunrise Highway South Service Road and Church Street within that  
16 Hamlet of Bayport. It contained a total area -- and again a  
17 total area of 22.66 acres which includes the paper streets,  
18 which could be abandoned by the purchaser. So, it include the  
19 22.6 acres. Property sold in January of '06 for a consideration  
20 of \$8,874,000 for \$391,615 per acre.

21 Q. Okay. If we could flip back to page 62, what I'm  
22 going to ask you to do walk me through the adjustments you made  
23 for this.

24 A. Sure.

25 Q. I'm not necessarily going to do them in the order here

1 that you've done.

2 A. Okay.

3 Q. So, stick with me. You do make a rather large  
4 adjustment for location. Do you see that?

5 A. Yes.

6 Q. It's 25 percent.

7 A. Yes.

8 Q. So, again for industrial purposes, what are the key  
9 components for prime location?

10 A. Again for industrial properties key components are  
11 western location, proximity to the Expressway.

12 Q. And neither one --

13 A. Or Sunrise Highway. Any main way of moving in and  
14 out.

15 Q. Does the subject property, the Gyrodyne property, have  
16 either one of those key components?

17 A. No. And looking at the property right from the moment  
18 of analysis, I was aware that location adjustments would be  
19 fairly substantial again because of the poor location of the  
20 subject for industrial development. It's just not well suited  
21 where it's located.

22 Q. Now, if we -- to just jump ahead -- if we look through  
23 all the comparable sales it appears to me that the largest  
24 adjustment you made for almost all of them was location, is that  
25 correct?

1 A. Yes.

2 Q. And why again is that?

3 A. Again, the poor location of the subject right from the  
4 starting point because it is not in a prime industrial area,  
5 what we would consider prime location industrial.

6 Q. Now, you make another adjustment for what you call  
7 utility.

8 A. That's correct.

9 Q. So, what is utility --

10 A. Utility --

11 Q. -- in -- wait let me. I'm trying to talk as fast as I  
12 can. I mean what is utility for purposes of industrial  
13 property?

14 A. Primary concern with utility -- the primary concern of  
15 the utility was the access in and out of the site itself. We've  
16 got location which is western location, some proximity to one of  
17 those main thoroughfares. Then you've got to look at the  
18 subject or the property itself compared to the subject as how is  
19 its access out to get to those main roads. And also you're  
20 looking at with some of the properties too, what is the  
21 configuration in combination with that access for developing the  
22 property itself.

23 Q. Okay. So, hypothetically if I had a piece of property  
24 in Hauppauge right on the Expressway, okay, that would be a  
25 pretty good, from a location adjustment; that would be a pretty



1 good location, right?

2 A. Correct.

3 Q. But if that property was located in between exits and  
4 it was difficult to get onto the Expressway, like if it's  
5 difficult -- you couldn't even get on the service road, you  
6 might have a problem on utility, right?

7 A. No question. No question because then you're looking  
8 at that access issue of how am I getting in and out of there? I  
9 mean that you're near one of the main thoroughfares is  
10 important, but you've got to be able to get to them as well.

11 Q. Now, I noted that utility seems to be the second  
12 highest adjustment you make in all the cases.

13 A. Correct.

14 Q. And why is that again?

15 A. Again, industrial property is the importance of having  
16 that access point, that develop-ability point. It helps develop  
17 the properties. They're more easily developed.

18 Q. Does the subject property for Gyrodyne's, does it have  
19 good utility?

20 A. No.

21 Q. Why not?

22 A. Again, limited access points, difficult access points  
23 distance. Again that friction of space is increased. Not near  
24 the main thoroughfares at all. So, I mean you've got both of  
25 those factors working against it so naturally -- to me naturally

1 looking at it going in the adjustments would be high. Unless I  
2 could have found another parcel large that was kind of remotely  
3 located surrounded by a residential that happened to be zoned  
4 industrial.

5 Q. Did you find any?

6 A. No.

7 Q. Now, with respect to the first comparable which is the  
8 one on Sunrise in Bayport, why was it a better location than  
9 Gyrodyne's property?

10 A. It's a little to the west, it's got a main roadway  
11 near it. It actually has two main roadways because it's at the  
12 terminus of Veterans Memorial Highway, which is pretty quick  
13 access from there up to the Expressway. I mean you can catch  
14 the Expressway pretty quickly through there by going past the  
15 airport properties that are located on Veterans and there's  
16 actually an industrial park up there as well, provides access to  
17 the east and west on Sunrise Highway.

18 Q. You also -- this property, the one in Bayport you have  
19 as having considerably better utility. Why is that than the  
20 Gyrodyne?

21 A. Again, this property had good frontage, multiple  
22 access points coming out, fairly reasonable shape for develop-  
23 ability to be cut-up and subdivided if that was eventually what  
24 would happen to it. So, I considered it superior to the  
25 subject.

1 Q. And how about the subject property, the Gyrodyne  
2 property, what's the utility of that?

3 A. It's kind of odd shaped in some ways. I mean it is a  
4 large piece that's kind of got some unusual shapes to it towards  
5 the western side. You've got some access points along Stony  
6 Brook Road, somewhat limited. You've got an access, two access  
7 points on Mills Pond Avenue, which again are not the greatest.  
8 They're okay, but they're not the greatest. And again you're  
9 accessing out onto secondary streets.

10 Q. Now, you do make an adjustment in many of these cases  
11 for lot size.

12 A. Absolutely.

13 Q. First of all, why are you making an adjustment for lot  
14 size? And then please explain how it works.

15 A. You make an adjustment to lot size to reflect the fact  
16 that a buyer purchasing a larger parcel of property typically  
17 will pay less on a per unit basis. Obviously on a gross sales  
18 basis, they're going to pay more; but they'll pay less on a per  
19 unit basis.

20 You have to look at that though and you have to  
21 realize that this is not a geometric equation of some sought  
22 that will run you down. Because if you were to follow that  
23 theory, the theory is that it gets larger, the unit cost goes  
24 down, it goes down to a point where the curve will level off  
25 because if it doesn't what would happen is someone who has a

1 large property you can say it's not worth anything because we  
2 adjusted it all the way down to zero. So, there's a point where  
3 it levels off. When I looked at these properties that leveling  
4 off point seemed to be somewhere around 60 acres or so and I  
5 kind of terminated the continued adjustment for it there.

6 Another example I think which helps explain it too is  
7 if you were to look at a 10,000 square foot lot and let's say it  
8 was worth \$10,000, \$11,000 square foot lot would be worth more  
9 but on a unit basis it would be worth less. That could happen  
10 and it would change as you went out until finally you hit 20,000  
11 square because now you've got two 10,000 square foot lots and it  
12 comes back. So, you have some of these changes that occur and  
13 that gets reflected in the size adjustment itself.

14 Q. If I'm buying something that's five acres I'm going to  
15 pay more per acres than for ten acres?

16 A. Typically you would, yes.

17 Q. But like once you get to 80, the difference between 80  
18 and 90, nobody adjusts the prices?

19 A. I don't think so because you're looking at a fairly  
20 substantial development project at that point as well.

21 Q. Now, with respect to the Bayport comparable number  
22 one, right --

23 A. Mm.

24 Q. -- you made a lot size adjustment of 20 percent here.  
25 How come?

1           A.     That lot was 22 acres and compared to the subject  
2 again which is 300 acres, substantial differences in sizes maybe  
3 adjustment downward on that to reflect those differences.

4           Q.     Now, when you have a negative adjustment, that means  
5 you're taking whatever the sales price for the comparable is and  
6 reducing it, right?

7           A.     Correct. It means that the sale price is higher for  
8 that property then it would be for the subject and you make a  
9 downward adjustment to reflect that.

10          Q.     Right.

11          A.     Because we're doing it on a unit basis so a smaller  
12 one you would look at and you would adjust it downward. Now,  
13 just to give you a concept is that if you went the other way  
14 around, where let's say you were doing a gross adjustment,  
15 obviously a 20 acre parcel to a 30 acre parcel, now you'd be  
16 making an upward adjustment because we're on a gross dollar  
17 basis versus a unit basis. The unit basis kind of breaks things  
18 down to numbers.

19          Q.     In fact your overall total adjustment for this  
20 property was almost 65 percent, right?

21          A.     Correct. And almost 30 percent of that if not more  
22 than 30 percent of that was for location.

23          Q.     And if you add location and utility, it gets you up to  
24 almost 55 percent.

25          A.     Correct.

1 Q. Okay.

2 A. Right.

3 Q. So, this had a far superior location, and far superior  
4 utility in and out?

5 A. Correct. There's no question in dealing with the  
6 subject property that I anticipated that there would be large  
7 adjustments. And again it's being appraised as zoned because  
8 it's one of the requirements that it be appraised as zoned.

9 Q. You also made an adjustment for market conditions.

10 A. Correct.

11 Q. Could tell us what that adjustment is?

12 A. Market conditions --

13 Q. And why you're making it.

14 A. Market conditions reflects what has been going on  
15 between the date of sale and the appraisal date. What changes  
16 have there been. Not always upwards as a lot of people would  
17 anticipate but in this particular market during this particular  
18 time period between '03 and '05, there was an upward trend in  
19 the industrial commercial market. It was my opinion that it was  
20 about 10 percent per year.

21 And it's a strictly mathematically calculation. After  
22 that, breaking it down on a per month basis, calculating the  
23 month differentials, multiplying them, and then getting the  
24 percentage adjustment.

25 Q. So, if I'm reading this one correctly, the price per

1 acre that the purchaser paid was about 391,615?

2 A. Correct.

3 Q. Right.

4 A. Correct.

5 Q. And you end up -- after you make your adjustments,  
6 what's the number that you come up with as a comparable?

7 A. The net number is 137,065.

8 Q. Now, the second property I want to walk you through  
9 how you made the adjustments on this one. I want to walk you  
10 through the rest of the properties briefly just so you can  
11 explain why these properties are better or worst and why you  
12 thought they were comparable, okay?

13 A. Okay.

14 Q. So, let's -- if we could do it a lot quicker than we  
15 did the first one, okay?

16 A. Okay.

17 Q. Okay. Number two is on River Road on Yaphank.

18 A. Right.

19 Q. Tell me about the property first.

20 A. It's a vacant parcel of land that's got road frontage  
21 on River Road and what's know as Broadway/Main Street in Yaphank  
22 itself. It is south of the Expressway, has access to the  
23 Expressway, but is kind of between Exit 66 and 67 I believe and  
24 it is difficult at best to get to because you've got to --  
25 there's no service road out there for the Expressway. So, even

1 though this piece is close to the Expressway, it's difficult to  
2 get to. You have to kind of either get off at the first exist  
3 and go up north and then come back down Broadway or get off at  
4 the second exit and work your way back or come around underneath  
5 River Road. So, it's not a wonderful location either. It's  
6 eastern. Again, it's an eastern location. I considered it  
7 pretty far east. And in comparison to the subject property, I  
8 considered that location actually inferior for how far east it  
9 was as compared to the subject.

10 Q. Was this property developed for industrial purposes?

11 A. It has not been developed yet, neither has sale number  
12 one.

13 Q. Now, number three, this is the one on Crooked Hill  
14 Road in Commack.

15 A. Correct.

16 Q. Tell me about this property.

17 A. This property is located in Commack. It's up on  
18 Crooked Hill Road, which is right off Commack Road around Exit  
19 53 on the Expressway Service Road. There's a multiplex cinema  
20 that would be -- has frontage down towards the service road.  
21 This is up and behind there. It originally was a Home Depot  
22 High End Store. And the name of it is like escaping me right  
23 now. I should remember it. I went there --

24 Q. Home Expo?

25 A. Home Expo that was there that has subsequently closed



1 down. This property is up behind that property was a 43 acre  
2 industry site that was sold -- I believe it was sold from  
3 Honeywell. Was subsequently, after the sale date, was  
4 subsequently developed with a shopping center. And I think it  
5 was anchored by I think Wal-Mart's in there. Yeah, Wal-Mart,  
6 Home Depot and Kohl's.

7 Q. Okay.

8 A. Again, more western location from a develop-ability  
9 point of view, nice layout, easy access to Commack Road right  
10 down to the Expressway. So, again, that one was considered  
11 superior in that regard as well.

12 Q. Okay. And of course whenever you find something  
13 superior you're knocking the price down more?

14 A. Correct. Correct.

15 Q. Okay. Tell me a little bit about the fourth. This is  
16 on Route 110 in East Farmingdale?

17 A. Yeah.

18 MR. CLASEN: And Your Honor, I'm trying to go as  
19 fast as I can on these, but I do want him to explain the  
20 properties.

21 THE COURT: Oh, no.

22 THE WITNESS: As long as I don't start talking  
23 too fast.

24 MR. CLASEN: I have that problem all the time.

25 A. Sale number our is located on Route 110 just above

1 where Route 109 would intersect the 110 corridor. South of that  
2 location is an industrial park and older one that was developed  
3 years ago. This particular site originally was Brooklyn  
4 Polytech Institute. I used to teach a lot of courses here. And  
5 it reached the point where they decided it was time to tear it  
6 down. It was sold for development.

7           Again was subsequently developed with a shopping  
8 center that is in there with some out parcels. Good access to  
9 110 which is a good north south roadway. Quickly get down to  
10 Sunrise Highway. Fairly quickly get up to the Expressway.  
11 You've got 109 which again ties you on a kind of  
12 northwest/southeast corridor there as well with industrial parks  
13 over in that area.

14           Q. This property has got a lot better location?

15           A. Yes.

16           Q. Lot better utility?

17           A. Yes.

18           Q. And it's a lot smaller, so it's selling for more per  
19 acre, right?

20           A. Correct.

21           Q. Tell me about the next property. This is on Commack  
22 Road and Dear Park?

23           A. Yeah, Commack Road in Deer Park. This is the old AIL  
24 facility that was there on Grand Boulevard. And actually it's  
25 got a Commack Road address but a fairly narrow frontage onto

1 Commack Road. Most of the frontage is on Grand Boulevard.

2 Grand Boulevard, again a fairly well developed  
3 industrial area of the township. Quick access to Commack Road.  
4 Access from there up to the Expressway. Was subsequently  
5 developed with a Tanger Mall type concept that's out there.  
6 It's known as the Arches. It's got Sak's Fifth Avenue, some of  
7 their outlet stores that are out there as well. Decided after  
8 the fact that that's what they were going to do it was  
9 purchased. It was industrial zoning at the time, GA Industry.

10 Again, far superior location to the subject's remote  
11 location up on the north shore. Very good as far as develop-  
12 ability is concerned. Nicely shaped parcel, good access points  
13 to Grand Boulevard as well as Commack Road.

14 Q. Tell me about Property number 6, the one at Riverhead.

15 A. Number 6 is a Riverhead property located on CR 58  
16 which is at the terminus of the Long Island Expressway. Across  
17 from Tanger Mall. When I looked at this from a location point  
18 of view, you noticed I didn't knock it down as much as the one  
19 that I had for River Road where I went upward. Even though it  
20 is pretty east, we're now east with Tanger Mall across the  
21 street, which generates a fair amount of traffic in and of  
22 itself. So, there's a little bit of an offset there, because  
23 that's there.

24 Good access to the Expressway, but you're in  
25 Riverhead. I mean you've got to drive even before you hit the

1 Hauppauge Industrial market. So, it is pretty remote. So, this  
2 one I only took down 5 percent. You'll also notice I made a  
3 utility adjustment there. It's on Cromer Avenue and Warsaw  
4 Street. It's not yet been developed. There's a light there.  
5 There a hatched, I believe a cross hatched traffic divider, but  
6 a little bit more difficult to make a left turn into this  
7 property. So, looking at pluses and minuses, ended up with a  
8 zero adjustment to that one.

9 Q. All right. Tell me about this Calverton Property.

10 A. The Calverton property itself is located in the old  
11 Grumman navel testing facility. It's being developed out there  
12 as a planned industrial park. It is one of the parcels. It's  
13 located off of River Avenue. Pretty close -- across the street  
14 you've got Swan Lake Golf course. And this one is up almost up  
15 to Middle Country Road, which doesn't have access into the park.  
16 So, I mean you're entering here and you're going pretty far up.

17 Very remote location. It's just beginning to get  
18 developed out there. So, again I thought that location was  
19 someone inferior to the subject property's location. I adjusted  
20 it upward for that. And that was about all. Utility I didn't  
21 make an adjustment. This parcel has got a fairly decent shape.  
22 But it's access back in and out to the main access points is  
23 difficult.

24 Q. This property, the Calverton property, for purposes of  
25 industrial, you have as the most comparable to the subject

1 property, right?

2 A. Yeah, it's like we are, remote, not a great spot. I  
3 think fairly similar to one another. I call them fairly similar  
4 to one another because they're kind of in distance spots.

5 Q. Now, but now you're talking about comparability for  
6 industrial purposes here, right?

7 A. Yes. Yes. This is for industrial.

8 Q. Is there any comparability for these two properties if  
9 they were both being developed for residential?

10 A. If they were both?

11 Q. Going residential.

12 A. Ah, none at all. None at all. The location of the  
13 subject property is far superior as far as residential  
14 development is concerned. If we were looking at  
15 Calverton/Berman Boulevard area, versus looking at Three  
16 Village, St. James area, there is a total difference in address  
17 there. So, again, one of the differences here between the two  
18 scenarios both as-zoned and as-re-zoned, is that when you look  
19 at address under the re-zoned, it's a whole different set of  
20 criteria.

21 Q. Right. I just want to make the comparability here as  
22 as-zoned.

23 A. Correct. As-zoned.

24 Q. Not comparability for all purposes.

25 A. Correct.

1 Q. Now, once you made all the adjustments, just walk us  
2 through the math as to how you calculated the value of the  
3 property as-zoned.

4 A. Once we did all the adjustments what you do is you  
5 look at the range of the adjusted sales prices and reconcile.  
6 My conclusion was \$150,000 per acre.

7 I then when I looked at this property and I looked at  
8 Mr. Gulizio's report and saw that in the after situation, the  
9 remainder property of the 62 acres that would be remaining after  
10 the acquisition, that there wasn't going to be any severance  
11 damage because there was no impact on the after-yield. And I  
12 mean that's going to be one of the things probably that  
13 would have caused any severance.

14 And in looking at that and realizing I was going to  
15 have to apply probability percentages and do mathematical  
16 calculations. And since we have a pretty nice break line  
17 between where the acquisition line was and the northern parcel,  
18 it was easy for mathematics to break it into an A and B  
19 situation and calculate the value. So that when I went further  
20 into the calculations where you're subtracting the as-value from  
21 the re-zone value and multiplying percentages, the mathematics  
22 doesn't get crazy. And the math of the total value of the  
23 property as-zoned and the before is on Page 64.

24 Q. Right. And again, explain to us what is Parcel A and  
25 what is Parcel B here?

1           A.     Parcel A in this case is the acquisition area, the  
2 245.46 acres. It would be that acreage that straddles Smithtown  
3 and Brookhaven south of the railroad track line. And the other  
4 parcel is the 62.43 acre remainder parcel that is to the north  
5 of the one with most of the industrial -- older industrial  
6 buildings on it.

7           Q.     Right. Parcel B is what's left in Smithtown, right?

8           A.     Correct. Parcel B is the left over.

9           Q.     What's left and it's all in Smithtown.

10          A.     Yes.

11          Q.     And Parcel A is in both Smithtown and Brookhaven?

12          A.     Correct.

13          Q.     But most of it is in Brookhaven, right?

14          A.     182 acres is in Brookhaven, and some 63 acres I guess  
15 that would leave. If my math in my head is pretty good, that  
16 would be the part in Smithtown.

17          Q.     So, your calculation of the entire property is  
18 46,185,000?

19          A.     Correct.

20          Q.     Okay.

21          A.     And that's the entire property as currently zoned.

22          Q.     Okay. It's as-zoned and you used raw acreage, right?

23          A.     Correct. It is raw acreage, I used raw acreage.

24          Q.     Did you include and increment for development?

25          A.     No. One of the things that's I guess beneficial in

1 Long Island at this point, even considering the Hewitt case is  
2 that increment is built into the acreage sales. It's not as if  
3 we're in upstate New York somewhere in the middle of no where  
4 and we've got a piece of acreage that's residential and we're  
5 saying oh, it's going to be developed some day. This stuff is  
6 stuff that has been or will get developed. Most of them have.  
7 I think, there's two or three of the sales that have not yet  
8 been developed. I think there's three.

9 Q. Now, once you determine the value of the property as  
10 of November 2005, as zoned what did you do next?

11 A. Next I had to take a look at the possibilities on the  
12 re-zoning as to what would the value of the property be re-zoned  
13 as of the vesting date 2005. With that I looked at Mr.  
14 Gulizio's report where he indicated what the densities would be.

15 And I looked at that, and, again, having been in the  
16 business for as long as I've been in the business, I'm not a  
17 planning expert by any stretch of the imagination business, but  
18 I've been involved in real estate appraising, as I said, for 35  
19 years. I'm familiar with what makes sense and what might not  
20 make so much sense. And when I looked at his report I wasn't  
21 shocked to see that there was a potential for re-zoning to  
22 residential.

23 Again, characteristics of the area, and I think he  
24 indicated five different things that he considered when looking  
25 at that as far as the property is concerned; surrounding



1 neighborhood, general environment stuff. So, I was not  
2 surprised at all that the possibility was there for a re-zoning  
3 to residential.

4 Q. Okay.

5 A. And in this case PDD.

6 Q. PDD. Well, PDD for Brookhaven and --

7 A. PDD for Brookhaven and what we assume is a similar --  
8 because the densities were the same in the townships, whatever  
9 the town came up with. I really wasn't very concerned with  
10 that. I'm more concerned with the densities that he felt would  
11 be approved within the townships.

12 Q. Okay. So, once you determined that there was a  
13 probability of re-zoning --

14 A. Right.

15 Q. -- how did you go about appraising the property as  
16 residential?

17 A. Again somewhat similar to the way I did it industrial  
18 except now we're looking at residential characteristics. I'm  
19 looking for residential sales that had occurred and with a three  
20 to six unit density as he indicated, I was looking at probably a  
21 mix of senior housing versus unrestricted. What we would call  
22 unrestricted housing. So, I went out into the marketplace,  
23 looking for recent sales, of property that had been developed  
24 with either senior or condominium-type projects.

25 Q. Recent property that had already been developed?

1 A. Well, that already had been or had been developed, and  
2 as a matter of fact, all of these had been developed.

3 Q. No, but when you're looking --

4 A. I looking for vacant. I'm looking for vacant.

5 Q. Okay. You're looking for raw property that's going to  
6 be developed as --

7 A. Raw property with approvals, for the most part. That  
8 have approvals for some sort of development on them; multi-unit  
9 development.

10 Q. But that have not as of that sale, been actually  
11 developed.

12 A. No, no, no, it wasn't as if I had properties where  
13 they built townhouses and then sold all the town houses on the  
14 acreage to one individual buyer or something, no. You're  
15 looking for vacant land and what you then look at is how many  
16 units were they getting on the property and break that down into  
17 a per unit cost.

18 Q. Okay.

19 A. Or price.

20 Q. Now, in this case were you able to identify any  
21 properties?

22 A. Yes, I was able to identify seven.

23 Q. Now, first of all, what geographic area were you  
24 using?

25 A. Again Suffolk County. Tried to stay in Brookhaven if

1 I could, but again, you're limited when you're looking at sales  
2 of those that have sold. As appraisers, we all say we wish we  
3 could just write up our own sales because then every appraisal  
4 would be perfect, but it doesn't work that way. We only can do  
5 what's been done out in the marketplace. And as I said, I  
6 identified seven sales of properties similar to this. And the  
7 sales were a mix of senior housing and unrestricted housing, so  
8 I kind of got the flavor for both in there.

9 Q. You mean the sales involve property with approvals for  
10 those?

11 A. Correct.

12 Q. Okay. What time period were you limiting yourself to?

13 A. I pretty much stayed between 2004/2005 actually. This  
14 was a fairly robust market. If you look on the grid -- not on  
15 my grid, but in the highest and best use analysis on -- let me  
16 get you to that page -- on page 49.

17 I indicate a number of projects that had taken place  
18 and been either fully developed or almost fully developed over a  
19 time period from around 2003 forward. And you can see this is a  
20 fairly robust market This is November 2005 residential market,  
21 very robust. And looking at this property 2005, the sales out  
22 there we could stay to '04/'05 as much as possible because they  
23 are going to require the least amount of market conditions  
24 adjustment. And again, this market was growing pretty rapidly.

25 Q. You mentioned you identified seven properties, were

1 there any you identified that you didn't include as part of the  
2 seven?

3 A. I considered these the reliable ones that were out  
4 there, the best ones that were out there and anything that would  
5 have been excluded I either had some problems with it or it  
6 didn't work. But it wasn't like a selective, I'm only going to  
7 take three or four. These are what I had. And if I had more I  
8 would have liked to have used more.

9 Q. Did you take everyone that you thought was even close  
10 to comparable?

11 A. Correct.

12 Q. Okay. Now where are these properties identified in  
13 your report?

14 A. Again, they are located -- the write-ups on them are  
15 located in the addendum beginning with sale number 8, which  
16 starts on page 112.

17 Q. And the adjustments that you're going to make for  
18 these that's on page 65?

19 A. That's correct.

20 Q. So, tell me about comparable number 8. This is the  
21 one that's in Brookhaven, right?

22 A. Yes. It's located on Moriches Riverhead Road,  
23 otherwise known as CR 51. CR 111 also runs fairly close to this  
24 property. It's north of Sunrise Highway. Pretty far east. Not  
25 a whole lot out there. It's the northern part of Eastport. So,

1 you're not down Eastport by the water somewhere or down closer  
2 to Westhampton. Farmland surrounding it primarily. Some  
3 development out there, but not a whole lot. So, again, I  
4 consider this an inferior location to Three Village. Again,  
5 school districts too you're probably in the Eastport, not the  
6 same reputation that you have in the Three Village School  
7 District or in the Smithtown School District.

8 Q. Take a look at Page 65 if you can for a moment, which  
9 I think you have in front of you.

10 A. Yes.

11 Q. And you do different -- slightly different adjustments  
12 for the residential property.

13 A. Yes.

14 Q. And you certainly apply them differently because it's  
15 a different type of property.

16 A. Correct.

17 Q. Okay. It appears if I look at the adjustments that  
18 you're making for all of these that again the largest adjustment  
19 is location.

20 A. Again, typically the axiom in real estate is location,  
21 location, location. It is one of the primary considerations for  
22 any property itself. Because you can't move it. It is where it  
23 is. On an industrial basis, that property is stuck right where  
24 it is with the residences around it and the limited road  
25 network.

1           As a residential property, it is where it is which  
2 happens to be in St. James and Stony Brook, not too distant from  
3 Head of the Harbor. So, I mean it's got an address that has a  
4 little panache to it as we would say.

5           Q.    It's a very good location, isn't it for residences?

6           A.    It's an excellent location. I wouldn't have lived up  
7 there otherwise.

8           Q.    Comparing it to the Eastport property, I noticed you  
9 made a fairly substantial adjustment, Eastport property getting  
10 a plus 30.

11          A.    Correct.

12          Q.    Which tells me it's nowhere near as good?

13          A.    No. Not at all. It's not as good. I mean don't mean  
14 no to your answer. But my answer is no, it's not as good. It's  
15 Eastport, kind of out there, north, as I said, of Sunrise  
16 Highway, in Eastport. Not close to the water. It's just kind  
17 of sitting out there in Eastport.

18          Q.    Now, you also make a fairly substantial -- in some of  
19 these cases -- market adjustment.

20          A.    Correct.

21          Q.    The market adjustment again is that working  
22 mechanically the same way as it worked in the industrial?

23          A.    Yes. It's a mechanical process looking at what the  
24 rate of change is between a sale date and valuation date. As I  
25 said the residential market was pretty hot at this time period

1 which is one of the reason I didn't want to go back even further  
2 in time, so I m an adjustment at a rate of 15 percent per year  
3 or 1¼ percent per month. And the mathematics is what the  
4 mathematics is, it just works out a number of ways.

5 Q. As of 2005, how was the market? Was it consistently  
6 going up?

7 A. The market was strong.

8 Q. Was it slowing--

9 A. The market was really strong. And it was going up and  
10 it was continuing to go up.

11 Q. Okay.

12 A. And again, it's one of those things where it continued  
13 to go up. I think people who were in the market and looking in  
14 the market even in 2003, and maybe put it off in 2004, they're  
15 like oh, my God, I should have bought in 2003. In 2005, they  
16 said, oh, my God, I should have bought in 2004. It just was at  
17 that rapid rate of appreciation. It was moving up.

18 Q. And of course no one knew that they should have all  
19 said I should have bought in 2009.

20 A. If we'd all known we'd all be rich today.

21 Q. But you look at this thing as someone would have  
22 looked at it in November of 2005, right?

23 A. You're looking at it from the eyes of the typical  
24 purchaser as of the date of valuation. What would that  
25 purchaser look at? And they would look at a very strong robust

1 market.

2 Q. Now, you also make from time to time in these an  
3 adjustment for yield density.

4 A. Correct.

5 Q. What's that for?

6 A. Yield density takes a look at the project and kind of  
7 what we talked about before with the size of a lot. If on one  
8 acre you can get seven units versus getting three units, your  
9 unit cost for the seven units is going to be lower. Your  
10 overall one acre value is going to be higher because you've got  
11 the seven of them. But you are giving up some open space. It's  
12 a little bit tighter now, footprints a little bit smaller.

13 So, there is an upward adjustment there when looking  
14 at it on a unit basis because the density of that particular  
15 project means that a developer would pay less per unit. Even  
16 though again if you were analyzing it in another way, it might  
17 come out to more, but he paid less per unit because of the  
18 density.

19 So, in this case, the subject's density was -- and  
20 again we selected since Mr. Gulizio's report was between 3 and 6  
21 units, I didn't want to do every iteration from three to six, so  
22 I went to the middle ground which was between 4 and 5 units per  
23 acre, which when you then take those and average, it gives you  
24 an average of about  $4\frac{1}{2}$  .

25 So, if you're looking at that particular sale, I think



1 it was number ten you're referring to where I make a yield  
2 density adjustment. Notice that's got 8.1 units per acre.  
3 Fairly dense, fairly tightly packed, smaller footprints.

4 Q. And this one you're anticipating to be 4½ because  
5 that's the midpoint.

6 A. Mathematically it works out to just about 4½ by the  
7 time you apply all the percentages and stuff, yes.

8 Q. Right. Now, another adjustment you make here is for  
9 utility restrictions. Can you tell me what that's about?

10 A. Yes. Two adjustments here. One adjustment was for  
11 sewage treatment plant. The subject property would be developed  
12 beyond the density required allowed under Article 6 of the  
13 Suffolk County Health Department. All right, that restricts the  
14 amount of effluence you can have per unit on properties that the  
15 Suffolk County Health Department mapped out and designated as  
16 hydro-geologically sensitive areas.

17 Now, all of Long Island is somewhat sensitive because  
18 our water comes from the aquifer. And what the health  
19 department did back in 1980, I believe it was November of 1980,  
20 is that they passed this plan that would map out parcels on the  
21 island and designate them as areas. And the areas they  
22 designated as most sensitive were zones three, five and six.

23 And in those particular zones they restricted the  
24 flow, effluence, to 300 gallons per day, all right? They also  
25 restricted the fact that that would require one acre lots. And

1 the one acre lot means that if you were in a Zone 3, let's say  
2 and you were developing a parcel, and you had 20,000 square foot  
3 zoning you had to develop it either with a sewage treatment plan  
4 (inaudible) 40,000 square foot lots.

5 MR. RYAN: Your Honor, I believe we're well  
6 beyond Mr. Taylor's expertise.

7 MR. CLASEN: Your Honor, he made an adjustment  
8 for this.

9 MR. RYAN: He's testifying about the requirements  
10 of an Article of the Sanitary Code of the County of  
11 Suffolk. He may have made an adjustment, but the details  
12 as to why he believed the particular parcels did or did not  
13 need a waste reclamation or processing plant is I think  
14 well beyond his report and his function.

15 MR. CLASEN: I disagree, Your Honor. He's making  
16 an adjustment --

17 MR. RYAN: I don't expect you to agree.

18 THE COURT: Mr. Clasen?

19 MR. CLASEN: He's making an adjustment here, Your  
20 Honor, for utility. He's now explaining the adjustment  
21 that he made, and the reasons why he made it. Okay. And  
22 one of the reasons he's giving is because his understanding  
23 of how Article 6 is this. Okay.

24 Now, I am not -- if someone disagrees and thinks  
25 Article 6 says something else, they can always cross him on

1 it. Okay. But he's now explaining the adjustment he made  
2 and the basis for the adjustment that he made. Okay. It's  
3 saying the basis. Whether he's right or wrong, under any  
4 legal determination, he can always be crossed. That's not  
5 the point, he has to explain why he made it.

6 THE COURT: Fair enough; overruled, Mr. Ryan.

7 MR. RYAN: Your Honor, may I just point out we  
8 have Mr. Taylor's explanations of his adjustments on Page  
9 66 and there's no reference to Article 6. There's no  
10 reference to waste treatment.

11 THE COURT: So be it. So, even more that Clasen  
12 examine him.

13 MR. CLASEN: It says -- Your Honor, utility  
14 restrictions, right? At the end of the discussion he says  
15 this factor is a significant benefit due to the cost  
16 associated with sewage treatment facilities.

17 THE COURT: So be it. Go ahead, Mr. Clasen. Mr.  
18 Ryan, you will be able to cross. I'm listening here  
19 listening to all of this. If you want to get into that  
20 help yourself.

21 MR. RYAN: Thank you.

22 THE COURT: You're welcome. Go on.

23 Q. Now, with respect to comparable number 8, you had a  
24 plus 5 on the utility restrictions.

25 A. Correct.

1 Q. Why are you making an adjustment with respect to this  
2 property for utility?

3 A. This property as would the subject, required  
4 construction of the sewage treatment facility. The plus 5  
5 adjustment is there just to reflect the fact that this  
6 particular comparable is restricted to senior housing. Subject  
7 property wouldn't be restricted senior. Assumed it would be  
8 some sort of a mix. And so again, just making a minor  
9 adjustment to reflect the fact that you've got options at the  
10 subject. You didn't really have an option at the sale property.  
11 It had to be developed with seniors.

12 Q. Now, the other adjustment you've made here is for  
13 approvals. Can you tell me what is this approvals?

14 A. Approvals is --

15 Q. Approvals adjustments you were making.

16 A. The approval adjustment is to reflect the fact that  
17 the subject property needed to be valued as re-zoned. Now, it  
18 could be re-zoned. For instance I could have a piece of land  
19 here that's zoned residential. And then have a comparable sale  
20 that has approvals for 20 units on it, all right? The one with  
21 the approvals is superior to the one that doesn't have it. And  
22 so we're looking at the subject. We're saying it's zoned, but  
23 it hasn't gotten the approvals yet. Therefore, the sales -- and  
24 I believe pretty much all of them had some sort of approvals in  
25 place either obtained by the grantor or the grantee, and

1 therefore I felt it appropriate to make that downward adjustment  
2 to subject. We're looking at it zoned, without full approvals  
3 for the number of -- for the units itself that are going on  
4 there.

5 Q. And the comparables that we're looking at here was  
6 zoned and also had the approvals --

7 A. Correct.

8 Q. -- for the number of units.

9 A. Correct.

10 Q. So, this is an adjustment you were making for the fact  
11 that it's going to take some time and effort, among other  
12 things, to get the approvals.

13 A. Correct.

14 Q. Okay. And since they all have it, this ends up being  
15 a negative adjustment, right?

16 A. That's correct.

17 Q. Now, walk me through number 9, comparable property  
18 number 9. This is on New Moriches Road in Lake Grove.

19 A. New Moriches Road, Lake Grove. This is across from  
20 the Smith Haven Mall. Originally it was an executive golf  
21 course that was located down there and there was a driving  
22 range. There's a I think an L.A. Fitness Center is in there  
23 now. Before that it was kind of a recreation building that was  
24 used. But it is on the eastern side of Moriches Road, and is in  
25 the Village of Lake Grove.

1 All right, so I made adjustments there for location.  
2 It's Lake Grove, which is a fairly decent address. Not as nice  
3 as the address we'd have up where we are in Stony Brook. It's  
4 located again -- when you're looking at location here, not only  
5 the address, this is on a very busy road that goes north and  
6 south along the eastern perimeter of the Smith Haven Mall.  
7 You've got this other facility that's located immediately to the  
8 North. So, I thought the adjustment there -- the appropriate  
9 adjustment there that I concluded is 15 percent.

10 This particular sale also had approvals in place, they  
11 had been obtained by the Grantor prior to the sale of the  
12 property. that was adjusted downward 10 percent for that  
13 amount. It is restricted to senior citizens so it was adjusted  
14 upward 5 percent for that.

15 And it also needed a sewage treatment plant to be  
16 constructed on the site which puts it similar in that regard to  
17 the subject. So, there was no need to make that utility  
18 adjustment on this particular sale.

19 Q. Now, with respect to number 10, that's in Bayshore.  
20 Walk me through that one. Is that any --

21 A. It's North Bayshore.

22 Q. North Bayshore, pardon me.

23 A. It's not quite fully Bayshore. It's north of the Long  
24 Island Railroad track. It is on the eastern side of Mena Road.  
25 Northeast corner of Mena Road and Orinoco Drive. This is a

1 blended community of senior housing and unrestricted housing.  
2 And the blend there was 30 singles and 60 seniors.

3 Now, I made a 5 percent adjustment there because  
4 getting down to doing 2½ percent or 1½ percent for the  
5 difference is too fine an adjustment. So, it's just a 5 percent  
6 adjustment there.

7 Q. 5 percent for what?

8 A. For the restrictions.

9 Q. Right. Okay.

10 A. Okay. The adjustment -- so that would be a plus five  
11 and then there's a 20 percent downward adjustment for sewage  
12 because it had availability of sewers. It didn't have to  
13 install an onsite site. As a matter of fact, it's located in  
14 the south by a sewer district.

15 Q. When you say it had sewers, what do you mean?

16 A. They were at the site and available to the site. They  
17 were there. All they had to do was hook up.

18 Q. So, you make a 20 percent adjustment because they  
19 could hookup to the sewers?

20 A. Yes. Fairly expensive putting sewers in. And from a  
21 purchaser's perspective it's expensive and time consuming.

22 Q. To have to put in your own sewers?

23 A. Correct.

24 Q. Now, with respect to property number 11 in  
25 Westhampton, you don't make much of a change for location for

1 this particular one, do you?

2 A. No, don't. It happens that -- it's interesting. This  
3 property is located on all Old County Road. It's almost in  
4 Eastport, but it has a Westhampton address. Westhampton  
5 address, good panache. Again, I'd like to live there so I can  
6 put on my return address, I live in Westhampton. It's not the  
7 Incorporated Village of Westhampton. It's in the unincorporated  
8 area of Westhampton.

9 But again, taking that into consideration understand  
10 that it's got some value to it having that type of location.  
11 So, I didn't make as much of a location adjustment to that  
12 particular property.

13 Q. Okay. what were some of the other adjustments you  
14 made with respect to this property?

15 A. Again, the same kind of adjustments for approvals. I  
16 made a size adjustment for this particular property. And this  
17 one, notice there's a downward density yield adjustment because  
18 they only go 2.8 units per acre there. And again 2.8 units  
19 versus what I'm going to call an average of 4½ means that they'd  
20 be paying a higher per unit costs for the 2.8, and therefore I'd  
21 have to make a downward adjustment when looking at the subject.

22 Q. Now, the next property is Oakdale, which I take it is  
23 not quite as nice an area, right?

24 A. No. It's Locust Avenue in Oakdale. And again, it's  
25 Locust Avenue, it's north of Montauk between Montauk Highway and



1 Sunrise Highway. Access into it as you kind of drive in a  
2 driveway, there's a nursing facility immediately abutting this  
3 property to the east and then this property is clustered in  
4 there. I didn't consider it as good a location. Oakdale again,  
5 doesn't carry much weight with it as far as being a great spot  
6 for housing. Then again, when I say great, it's comparative.

7 Q. Right. Oh, yeah, everything is relevant in life.  
8 You've made an adjustment in this one also for utilities that's  
9 negative, right?

10 A. Yes.

11 Q. Why is that?

12 A. Again, this one had -- let me just take a look. I  
13 believe this one, Number 12, had -- oh, it had access to the  
14 sewage treatment plant for the adjacent facility. The nursing  
15 home already had to put in a sewage treatment plant. They were  
16 able to hook up to it. So, again, it's less expensive you not  
17 developing your own sewage treatment plant.

18 Q. Now, I don't understand something here. When you were  
19 looking at the industrial properties, were you making any  
20 adjustments for sewers?

21 A. Well, I was doing it on a gross basis. Well, I was  
22 doing it on a raw acreage basis and if someone needed to do it  
23 because they develop to a certain density where they would  
24 require sewage treatment, it would be reflected in the prices  
25 that were being paid. So, it was raw acreage.

1           Now, as I'm looking at these, obviously everyone of  
2 these sales, exceeds the baseline densities as promulgated  
3 Article 6 of the Suffolk County Health Department.

4           Q.    So, they all have to --

5           A.    So, they all would have to do it.  There's no option  
6 for it.  You'd have to either put one in or connect to an  
7 adjacent one.  If you're in the southwest sewer district,  
8 obviously it makes it pretty easy because there's an adjacent  
9 one.  And in this particular case, again on this one, they were  
10 able to connect to the property immediately adjacent.

11          Q.    Now, talk to me about that Lakeview Avenue in Bayport  
12 property.

13          A.    Now, Lakeview Avenue in Bayport again it's located in  
14 the Hamlet of Bayport, north of Montauk Highway on Lakeview  
15 Avenue.  As you come in there, it's got -- actually there's an  
16 auto repair shop right on the corner.  Across the street from  
17 that is a car wash.  So, although it's in Bayport, again,  
18 location, location, location.  I didn't consider it as good a  
19 location as Three Village.

20                Again, north shore, you're not south shore.  South  
21 shore tends to break, believe it or not Montauk Highway.  South  
22 of Montauk Highway, is one cluster.  North of Montauk between  
23 Sunrise next cluster.  Next cluster up north of Sunrise Highway.  
24 So, I mean you kind of move from the shorelines.  It's almost --  
25 you're moving almost in opposite directions of industrial.  It's

1 like the further you are away from the Expressway North and  
2 South from a residential point of view, the better the value.  
3 As soon as you get closer to the Expressway, the values tend to  
4 be declining as you're going down for those locations. It's a  
5 phenomenon that's been out on the Island for years. And again,  
6 logical. Shorelines are more prestigious than interior.

7 Q. Now, the final one you have is the Mount Sinai  
8 property.

9 A. Correct.

10 Q. That one you don't have any adjustment for location.

11 A. No.

12 Q. Why?

13 A. Well, I considered it fairly comparable. It's north  
14 shore, well located off CR 83 and Canal Road. Pretty good  
15 address. In high insight if I had made any adjustment, I would  
16 have made an upward one to it here.

17 Q. You made a negative adjustment though for approvals  
18 and for utility --

19 A. Correct.

20 Q. -- restrictions.

21 A. Correct.

22 Q. Describe those for us, please.

23 A. Again, this is a seniors complex. Needed to have the  
24 adjustment there. They had approvals in place, so I needed to  
25 make an adjustment for that. And they had access to an existing

1 sewage treatment plant. This was part of a bigger complex that  
2 was developed. This was one portion of it that was the senior  
3 portion of it. So, there was sewage in there that they could  
4 connect to.

5 Q. The properties that were just looked at here, 8, 9,  
6 10, 11, 12, 13 and 14, those comparables; these were all raw  
7 land sales?

8 A. Yes.

9 Q. Okay. Have any of them been developed?

10 A. All of them.

11 Q. Okay. And they've been developed for what?

12 A. For the purposes they were zoned for. Either for  
13 single family condominium or for senior citizen housing. As a  
14 matter of fact a number of them are indicated again. If you go  
15 back to that chart --

16 Q. Let's go back to that chart that you're referring to.

17 A. I should have that page memorized. Page 49.

18 Q. And this chart again is designed to depict what?

19 A. It depicts really ongoing demand at this time through  
20 the marketplace. It is an indication of -- these are projects  
21 that are selling. Most of them as you can see are sold out.  
22 And this survey was completed in 2007 by the time the report was  
23 filed. So, between that time and the date of the report, you  
24 can see that most of these had been sold out with a couple of  
25 exceptions. And one of those exceptions is the one in Eastport

1 that's located out there on CR 51. And the other one is the  
2 Mount Sinai property located at CR 53.

3           Again if you looked at those and totaled them up, it's  
4 like a total of 1,482 units sold out of those complex during  
5 that time period.

6           Q.    Do you know what they were selling for?

7           A.    Yes, I do. Most of these if you look at my comparable  
8 sales, the range in the sales prices on the improved units was  
9 between 450,000 towards the low side up to a high of around  
10 800,000. And actually there are some 800,000 sales at the  
11 Eastport property.

12          Q.    And what was the raw land selling for on a per unit  
13 basis?

14          A.    Again, those were selling for between, unadjusted for  
15 market conditions, a low of 75,000 to a high of 195,000, the one  
16 in Bayport. And the one in Bayport actually is selling at the  
17 450/500 range, 500 plus.

18          Q.    Now, after you have identified all these comparables,  
19 and made the adjustments, the key now is to figure out a per  
20 unit cost, right?

21          A.    Correct.

22          Q.    What per unit value did you come up with?

23          A.    I concluded \$130,000 a unit.

24          Q.    Now, once you did that, could you walk us through what  
25 the next step is you make in making your determination of the

1 value of the property as re-zoned?

2 A. Yes. Well, again, we started off in the grid with a  
3 property re-zoned versus those with approvals and I made a 5  
4 percent adjustment there. After I concluded --

5 Q. Wait, wait, wait, one second. I'm sorry. You're  
6 going too fast.

7 A. I'm sorry.

8 Q. You've made a whole lot of adjustments for approvals  
9 already, right?

10 A. Correct.

11 Q. Okay. That was --

12 A. Step one.

13 Q. Those were sometimes 5, sometimes 10 percent, right.

14 A. Correct.

15 Q. Okay. So, that was step one. Step two, you -- and  
16 that's how you come up with -- eventually you come up with 130.

17 A. Correct.

18 Q. Okay. What do you do next?

19 A. Well, then I looked at the 130 once I realized the  
20 property isn't zoned PDD or residential at the date of  
21 valuation, so I made an additional downward adjustment of 5  
22 percent or 6,500 per unit for the cost and time of obtaining  
23 that zoning. There would be expenses involved in obtaining  
24 that zoning. And so that adjustment is made and is indicated on  
25 Page 67, which drops the net price down to 125,000 per unit.

1 Q. Okay. So, you've -- so I understand here, when you're  
2 making the adjustments to the comparable you knock them down  
3 because all the other ones had approvals already, right?

4 A. Correct.

5 Q. Okay. And then because this one is not even re-zoned,  
6 you knock it down another 5 percent cover the time and expense  
7 of getting it re-zoned.

8 A. Correct.

9 Q. Okay. Now, how do you make any other adjustments or  
10 do you do anything else?

11 A. Yes. The next set of adjustments we had to make are  
12 based on the scenarios based on the probability of obtaining the  
13 re-zoning. And those were taken from Mr. Gulizio's report. And  
14 what I did here was I broke it between -- since it was 3 to 6, I  
15 picked 4 to 5 which again would give me the mid-point. And then  
16 I applied the probability percentages to the differentials  
17 between the value as-zoned for residential and the value as-is-  
18 zoned for industrial. And then I applied the percentage.

19 That number then gets added back to the industrial  
20 number. And again it's laid out on page 67. And Parcel A and  
21 Parcel B, there are two zonings within Parcel A. We had 63,  
22 almost 64 acres in Smithtown which had in this case taken 4  
23 units, 75 percent probability and almost 182 acres in Brookhaven  
24 which we said had 95 percent probability. So, I ran through the  
25 mathematics.

1           And then on the remainder parcel to the north, Parcel  
2 B, you had everything in Smithtown and it was a 75 percent  
3 probability in Smithtown. And so again I ran through the  
4 mathematics on that. And then summed both the numbers to get a  
5 conclusion of value of the subject as of that vesting date.

6           Q. Right. And now on the next page, 68, you do the same  
7 thing just using the lower probabilities.

8           A. Correct.

9           Q. When I'm walking through the math here, if I  
10 understand what you did was, you took -- Mr. Gulizio had a 3 to  
11 6?

12          A. Correct.

13          Q. And first you ran the numbers using 4 with the highest  
14 percentage?

15          A. Correct.

16          Q. 4 units per acre but at the higher probability because  
17 it was on the low end of your range, right?

18          A. Correct.

19          Q. Then you did the same math using the five, but using  
20 the low end?

21          A. Correct.

22          Q. Okay. The effect of that is really doing, as a  
23 practical math matter, you're taking  $4\frac{1}{2}$  times the mid point of  
24 the two ranges, right?

25          A. Correct.



1 Q. Okay.

2 A. Yeah, you kind of go in a mid-level.

3 Q. Right. I mean after we do all this math, really what  
4 we have is  $4 \frac{1}{2}$  times  $92\frac{1}{2}$  and  $4\frac{1}{2}$  times  $72\frac{1}{2}$ .

5 A. Roughly yes. The math is roughly that, yes.

6 Q. Okay. Why did you pick the mid-points?

7 A. I wanted to avoid the extremes. Extreme being, the  
8 extreme low of 3, the extreme high of 6. It seems when you're  
9 looking at it from the perspective of appraisal, with respect to  
10 approving, you're going to shoot for the middle somewhere and  
11 assume that's about where it's going to shake out. And the  
12 probabilities were pretty high.

13 Q. Now, this deduction you're making, is because the  
14 property is not yet re-zoned and approved, right?

15 A. Correct.

16 Q. Okay. And this is essentially the third adjustment  
17 you've made for those issues?

18 A. Yes.

19 Q. Right. You adjusted the comparables for the  
20 approvals, you took a 5 percent off the top, for the fact it  
21 wasn't zoned, and now you've done it again, right?

22 A. Correct.

23 Q. The effect of that on some of these comparables is an  
24 adjustment -- well, let me ask you, if you add up all your  
25 adjustments, you're making for approvals and zoning in the town

1 of Smithtown, how much of an adjustment are we making just for  
2 those issues alone to the comparables?

3 A. Well, you're adjusting downward. If you're looking at  
4 it and you're saying 7½ percent in case there was the split  
5 there, plus 5 is 12½ plus 72½ which would be another 28½, you've  
6 adjusted it down a fair amount to reflect those zoning  
7 requirements. The zoning issues that were there.

8 Q. Right. Just the 2, the 5 percent, plus the Smithtown  
9 one, the 28½.

10 A. Right.

11 Q. I guess you're up to 33 percent. Already you'd be  
12 knocking it down.

13 A. Correct.

14 Q. And then if we look at some of your adjustments for  
15 your approvals, it's another 10 percent or 5 percent.

16 A. Correct.

17 Q. Okay. So, you're knocking it down, in some of these  
18 cases, you're knocking it down to 37½ to 42½?

19 A. Correct.

20 Q. For the fact the property is not re-zoned with  
21 approvals, right?

22 A. Correct.

23 Q. Like if this property got re-zoned, as part of the re-  
24 zoning process it would get the approvals too?

25 A. Yes.

1 Q. Okay. Now, with respect to Brookhaven, those numbers  
2 are lower because the percentage is higher --

3 A. Yeah, the percentage is much higher.

4 Q. -- than Mr. Gulizio gave.

5 A. Correct. And they're from Gulizio's report, that's  
6 correct.

7 Q. Right. But if you do the math there it's running  
8 about 17½ too.

9 A. Yes.

10 Q. Now, ultimately, you then have to do the math to come  
11 up with the calculation of the value, right?

12 A. Yes.

13 Q. Which we just started to do. First you calculated  
14 under the one scenario with 95 percent to 75 percent and that  
15 number is on page 67, right?

16 A. That's correct.

17 Q. And what's that number for the total?

18 A. 139,550,000.

19 Q. Okay. And with respect to the lower percentages when  
20 I put the higher probability, what number do you come up with?

21 A. (No response.)

22 Q. That's on page 68.

23 A. On page 68 where we've used the lower probabilities,  
24 that number is 100 and -- and the higher number of units, it's  
25 165,680,000.

1 Q. Okay. So, you've run it under those two scenarios --

2 A. Correct.

3 Q. -- and then how do you calculate what the value is?

4 A. Well, then you go over to page 69 and value primarily  
5 is in between those two numbers. So, again that's where we come  
6 back to roughly we've done it at 4½ units with the associated  
7 average adjustments of 92½, 72½ and you're at 153 million. I  
8 think the mid-point on this works out to something like 102,615  
9 or something like that. And it was rounded up to 153 million.

10 Q. Now, the 153 million is the value of what?

11 A. It's the value of the property as it is with the  
12 potential for re-zoning to a PDD or residential type use.

13 Q. But 153 is the entire property?

14 A. Yes.

15 Q. Okay.

16 A. Yes.

17 Q. Now, not the entire property was taken, right?

18 A. That's correct.

19 Q. So, what do you have to do next?

20 A. Well, the next thing you have to do is you've got the  
21 value of the remainder parcel is the 62 some odd acres that is  
22 left over within the town of Smithtown.

23 Q. Right.

24 A. And again as I indicated earlier, since there was no  
25 apparent severance damages that we could see because the density

1 wasn't changing, the probabilities weren't changing, the values  
2 aren't changing. In the after situation basically the  
3 adjustments are all the same and the only thing that changes is  
4 the math because you've got less units.

5 Q. What's the value of the remainder?

6 A. The value of the remainder is indicated on page 88 and  
7 it's 28 million.

8 Q. Okay. Now, what you actually do is we've been walking  
9 you through the calculations you made to determine the value of  
10 the entirety, both as owned and as re-zoned right?

11 A. Correct.

12 Q. You then in the back part of your report do that same,  
13 identical analysis to just value the remainder, right?

14 A. Correct.

15 Q. Okay. And ultimately the only thing that changes here  
16 is, it's a different base number for the size of the property  
17 that's left.

18 A. Correct. It's the same number of units per acre and  
19 it's a just a matter of the mathematics then. It's just 62  
20 acres versus 300 acres on the multiplication side.

21 Q. Right.

22 A. Also it's all located within the Town of Smithtown, so  
23 the probability is there's only one scenario for the  
24 probabilities. It's either 70 or 75 percent.

25 Q. Right.

1           A.    So, you're going again the mid-point of either 3 or 4  
2 units, 4 or 5 units, rather times those percentages.

3           Q.    Now, assuming the property wasn't re-zoned, what's the  
4 value of the property that was taken?

5           A.    Assuming it wasn't re-zoned?

6           Q.    Yeah, as the as-zoned value --

7           A.    The as-zoned industrial value --

8           Q.    -- of the property that's taken, because I walked you  
9 through what the as-zoned property value was for the entire  
10 property.

11          A.    On page 84 --

12          Q.    Right.

13          A.    -- it indicates a value of 9,365,000.

14          Q.    That's the remainder?

15          A.    Correct.

16          Q.    And you take that off of the gross number which was?

17          A.    That's the remainder value.

18          Q.    Right. Now, to find the value of the property  
19 taken --

20          A.    Oh.

21          Q.    -- which is where I'm going on this.

22          A.    Yeah, you would subtract that from the earlier value  
23 of -- let me go back to that page. The earlier value of  
24 46,185,000 to --

25          Q.    And once we do that math, what's the value of the

1 property taken as-zoned?

2 A. I don't know why I'm flipping pages; it's right in  
3 front of me. That's always fun. It would be 36,820,000.

4 Q. And what was the value of the property that was taken  
5 as re-zoned?

6 A. That would be the 125 million.

7 MR. CLASEN: Yeah, I was just checking to make  
8 sure. I didn't even want to ask for a break. No further  
9 questions. Thank you very much.

10 THE WITNESS: You're welcome.

11 THE COURT: Ah, yes, you'd like some time, right?

12 MR. RYAN: I would, Your Honor.

13 THE COURT: Yeah, I thought so.

14 MR. RYAN: Thank you.

15 THE COURT: How about we'll come back at 2:45?

16 MR. RYAN: Very good. Thank you.

17 THE COURT: Thank you. We stand adjourned.

18 (Off the record.)

19 THE COURT: Mr. Ryan?

20 MR. RYAN: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. RYAN:

23 Q. Good afternoon, Mr. Taylor.

24 A. Good afternoon, Mr. Ryan. You can hear me okay?

25 Q. I can. Thank you. I will try to remember your name

1 and not misspeak.

2 A. I will have been called a lot worst things I'm sure.

3 Q. Mr. Taylor in your valuation of the 308 acre parcel  
4 owned by Gyrodyne, you were charged with the task of valuing it  
5 as of November 2005.

6 A. Correct.

7 Q. And in November 2005, as you indicated, you had passed  
8 this property by on numerous occasions?

9 A. Yes.

10 Q. And you appreciated that it existed in a location that  
11 was near the university but primarily surrounded by residential  
12 uses, correct?

13 A. Pretty exclusively surrounded by residential, yes.

14 Q. Right. The university would be the only non-  
15 residential neighbor.

16 A. Maybe.

17 Q. But it had been used -- the Gyrodyne property now, had  
18 been used and underutilized for industrial purposes for many  
19 years, correct?

20 A. Very underutilized. Basically, as I said, I think  
21 maybe 5 percent of the entire site was even used. So, it was  
22 pretty open space with a small cluster of industrial in the two  
23 spots I indicated.

24 Q. Right. And it had been that since the 1950s.

25 A. Correct.



1 Q. Over the 20 years before you became a resident of the  
2 neighborhood and the 40 years before 2005, it had never been  
3 developed more intensely?

4 A. Just what was there.

5 Q. You ever wonder why?

6 A. I kept waiting for it to get done, I tell you that  
7 much when I drove by. I kept waiting to see the sign up there  
8 saying coming soon, townhouse opportunities.

9 Q. You viewed it as unusual that such a large vacant  
10 parcel, whatever its use, would remain at that location?

11 A. I don't know if I would say unusual, but --

12 Q. Well --

13 A. -- it wasn't.

14 Q. Could you think of any other 308 acre parcel that was  
15 essentially vacant in the neighborhood?

16 A. In that neighborhood; no. There really weren't any  
17 300 acre parcels vacant in that neighborhood.

18 Q. How about in this neighborhood, in Hauppauge, where  
19 you had worked for years and years?

20 A. I can't think of 300 acres here that is vacant either.

21 Q. Now, you also appreciated that this was a -- I think  
22 you used the word bucolic setting?

23 A. Yes.

24 Q. A pristine parcel in a bucolic setting.

25 A. Yes.

1 Q. The roadways were narrow and winding, correct?

2 A. Correct.

3 Q. It was remote from commercial development. It was  
4 remote from other industrial uses.

5 A. That's correct.

6 Q. Other than the university?

7 A. Other than the -- well the university -- and the again  
8 I don't consider that a "commercial" use.

9 Q. Well, I --

10 A. It's a university.

11 Q. Right. The appraisal that you did considered what the  
12 highest and best use of this property would be?

13 A. Correct.

14 Q. And there are considerations that you have to analyze  
15 in order to arrive at that determination, correct?

16 A. Correct.

17 Q. That are what's physically possible?

18 A. Yes.

19 Q. What's legally permissible?

20 A. Correct.

21 Q. What's economically feasible?

22 A. Or as we say today, financially feasible.

23 Q. And what's maximally productive?

24 A. Correct.

25 Q. Now, all four of those considerations have to feed

1 into the ultimate conclusion.

2 A. Correct.

3 Q. Now, the site itself, it's topography and shape, it  
4 didn't have any limits on what could be done with this property,  
5 did it?

6 A. I'm not quite sure I understand what you say about  
7 limits.

8 Q. Well, within reason. Within an industrial zone. Did  
9 the topography of the site prevent its development for  
10 industrial?

11 A. I would think the topography didn't affect it that  
12 much. Maybe perhaps over towards the Stony Brook Road perimeter  
13 up where 25A and Stony Brook Road as it gets a little --

14 Q. Where Stony Brook Road dips down toward 25 --

15 A. Correct.

16 Q. -- there's a rocky bluffer or high bluff. That may  
17 pose some physical limitation but might even pose that in many  
18 other uses too, correct?

19 A. Correct.

20 Q. But other than that you had 308 acres that could be  
21 used for residential, industrial, retail, any reason, any use.

22 A. It could be used --

23 MR. CLASEN: Well, is he talking from a  
24 topographical report or --

25 MR. RYAN: Yes.

1 THE WITNESS: He's talking physically.

2 MR. CLASEN: Oh.

3 MR. RYAN: Physically possible.

4 MR. CLASEN: Okay, good.

5 Q. You appreciate that's the focus of my --

6 A. Yes.

7 Q. -- line of questions.

8 A. And basically the physically components on this  
9 property were okay.

10 Q. Right. There's no vast acreage or wetlands. There's  
11 no rocky mountain sitting in the middle of the property.

12 A. No ravines.

13 Q. Right. No, big sand pit.

14 A. Correct.

15 Q. So, that consideration would allow any use of this  
16 property within reason.

17 A. When you're isolating on the physical portion --

18 Q. Right.

19 A. -- of it, I don't see detriments to the development of  
20 that property, correct.

21 Q. Okay. And the shape of the property, did it impede  
22 its development in any way?

23 A. Only when you look at physical access points, perhaps  
24 you had some difficulties there with coming in off of Stony  
25 Brook Road or coming in off Mill Pond.

1 Q. But where the access is, I mean that's a matter of an  
2 adjustment with the town or with the state, correct?

3 A. Correct.

4 Q. So, that's not a physical donation of the property.

5 A. Well, it's considered under the physical category,  
6 yes.

7 Q. Oh. Okay. Well, you indicate that the physically  
8 possible is based on topography, land area, and site  
9 configuration.

10 A. Right.

11 Q. You consider the access -- or did you consider the  
12 access in relation to the physical conditions of the property?

13 A. Yes.

14 Q. Okay. But you considered it also in terms of only a  
15 light industrial development, correct?

16 A. That's what it was zoned, yes.

17 Q. But the physical condition doesn't relate to it's  
18 zoning, does it?

19 A. No.

20 Q. The physical condition relates to what is physically  
21 possible to be constructed.

22 A. Well, you're looking at a parcel of land and in your  
23 first thrust you're looking at it as a piece of vacant land  
24 sitting there, and you're looking at what's around it as far as  
25 physical attributes are concerned. One of those attributes or

1 some of those attributes are topography access, configuration;  
2 those are all part of the physical aspects of the site.

3 Q. Well, this parcel had frontage on three roadways; two  
4 town and one state road, correct?

5 A. Correct.

6 Q. It had sufficient frontage on public roadways to  
7 construct access if permitted that would serve any conceivable  
8 use of it, didn't it?

9 A. It had access on the roadways. It has one access  
10 point on 25A. It had two on Mills Pond Road. And at the time  
11 had one access point on Stony Brook Road that came in through a  
12 long driveway. That I believe has since been closed off.

13 Q. I don't believe that that was my question. Let me try  
14 it again, Mr. Taylor. The frontage of this parcel was  
15 sufficient for access to be developed through a public road that  
16 would serve any potentially conceivable use of it, isn't that  
17 so?

18 A. It could serve them. The question then gets to be to  
19 what degree. How efficient is it?

20 Q. Well, without regard to the nature of the roadways,  
21 1,000 feet on Stony Brook Road, correct? Or more.

22 A. The nature of the roadways, you can't say without  
23 regard to the nature of the roadways. If you're looking at an  
24 industrial development, the nature of the roadways is quite  
25 significant as far as what you can do moving in and out of the

1 site. It becomes very significant from utility point of view  
2 which is considered part of the physical attributes of the site.  
3 So, I don't think you can say, looking at it, and disregard the  
4 roadway, or the roadways network that's around it. That's all  
5 part of the physical attributes of the property.

6 Q. Okay. Now, if you considered just on page 47 your  
7 analysis of the physical conditions, and your discussion on page  
8 47 is just a discussion of the physical attributes of the  
9 property, correct?

10 A. Yes.

11 Q. You consider just based on the physical attributes of  
12 the property that it was your opinion that based on its  
13 location, immediately surrounding land uses, road frontage,  
14 accessibility, configuration that the physical highest and best  
15 use of the subject is for a change of zoning to PDD?

16 A. Yes. Correct. Because two paragraphs above that I  
17 discuss the current zoning and it's being inadequate support for  
18 access for that particular development on a physical basis.

19 Q. Well --

20 A. So, it would fail it on the first test.

21 Q. Isn't the zoning a matter to be considered in the  
22 analysis of what could legally be done with the property?

23 A. It's not the zoning, it's the use. The zoning permits  
24 light industrial. And when I'm looking at this, I'm looking at  
25 it under a light industrial perspective or scenario and saying

1 that the access and problems with this site would be a  
2 significant deterrent to the industrial development. And based  
3 upon that, looking at one to the other the other one would be a  
4 better use.

5 Q. Well, could an industrial development be a school?

6 A. Part of it could be.

7 Q. Could an industrial development be a research center?

8 A. I'm not quite sure what you mean by a research center?

9 Q. Such as is actually being constructed.

10 A. A series of individual buildings dedicated to R&D type  
11 uses.

12 Q. Right.

13 A. Could it be? Yeah. I didn't think the access was  
14 good for that, though however.

15 Q. Okay. The access would have to be improved to support  
16 that, correct?

17 A. I would think it would, yes.

18 Q. All right. And the access for a residential  
19 development.

20 A. Pretty good.

21 Q. Well, I don't think I finished my question --

22 A. Oh, I'm sorry.

23 Q. -- yet, Mr. Taylor.

24 A. I'm sorry.

25 Q. I would please ask you to --



1 A. I apologize.

2 Q. -- rein yourself.

3 A. Yes.

4 Q. Wouldn't that depend on the density of the residential  
5 use?

6 A. I'm not sure I understand your question now.

7 Q. Sure. Could you put say 10,000 apartments on this  
8 property?

9 A. You might be able to.

10 Q. Physically?

11 A. Physically.

12 Q. And driveways as they exists and the roadways as they  
13 exists would be suitable for that?

14 A. For residential utilization the roadways are fine.  
15 It's when you start doing commercial utilization on narrow windy  
16 roadways that my conclusion was from a physical basis, it  
17 wasn't --

18 Q. Okay.

19 A. -- it was a significant deterrent to that development.

20 Q. So, it's just commercial versus residential?

21 A. Yes.

22 Q. The roadways cannot accommodate at all a commercial  
23 use?

24 A. I don't believe that's what I said. I said it's a  
25 significant deterrent to that development.

1 Q. Well, a deterrent affects the intensity of the use,  
2 correct?

3 A. The intensity and the use itself.

4 Q. Well, if someone wanted to put up a Duncan Donuts on  
5 this 300 parcel and dedicate all of it to the Duncan Donuts,  
6 they could do it and they'd have fine access, wouldn't they?

7 A. I have to tell you, I don't think they would.

8 Q. The vehicles couldn't use those existing driveways to  
9 access the little shop?

10 A. Duncan Donuts is a high value operation that typically  
11 will be at a commercial intersection somewhere.

12 Q. Understood.

13 A. To stick a Duncan Donuts somewhere on 300 acres,  
14 they're probably going to go out of business pretty quickly.

15 Q. Well, we're talking about physical, Mr. Taylor. We're  
16 not talking about the considerations of financial feasibility.  
17 I appreciate that my suggestion was a ludicrous one.

18 A. (Chuckles.)

19 Q. But we're focusing here simply on the physical  
20 possibilities for this property. And you've indicated that the  
21 driveways themselves dictate -- and the adjoining roads, dictate  
22 a non-commercial use.

23 A. What I indicated is that does not dictate a non-  
24 commercial use. What it says is it's a deterrent to a  
25 commercial use and would hamper the development.

1 Q. Well, it wouldn't be a physical limitation on a  
2 development, would it?

3 A. I think we keep going around the same circle, Mr.  
4 Ryan. It is the physical access to those roads that's  
5 considered part of the physical component. If you don't  
6 consider it there, there's no place else in highest and best use  
7 where you would consider it, because then you'd go to legal and  
8 financially feasible and maximally productive. It's considered  
9 as part of the physical analysis.

10 Q. Okay. So, based on the physical conditions existing  
11 at this site, it could not support an industrial use?

12 A. No. That is not what the conclusion is.

13 Q. Okay.

14 THE COURT: Mr. Clasen, did you have a comment?

15 MR. CLASEN: He answered too quick, Your Honor, I  
16 was going to say you've asked that question several times  
17 and got the answer.

18 THE COURT: Well, I thought you were going to ask  
19 if there was a Cluster Donuts Pastry Shop.

20 MR. CLASEN: In a couple of minutes I'll start  
21 making those objections, Your Honor.

22 Q. The roadways in the area, Mr. Taylor, you drive by  
23 this site everyday.

24 A. Pretty much.

25 Q. They're already busy, aren't they?

1 A. At certain times of the day they're busy. I will tell  
2 you though that I use this way to avoid the traffic.

3 Q. Okay.

4 A. And 347.

5 Q. Right. You try to avoid the traffic in the area.

6 A. Correct.

7 Q. And any development would have an impact on traffic,  
8 correct?

9 A. Yes.

10 Q. And that's development in any manner?

11 A. I'm not a traffic --

12 Q. I appreciate that.

13 A. -- specialist.

14 Q. But you're well experienced -- oh, I'm sorry.

15 A. And when you say would there be an increase, what I  
16 have to say to you is if you put something there versus vacant  
17 land, there will be an increase in traffic. There's no  
18 question.

19 Q. All right. And you've been appraising property for 32  
20 years?

21 A. 36.

22 Q. 36. I'm sorry to sell you short.

23 A. And if you count my part time work it's almost 39.

24 Q. Okay. And over those 36 years, you've seen  
25 development proposals, correct, of various parcels of land?

1 A. Yes.

2 Q. And the public response to those or the municipal  
3 response to those proposals on Long Island --

4 A. Which question are you asking me, sir; is it the  
5 public response or the municipal response?

6 Q. Okay.

7 A. Are you asking me both?

8 Q. Let's deal with the public response.

9 A. Okay.

10 Q. Are new traffic generators welcomed by the neighbors?

11 A. It depends on their choice. I mean realistically all  
12 neighbors would like nothing to ever be done.

13 Q. All right.

14 A. But given a choice of industrial development,  
15 residential development and the associative traffic patterns  
16 that would change, it would appear to be almost a no-brainer for  
17 them. They would go with the residential portion.

18 Q. Okay. If forced to that election, they would go with  
19 the residential?

20 A. Yes.

21 Q. Okay. Now, legally permissible this property is and  
22 has been zoned L-1 Industrial, correct?

23 A. Yes, by both townships.

24 Q. And that zoning allows certain uses and it's been  
25 talked about extensively of-right.

1 A. Correct.

2 Q. All right. Now, of right uses under zoning, do they  
3 permit of-right a maximum development of the property under the  
4 zoning?

5 A. They could.

6 Q. In the Town of Brookhaven --

7 A. Yes.

8 Q. -- do they?

9 A. They could.

10 Q. And what determines whether it is or is not developed  
11 to the maximum?

12 A. I think Mr. Gulizio elucidated us on that yesterday  
13 with the five points that they looked at. When you're looking  
14 at a site plan for the development of a property, what the  
15 ultimate development is, gets determined. And it could be  
16 maximum coverage.

17 Q. Well, Mr. Gulizio dealt with a change of zone,  
18 correct?

19 A. No, he also dealt with the square permitted under the  
20 as-of-right I believe. Not I don't believe, he did.

21 Q. Right. And he calculated a square foot coverage based  
22 on an FAR, which in his opinion could be possible.

23 A. Correct.

24 Q. Right. Well, Mr. Gulizio isn't the municipality. Who  
25 in the municipality makes that determination?

1           A.    It could be planning department, site plan approval,  
2 somewhere in that process.

3           Q.    And the planning department considers various issues  
4 in your experience, correct?

5           A.    I think as he indicated yesterday, and I agreed, there  
6 are a number of issues they look at when they're approving  
7 anything.

8           Q.    Right. One is traffic.

9           A.    Correct.

10          Q.    And a planning board could adopt an industrial use or  
11 if an application for an industrial use was here, it could be  
12 adjusted by a planning board toward intensity that did not  
13 generate severe traffic.

14          A.    Planning boards can adjust densities.

15          Q.    Right. It could also -- planning boards could also  
16 condition approvals given.

17          A.    Yes.

18          Q.    On such things as the uses which generate traffic.

19          A.    Yes.

20          Q.    That's their function, as a matter of fact to approve  
21 a plan for a particular site that will minimize its negative  
22 impacts, correct?

23          A.    But they have the ability to adjust what's done to a  
24 degree. If they go too far, obviously, it creates another set  
25 of problems.

1 Q. Right. Understood. And what their task is, is to  
2 view that is put forward and make the adjustments necessary,  
3 isn't it?

4 MR. CLASEN: Your Honor, I haven't objected  
5 because I thought he was laying a foundation for going some  
6 place that I had gone to. I didn't ask any questions about  
7 this. Nothing about traffic with this gentleman.

8 MR. RYAN: Your Honor --

9 MR. CLASEN: Nothing about what zoning boards do  
10 or don't do, okay? He talked about the re-zoning from what  
11 Mr. Gulizio said and said it was consistent with what he  
12 understands is happening. That's where I kind of -- where  
13 I thought he was going. What's the basis for your  
14 believing that? Okay, but now, I don't know what the  
15 relevance of this is, number one. Number two, it's way  
16 beyond what I asked him. And it's getting repetitive.

17 MR. RYAN: Your Honor, it certainly goes to the  
18 legally permissible uses. It goes to various adjustments  
19 that were made, this witness' understanding of the process,  
20 and what could be done.

21 THE COURT: Mr. Clasen, I understand, but I plan  
22 on giving Mr. Ryan some latitude when it comes to cross  
23 examination of Claimant's appraisal. As I'll of course  
24 give you latitude in cross examination of Defendant's  
25 appraisal. So, you can certainly go ahead, Mr. Ryan, but -



1 - please go ahead.

2 MR. CLASEN: Thank you.

3 MR. RYAN: I thought I was, Your Honor.

4 THE COURT: Okay.

5 Q. Now, in your legal analysis, Mr. Taylor, you refer to  
6 a yield analysis provided by BJF Planning.

7 A. I say as reported in Mr. Gulizio's zoning analysis.

8 Q. Oh, I understand that. Did you ever see a BJF  
9 Planning Yield Analysis?

10 A. I don't believe I did, no.

11 Q. And, Mr. Gulizio's report, does it refer to BJF  
12 Planning as the source?

13 A. I'm pretty sure it does.

14 Q. Okay. Did you ever look at that or did you ever ask  
15 Mr. Gulizio what that yield analysis showed other than the  
16 numbers that he reported?

17 A. No, he's the planner and I assumed when he looked at  
18 those numbers understood where they came from.

19 Q. Okay.

20 A. It's about a 25 percent density.

21 Q. So as to those numbers, you just accepted them as  
22 reported to you by or as made apparently by BJF Planning and  
23 reported to you by Mr. Gulizio?

24 A. And based obviously on the fact that when I looked  
25 them and I look at the percentage, it seemed reasonable.

1 Q. Excuse me?

2 A. When you look at the percentage of coverage, it seemed  
3 reasonable. It's about a 25 percent coverage ratio.

4 Q. Well, it seemed reasonable in terms of what, Mr.  
5 Taylor?

6 A. Given the zoning on the property, which allowed  
7 densities of either 42 percent or 35 percent, depending upon the  
8 district you were in --

9 Q. All right.

10 A. -- to look at this and say all right this number he's  
11 indicating is about 25 percent. I assumed he's a planner, that  
12 seems like a reasonable amount of square footage based upon what  
13 the existing coverage ratios were on those properties.

14 Q. Well, it's lower than the allowed according to Mr.  
15 Gulizio, correct?

16 A. That's true.

17 Q. But it's still too high a ratio for that use,  
18 according to Mr. Gulizio.

19 A. In whose opinion?

20 Q. Excuse me?

21 A. I don't have anything in my report that indicates that  
22 it's too high.

23 Q. Well, it's found to be a yield that would not be  
24 suitable for this property in your view, right?

25 A. No.

1 Q. You have no view whether the development of  
2 approximately 3 million square feet of industrial area on this  
3 property would be unsuitable?

4 A. I'm not sure I understand your question, Mr. Ryan.

5 Q. Mr. Gulizio reported figures that he says came for BJB  
6 analysis.

7 A. Right.

8 Q. You accepted those figures, which provide for a 25  
9 percent coverage --

10 A. Correct.

11 Q. -- in considering whether or not that use was suitable  
12 for that property.

13 A. What we're looking at it is what was legally permitted  
14 on the property is what I looked at this for. That's what this  
15 is under.

16 Q. Right.

17 A. What is legally -- what would be legally permitted in  
18 their opinion. I'm doing a raw acreage valuation and we're  
19 looking at what's legally permitted on there, and the 25 percent  
20 coverage seemed to be within parameters.

21 Q. But you just indicated that Mr. Gulizio had reported  
22 that legally they could have covered more.

23 A. I didn't say that.

24 Q. I'm sorry. Perhaps I misheard you.

25 A. I think you may have.

1 Q. They analysis of Mr. Gulizio as to open space and  
2 recreation areas, do you know where that came from?

3 A. No, I do not.

4 Q. The analysis of 30,000 square of central services, do  
5 you know where that came from?

6 A. From Mr. Gulizio.

7 Q. Other than from Mr. Gulizio?

8 A. I assume he made those calculations. I have no idea  
9 unless what else.

10 Q. Well, the 30,000 square feet for central services is  
11 relative to a particular site, correct -- this site?

12 A. Yes.

13 Q. And it's relative to a particular use, right?

14 A. Correct.

15 Q. And you're indicating you don't know where the number  
16 came from, other than Mr. Gulizio?

17 MR. CLASEN: Objection, asked and answered.

18 THE COURT: Sorry?

19 MR. CLASEN: That's what he said, Your Honor.

20 It's asked and answered.

21 THE COURT: Sustained.

22 MR. RYAN: Withdrawn, Your Honor.

23 Q. And the number of parking spaces, again, you made no  
24 independent investigation of that?

25 A. No. I had an expert that did it.

1 Q. And that expert, again, was Mr. Gulizio?

2 A. Correct.

3 Q. You go on to state, Mr. Taylor, that while the yield  
4 and development scheme is legal it has been demonstrated that  
5 the development is inappropriate.

6 A. Correct.

7 Q. And who demonstrated that?

8 A. You're taking the pieces together. They don't stand  
9 out there on an individual board somewhere where you say, well,  
10 let me just look here and forget about the physical part that I  
11 looked at. I looked at the physical part first, then look at  
12 the legal part. And the legal part says this is what you could  
13 build there. But remember when you go back to the physical part  
14 it's not working because of the access issues that you have on  
15 the roadways. So again, many non-practitioners like to take  
16 this and make believe you're standing in a vacuum at each option  
17 as you go through here. This is a blended analysis highest and  
18 best use.

19 Q. I appreciate that, Mr. Taylor. But these are your  
20 words, "It has been demonstrated that this type of development  
21 is inappropriate due to physical constraints as well as the  
22 nature of the surrounding land uses and the neighborhood as a  
23 whole."

24 A. Correct.

25 Q. So even without considering the legality, you're

1 saying that the physical constraints on this parcel make the  
2 industrial development inappropriate.

3 A. The physical constraints make it inappropriate --

4 Q. Right.

5 A. -- in my opinion. Right.

6 Q. And again, that's the surrounding roads, right?

7 A. Correct.

8 Q. Okay. The surrounding land uses and neighborhood as a  
9 whole is not part of the consideration of the physical  
10 limitations on the use of this property, is it, Mr. Taylor?

11 A. It's part of the legal consideration. What's around  
12 the property is a legal consideration.

13 Q. Right.

14 A. Understand also too, Mr. Ryan, if one of these doesn't  
15 work, the highest and best use is out. It's not as if you go  
16 through -- have to go through each one. If one of them is  
17 checked off, it's done.

18 Q. Surrounding land uses and the neighborhood as a  
19 whole --

20 A. Correct.

21 Q. -- is a condition affecting this property. Does it  
22 affect the legal use that could be made of this property as it  
23 is zoned?

24 A. Hard to separate them apart from one another. It is  
25 zoned for industrial.

1 Q. So legally, it could be developed industrial --

2 A. Yes.

3 Q. -- regardless of what the neighborhood is like.

4 A. Yes.

5 Q. Regardless of what surrounding land use there is?

6 A. Yes.

7 Q. Okay. So that leaves us solely with physical  
8 constraints?

9 A. So far.

10 Q. So far.

11 A. We only have to knock one out.

12 Q. No. I understand.

13 A. If one gets eliminated, it eliminates the others.

14 Q. What you're doing here in your analysis of highest and  
15 best use is detailing the considerations that went into your  
16 conclusion?

17 A. Correct.

18 Q. Now do you have any economic analysis that would show  
19 us whether or not any industrial development here would be a  
20 financial failure?

21 A. I think you misinterpret that. It's not a financial  
22 failure. It's not a matter of failure or success financially.  
23 It's a matter of feasibility and you're measuring it against  
24 something else. It's not just a failure. It's not going to  
25 return the greatest return.

1 Q. Economically feasible is the consideration we're  
2 addressing at this point, Mr. Taylor.

3 A. Financially feasible. Yes.

4 Q. Well, I was referring to page 46, item 3 that you  
5 define as "economically feasible and fulfilling and identifiable  
6 demand in the market."

7 A. Correct.

8 Q. Okay. That's financially feasible, economically  
9 feasible. Same thing, right?

10 A. Yeah.

11 Q. And you use both terms.

12 A. Yes.

13 Q. If I use one as oppose to the other, I think we have a  
14 common ground.

15 A. You're not going to confuse me.

16 Q. Good. Do you have any study that would show that this  
17 property cannot be developed under its current zoning that so  
18 that it would not provide a reasonable return?

19 A. No. I have appraised it under its current zoning.  
20 What I'm measuring here is -- you've got a unique situation of  
21 present zoning/re-zoning. And you're looking at financially  
22 feasible and maximally productive questions. It's not that it  
23 can't give a return. It's just not giving the greatest return.

24 Q. Mr. Taylor, I know I'm not one of the brethren. I  
25 don't do this for a living. I want to pick apart your analysis



1 and that's what I'm doing, all right? We're dealing now with  
2 the feasible uses of the property, the economically, financially  
3 feasible uses of this property. Is one of those economically  
4 feasible uses of this property an industrial development?

5 A. Yes.

6 Q. Thank you. Maximally productive, though, this  
7 property has much, much higher value residentially than  
8 industrial. I think everybody agrees that, correct?

9 A. Thank you.

10 Q. If it could be done.

11 A. Yes.

12 Q. But it's not currently legal.

13 A. No.

14 Q. And there is no plan that would show what such a  
15 development would look like.

16 A. Correct.

17 Q. Now the change of zone in -- this property sits over a  
18 town line, right?

19 A. It straddles Smithtown and Brookhaven.

20 Q. Well, get to the remainder later on. I'm talking  
21 about the whole thing --

22 A. No, that's what I'm say --

23 Q. -- the 308 acres.

24 A. It straddles.

25 Q. It sits on a town line and two towns are involved,

1 right?

2 A. Correct.

3 Q. And based on your experience in the field for 36  
4 years, you know that the county's involved here too, right?

5 A. Yes.

6 Q. As a matter of fact, the county's been concerned the  
7 potential development of this site for many years and been on  
8 its website.

9 A. I'm not aware of that.

10 Q. Okay. When a property of this size is going to be  
11 developed, there has to be a full environmental consideration  
12 given to the impacts, right?

13 A. Correct.

14 Q. Regardless of what the use is going to be, every use  
15 has to be evaluated.

16 A. Correct.

17 Q. Every plan has to be evaluated.

18 A. Correct.

19 Q. Do you know whether that was ever done for this  
20 property?

21 MR. CLASEN: What was ever done?

22 MR. RYAN: An environmental review.

23 THE COURT: Mr. Clasen?

24 MR. CLASEN: I'm sorry, Your Honor. My objection  
25 what was ever done? Was there ever any -- I don't know

1 what the question was.

2 I'm sorry, Your Honor. My objection what was  
3 ever done? Was there ever any -- I don't know what the  
4 question was.

5 MR. RYAN: I'm sorry. Did you understand, Mr.  
6 Taylor?

7 THE WITNESS: No.

8 MR. RYAN: Okay. Sure.

9 Q. Do you know whether a close look at the environmental  
10 impacts of development of the entire 308 acres of this parcel  
11 was ever conducted?

12 A. I'm not aware of it.

13 Q. And in the course of your years as an appraiser, have  
14 you some familiarity with that process?

15 A. Some.

16 Q. It can take a long time, can't it?

17 A. It can take some time. I don't know about long.

18 Q. Sure. You can go in with a draft. The town can send  
19 you out to count every tree on your property that's over 4  
20 inches in diameter.

21 THE COURT: Yes, Mr. Clasen. Why are you rising?

22 MR. RYAN: Excuse me?

23 MR. CLASEN: Your Honor, my standing object is as  
24 before. This is way off anything I've asked. I know  
25 you're giving him a lot of liberty, but he didn't even give

1 an opinion on this stuff.

2 MR. RYAN: Your Honor, all of this goes to  
3 highest and best use.

4 THE COURT: Yes. Except Mr. Ryan, you a couple  
5 minutes ago ceased asking questions and were making  
6 statements about how long EIS and other such things can  
7 take. If you want to elicit that from witnesses that's  
8 fine. But quite frankly, you're making a speech. So  
9 perhaps you could try rephrasing whatever you're trying to  
10 accomplish in terms of questions for this witness.

11 We're all aware of problems with real estate in  
12 Suffolk County. If you want to bring witnesses forth to  
13 testify to the extent that it could affect this valuation  
14 proceeding, fine. But you've been for the last minute or  
15 two, anyway, testifying about it yourself and it's not what  
16 I really want to hear.

17 MR. RYAN: I did not intend to do so.

18 THE COURT: Fair enough. I realize you can get  
19 carry away. I'm just trying to bring it back into focus a  
20 little bit. I think that's what Mr. Clasen was trying to  
21 do.

22 MR. RYAN: Well, thank you both.

23 THE COURT: You're welcome.

24 Q. Are costs involved in that process, Mr. Taylor?

25 A. Yes. And I'm assuming you're speaking about the EIS,

1 the DEIS?

2 Q. Correct, the EIS process?

3 A. Yes.

4 Q. And time?

5 A. Yes.

6 Q. And in this case there are, with two municipalities,  
7 you know who gets to rule on it?

8 A. No.

9 Q. And do you know -- withdrawn. In valuing this  
10 property as zoned, Mr. Taylor, you selected -- you did so by  
11 comparable properties, correct?

12 A. Comparables of vacate, raw acreage. Yes.

13 Q. Right. And the properties that you selected were all  
14 in industrial zones?

15 A. Yes.

16 Q. The sales you selected -- Sale 1 --

17 A. Yes.

18 Q. -- what was its proposed use?

19 A. There was no proposed use.

20 Q. Referring to page 96 of your report, Mr. Taylor, under  
21 "Comments."

22 MR. CLASEN: Page 96?

23 MR. RYAN: Yes, page 96.

24 A. I stand correct, Mr. Ryan. It was purchased by  
25 Lowe's. They contemplated putting a Lowe's --

1 Q. A Lowe's.

2 A. -- in there. They've never done it.

3 Q. Right.

4 A. They didn't have the permits when they purchased it.

5 Q. Right. But the purchaser was Homes or Lowe's Home  
6 Center, right?

7 A. It was Lowe's. Yes.

8 Q. Right. That's a retail use, isn't it?

9 A. Quasi. Yes.

10 Q. Well, they sell things.

11 A. Yes, they do. Some industrial properties -- there's a  
12 vitamin place I go to down the industrial park by the airport  
13 that sells vitamins.

14 Q. Okay. Is this property, Gyrodyne's property suitable  
15 or comparable to a retail site?

16 A. I've adjusted downward for a location for it. Is it  
17 comparable? Is it the same? Would it be developed for that?

18 Q. In assessing the reasonable value of this property as  
19 zoned, you're looking at it or you're trying to look at it as  
20 the marketplace would look at it, correct --

21 A. Right.

22 Q. -- as of November 2005?

23 A. Correct.

24 Q. Would anyone; looking at Gyrodyne's property, suspect  
25 that it would have a retail use?

1           A.    Well, this property that we're looking at is adjacent  
2 to an industrial park.  Industrial development could be  
3 developed industrial the same way.

4           Q.    I'm just asking about --

5           A.    I looked at it as comparable.

6           Q.    -- Gyrodyne's property, Mr. Taylor.  I'm not asking  
7 about your comparable one.

8           A.    I think you're asking me about comparability and uses  
9 and the fact --

10          Q.    I'm asking you -- and I'll repeat it.

11          A.    Uh-huh.

12          Q.    Would anyone; looking at Gyrodyne's property, suspect  
13 that a retail use was at all feasible or potential for that  
14 site?

15                   MR. CLASEN:  Objection, Your Honor.  We're  
16 talking about any retail use for a piece of it or retail  
17 use for the entire thing.  To the best of my knowledge, no  
18 Home Depot occupies 308 acres, okay.  So are we talking  
19 about a Home Depot coming here, along with other things?

20                   MR. RYAN:  Your Honor, could we not have a  
21 speaking objection?

22                   MR. CLASEN:  Your Honor, he -- Your Honor?

23                   THE COURT:  Wait a minute.  Both of you, that's  
24 quite enough.  Mr. Clasen, please sit down.  Mr. Ryan,  
25 perhaps you could ask the question with a little bit more

1 specificity as to what type of retail use you're talking  
2 about, whether it's the 308 acres, the remainder,  
3 Smithtown, Brookhaven? I mean we have all sorts of --

4 MR. RYAN: Fine.

5 THE COURT: -- pieces and parcels here to  
6 consider. And then you can elicit whatever response you  
7 get.

8 MR. RYAN: I will ask the question with greater  
9 definition.

10 THE COURT: Thank you very much.

11 MR. RYAN: Thank you.

12 Q. Mr. Taylor, in your opinion would anyone, looking at  
13 the 308 acres that Gyrodyne owns, look at that as a potential  
14 retail development?

15 A. No.

16 Q. Now your Sale Number 1 was a sale in the marketplace  
17 of a potential retail site, correct?

18 A. It was a sale of an industrial site, Industrial 1, in  
19 the Town of Islip.

20 Q. Right. But it was bought by a retailer for the  
21 purposes of possible development of a site.

22 A. Possible without approvals, without permits.

23 Q. Understood.

24 A. It was purchased. Yes, as a purchase.

25 A. Understood. The features that would attract Lowe's to



1 this site are those features that would serve the retail use of  
2 it, correct?

3 A. Perhaps. Obviously, hasn't.

4 Q. Sale 3 is also a retail use, is it not?

5 A. Correct.

6 Q. That's a site that was developed with three Big Lot  
7 Stores, I think, you've described.

8 A. Correct.

9 Q. A Home Depot, a Kohl's, and a Wal-Mart.

10 A. Uh-huh.

11 Q. And it was bought by someone who had commitments by  
12 those stores for the construction -- a developer of a commercial  
13 retail site?

14 A. I'm not sure they had commitments from stores. I  
15 don't know that.

16 Q. But it was bought anyway for developing a commercial  
17 retail site?

18 A. It was bought as raw acreage from Honeywell.

19 Q. I understand that. Now that sale was in May of 2005.

20 A. Correct.

21 Q. Do you know when the approval for the development of  
22 that retail use was permitted?

23 A. I don't recall.

24 Q. Okay. Sale 4 is also a retail use, is it not?

25 A. Yeah. That's the old Brooklyn Poly Tech Building.

1 Yes.

2 Q. It was purchased for a shopping center?

3 A. Correct.

4 Q. Now you'll agree that no one would ever look at  
5 Brookhaven's 308 acres as a potential shopping center.

6 MR. CLASEN: I don't he meant to say Brookhaven's  
7 308 --

8 MR. RYAN: I did not. And I misspoke. Thank you  
9 very much, Mr. Clasen.

10 Q. No one would ever look at the 308 acres of Gyrodyne as  
11 a potential site for a shopping center?

12 A. No.

13 Q. Sale 6, that also was purchased for a shopping center,  
14 Tangier Outlet Center, correct? I'm sorry. I withdraw that. I  
15 misspoke. It was bought for the development of a Lowe's opposed  
16 a Tangier Outlet Center.

17 A. Potential development of a Lowe's, yes. Has again,  
18 not been developed to the current date and that property was  
19 purchased in '03.

20 Q. Right. It still hasn't received approval.

21 A. No.

22 Q. Still waiting?

23 A. Still waiting.

24 Q. Now your Sale 5 -- 4 and 5 are also retail sites,  
25 correct?

1           A.    Yeah.  Five was -- eventually, the buildings were  
2 raised and eventually, it was developed with retail.

3           Q.    As a mall, correct?

4           A.    Yeah, as an outlet mall.  Yes.

5           Q.    And Sale 4 was detailed as a shopping center with Wal-  
6 Mart.

7           A.    We've already talked about that one.

8           Q.    We've already talked about that one.  Right.  And so  
9 that leaves us Sales 2 and 7.  Sale 2 was land purchased for the  
10 development of a school, correct?

11          A.    Potential.  Yes.  It was a site that he looked at.

12          Q.    And who bought it?

13          A.    The Lake Grove School.

14          Q.    That's a public school district?

15          A.    No.  It's a --

16          Q.    Private school?

17          A.    It's a private school for the deaf, I believe.

18          Q.    I know it's getting late, but you have to keep your  
19 voice up, Mr. Taylor, or I'm not going to hear.

20          A.    It's for the deaf.

21                    THE COURT:  It's for the deaf.

22                    (Laughter.)

23                    MR. RYAN:  Thank you, Judge.

24                    THE COURT:  You'd like to visit it, wouldn't you?

25                    (Laughter.)

1 Q. And that property, although purchased around 2005,  
2 still hasn't been developed yet.

3 A. That's correct.

4 Q. Now someone looking at the Gyrodyne's 308 acres could  
5 it possibly serve as a school site?

6 A. Partially, probably yeah.

7 Q. As a matter of fact, the only industrial, non-retail,  
8 non-educational use that you've got is Sale 7, right?

9 A. It's not correct.

10 Q. What other industrial, non-retail use property --

11 A. As I indicated, the other sales were purchased as  
12 retail -- as industrial. They were more subsequently approved  
13 for retail and development. They were purchased as vacant,  
14 industrial acreage and I had vacant, industrial acreage.

15 Q. Sure. But the amount paid for them is an amount  
16 arrived at between buyer and seller, right?

17 A. Correct.

18 Q. And the amount arrived at between buyer and seller  
19 includes the anticipated -- a consideration of the anticipated  
20 use of the purchaser?

21 A. Well, I think the seller is looking at what price can  
22 I get for my property as industrial use. He's not looking  
23 around for a buyer who says, oh, there's retailer buyer. I can  
24 charge more. They're going to offer a price out on the open  
25 market and they're offering it out as vacant, industrial land on

1 the open marketplace, buyers coming in and taking advantage of  
2 the purchase.

3 Q. Okay. Now Gyrodyne's land is vacant, industrial land.

4 A. Correct.

5 Q. But it would not sell as vacant, industrial land.

6 A. Correct. And again, actually, is actually what I  
7 adjusted for is that these industrial properties had some  
8 potential in them for more intense development because of their  
9 locations and proximity to the roadways and stuff; therefore,  
10 they were purchased at a higher per-acre basis and was adjusted  
11 downward because of Gyrodyne's poor location.

12 Q. Each of these properties -- well, Sale Number 1,  
13 Mr. Taylor, is 22 acres in size?

14 A. Correct.

15 Q. And you make a size adjustment of 20 percent, correct?

16 A. Correct.

17 Q. And you indicated on your direct testimony that after  
18 60 acres there's really no sense to a size adjustment?

19 A. I don't think I said "sense." I said it eventually  
20 levels off. Yes.

21 Q. Well, what other 300-acre industrial sales did you  
22 consider --

23 A. As I indicated --

24 Q. -- during arriving at that?

25 A. As I indicated in my direct testimony, I didn't have

1 any. Wish I did. I didn't have any.

2 Q. So this leveling off is not something that's been  
3 demonstrated in the marketplace because there just aren't any  
4 sales.

5 A. It's my conclusion, based upon indications from the  
6 market. But is there a documented 300-acre sale that I have in  
7 here, unfortunately not.

8 Q. Well, when you say "indications in the marketplace,"  
9 you're talking about sales of similar-sized parcels, aren't you?

10 A. I'm talking about trends in price-per-acre and what  
11 happens with happens with price-per-acre. And it's my opinion,  
12 my conclusion that after that size that would end any further  
13 adjustment to the property.

14 Q. And I think the size you gave us was 60 acres.

15 A. That's correct.

16 Q. A size comparable to the remainder?

17 A. Correct.

18 Q. None of these industrial sales -- well, the largest of  
19 your industrial sales, Mr. Taylor, is 81 acres?

20 A. That's correct.

21 Q. And as to that one, you give the same adjustment,  
22 based on this view that you hold as the adjustment for a parcel  
23 half that size.

24 A. Correct.

25 Q. And yet, Gyrodyne's property is five times that size.

1 A. Not quite.

2 Q. Close to it?

3 A. No. That'd over 400 acres.

4 Q. Oh, I'm sorry. Four times -- you're right.

5 A. It's less than four.

6 Q. The location adjustments that you gave here for the  
7 property in River Road and Yaphank --

8 A. Yes.

9 Q. -- was a positive adjustment?

10 A. Correct.

11 Q. The Gyrodyne property had a more beneficial location  
12 for industrial uses than the property in Yaphank?

13 A. In my opinion, yes.

14 Q. And part of that location adjustment includes its  
15 access, right?

16 A. That location adjustment includes its location to the  
17 east more than anything else. It's located further to the east  
18 than the Gyrodyne property. The access adjustment is a separate  
19 adjustment that's taken care of under utility.

20 Q. All right. So the location adjustment is just because  
21 it's further east than the Town of Brookhaven?

22 A. East. And looking at major roadway, the Expressway  
23 out there, but it's still further east. Yes.

24 Q. Burman Boulevard in Calverton is also further east, is  
25 it not?

1 A. Correct.

2 Q. Is that further east than River Road in Yaphank?

3 A. Yes.

4 Q. County Road 58 in Riverhead is also further east  
5 than --

6 A. Correct.

7 Q. Yaphank, correct?

8 A. Correct.

9 Q. So eastness of itself is not what warranted the 35  
10 percent adjustment since for Calverton you give 10 percent and  
11 River Road you give them a negative 5 percent, right?

12 A. Correct.

13 Q. It's access to a major road.

14 A. It has access to the Expressway at that point, which  
15 you'd have to travel west on to get to. Yes.

16 Q. Right. Well, this site what access to a major road  
17 does it have -- by "this site," the Gyrodyne site?

18 A. None. It eventually has it. I mean if you head south  
19 here you'll eventually get to the Expressway.

20 Q. Right. And as between Gyrodyne's property and River  
21 Road neither one has access to a major road -- convenient access  
22 to a major road.

23 A. Right. And the River Road actually has a one car at a  
24 time underpass to go under to go down River Road, exiting off  
25 the property.



1 Q. Okay. And is it because of that one-car overpass or  
2 underpass that it's 35 percent negative or less valuable for  
3 industrial uses than Gyrodyne's property?

4 A. That's part of it. Yes.

5 Q. Excuse me?

6 A. That's part of it. Yes.

7 Q. Now your utility adjustment also reflects  
8 consideration of access, correct?

9 A. Access and shape. Yes.

10 Q. So both locations, in regard to these adjustments for  
11 Sale 2 then there are two adjustments that relate to access,  
12 location, and utility?

13 A. Partially.

14 Q. Each one partially refers to it?

15 A. Uh-huh.

16 Q. Do we know -- well, withdrawn. There's no way to  
17 differentiate among the considerations you gave in each category  
18 I would suppose?

19 A. Now if you asked me to parse it out, no.

20 Q. The Gyrodyne 308-acre site that you were valuing in  
21 its industrial use were you envisioning that as a single user?

22 A. No. I wouldn't think you'd get a single user. You  
23 could. I mean you could get somebody to go in there, I guess,  
24 but probably not.

25 Q. You were thinking that there would be multiple users

1 if it were ever to be used for industry.

2 A. Correct.

3 Q. Correct?

4 A. Correct. But I was appraising it as raw acreage,  
5 looking at 300 raw acres and saying somebody buying they could  
6 find one users or they could find multiple users. Yes.

7 Q. All right. Well, before they could find multiple  
8 users, it would have to be subdivided, correct?

9 A. Correct.

10 Q. It would have -- they would have to have an  
11 infrastructure that would support separate lots?

12 A. Correct.

13 Q. Did you make any adjustments for those considerations  
14 that would be in the mind of the potential purchaser?

15 A. They're built into the sales because the sales were  
16 acreage than they would if they were subdividing. It would have  
17 to go through the same process.

18 Q. Well, the sales that you've developed -- Sale 1 is a  
19 single user.

20 A. There's no user.

21 Q. Right. But it was purchased for a single use.

22 A. But it could be subdivided. It's raw acreage.

23 Q. It could be. I appreciate it --

24 A. It could be.

25 Q. -- it's --

1 A. The subject "could be."

2 Q. Right.

3 A. We're similar to similar there.

4 Q. Sale 2 as a possible school site that's a single user,  
5 isn't it?

6 A. No. Because they wouldn't necessarily need the whole  
7 site for the school. This property is 30 some odd acres, could  
8 be subdivided, school put on 5, 10 acres, the balance of it  
9 subdivide off. It's raw acreage.

10 Q. The Wal-Mart Shopping Center --

11 A. Is that the one on Number 3 you're talking about,  
12 Crooked Hill Road?

13 Q. No. That's Number 4.

14 A. Number 4?

15 Q. Number 3 is Home Depot, Kohl's and Wal-Mart.

16 A. Right. Number 4, again, 24 acres could be subdivided,  
17 was raw acreage, was permitted under the zoning code.

18 Q. But this purchase was for the development of a single  
19 shopping center?

20 A. Developed a shopping center on it. That's correct.

21 Q. And it's one shopping center. It's not being  
22 subdivided into lots so that you could have two shopping  
23 centers, correct?

24 A. That would be very unusual.

25 Q. I agree. Sale 5 is a single user, right?

1 A. Again, purchased as 81 acres, vacant industrial.

2 Q. Right.

3 A. Could have been -- they could have decided to go  
4 through a subdivision into individual industrial lots.

5 Q. They could have.

6 A. It's raw acreage. They could have. Right.

7 Q. But the purchase that you cite is to a buyer who has a  
8 single use in mind for the entire lot.

9 A. They eventually developed it for single use. Yes.

10 Q. Right.

11 A. Yes. Yes.

12 Q. And Sale 6 is intended for a single use, development  
13 of a Lowe's you told us.

14 A. Was purchased by someone who was anticipating perhaps  
15 leasing it to Lowe's. But again, the property is still vacant  
16 land, could be sold and subdivided off as raw acreage.

17 Q. Sure.

18 A. Right.

19 Q. But Gyrodyne's property -- anyone looking to purchase  
20 that would not be looking at purchasing a lot that could be made  
21 as -- how many buyers out there are there for 308 acres for a  
22 single use?

23 A. There may be a number of them if they wanted to do a  
24 corporate-type office there with a campus. I mean, you know, it  
25 could be done. That's all I'll say on that.

1 Q. It'd be pretty rare?

2 A. I don't know that it would be rare. It happens across  
3 the country where you get these corporate developments like that  
4 were you've got a user who has a corporate setting.

5 Q. But the likely purchaser here would be interested in  
6 its development potential as an industrial park?

7 A. I would think under that particular zoning --

8 Q. All right.

9 A. -- I would think yes.

10 Q. And that's what you evaluated it as, correct?

11 A. Yes.

12 Q. Anyone buying it for that use would consider those  
13 development costs necessary, correct?

14 A. I would think so. Yes. And again, reflected in raw  
15 acre prices.

16 Q. Well, the single-user site doesn't have those  
17 development costs built in?

18 A. I believe it does.

19 Q. Okay. You value the property then as if re-zoned to  
20 PDD, correct?

21 A. Correct.

22 Q. Now the only PDD use that you considered was  
23 residential.

24 A. That's what was in Mr. Gulizio's report was that it  
25 could be developed residentially with a density of three to six

1 units.

2 Q. Right. You made no separate analysis of what could or  
3 should be done --

4 A. Well, as I indicated --

5 Q. -- or what possible zones changes could be made?

6 A. As I indicated, I'm not a planning expert. I relied  
7 on experts, tempered with the fact that I've been in the  
8 business for too many years.

9 Q. Well, aside from being in the business for too many  
10 years, you made no analysis of the potential use of this  
11 property apart from its --

12 A. I did not go out and do a separate planning analysis.  
13 I looked at Mr. Gulizio's report and thought it was reasonable  
14 and accepted it.

15 Q. Okay. Now the comparables that you chose in valuing  
16 it in that zoning were all residential, although I think you  
17 were here when Mr. Gulizio testified. PDD does not necessarily  
18 mean residential.

19 A. I understand that.

20 Q. Okay. Were any of these properties zoned PDD?

21 A. No.

22 Q. All of these properties were zoned for a specific  
23 residential use?

24 A. Correct.

25 Q. All right. Did you select any mixed-use parcels?

1 A. No. And I assume by "mixed use" you're referring to  
2 commercial, residential or something along those lines.

3 Q. Well, did you look for any PDD zone properties?

4 A. I don't know that there are PDD zoned. There are  
5 applications to develop under PDD and I didn't see any. No.

6 Q. Have you heard of the Tall Grass Development?

7 A. Yes.

8 Q. That's a PDD, isn't it?

9 A. I don't recall.

10 Q. Mr. Gulizio's report indicated two properties that  
11 were PDD, did he not?

12 A. If you could refer me to a page in his report?

13 Q. Sure.

14 A. I'm there.

15 Q. We have Parchar Associates at page 15 and Laurel Hill  
16 Associates.

17 A. Yes. And actually Laurel Hill is one of my  
18 comparables -- well, part of it, the Canal Road, number 14.

19 Q. Laurel Hill is the Canal Road/Mt. Sinai --

20 A. Yes.

21 Q. -- Development?

22 A. Yes. It was developed -- that is the portion of that  
23 PDD that was sold off -- developed as senior citizen.

24 Q. So.

25 A. So technically, I misspoke.

1 Q. The entire Laurel Hill property, though, was PDD,  
2 right?

3 A. Yes.

4 Q. And this portion of it was dedicated to a senior  
5 citizen residence?

6 A. Correct.

7 Q. And you selected that portion as a comparable to a  
8 308-acre PDD development?

9 A. Correct.

10 Q. How big is the Laurel Hill Development, according to -  
11 -

12 A. Forty acres.

13 Q. No, the entire development, according to Mr. Gulizio?

14 A. He doesn't say how big it is.

15 Q. Was the 40 acres the entirety of it?

16 A. No.

17 Q. Is there a health care related facility?

18 A. I don't believe that's been developed. The housing  
19 portion of it, I believe, has been developed.

20 Q. Okay.

21 A. And I know the senior portion of it's been developed.

22 Q. You value these properties and make an adjustment or  
23 you analyze the value by units and then make an adjustment for  
24 approvals --

25 A. Correct.



1 Q. -- of between 5 and 10 percent, right?

2 A. Correct.

3 Q. Now those approvals are approvals for the plan site  
4 development or for the zoning?

5 A. The site development.

6 Q. The approval process for a site plan does that take a  
7 period of time?

8 A. I don't understand what you mean by "period."

9 Q. Sure. For a 40-acre site or -- for a 40-acre site can  
10 it take a couple of years to get site plan approval?

11 A. It could take one year. I don't know. I don't know  
12 how long it took.

13 Q. Sure. Have you, over 36 years, experienced cases that  
14 have taken longer?

15 A. Yes, and shorter.

16 Q. For 40-acre sites?

17 A. Uh-huh.

18 Q. And what about for 300-acre sites?

19 A. I'm not sure I understand your question.

20 Q. Sure. Is the planning involved or the site plan  
21 review more involved for a 300-acre site or a 40-acre site?

22 A. I think you're just looking at size. They have  
23 certain requirement processes they have to go through that are  
24 fairly similar. Do I think there'd be more involved in a 300?  
25 I'm not sure -- I mean I'm not so sure.

1 Q. Size can complicate the development of a property,  
2 though, the size of a property?

3 A. Size can matter.

4 Q. And the larger the development the more likely it is  
5 that it will matter.

6 A. Perhaps.

7 Q. You give location adjustment -- the Canal Road/Mt.  
8 Sinai is given no location adjustment, correct?

9 A. Correct.

10 Q. Is Mt. Sinai east of the Gyrodyne property?

11 A. Yes. And as I indicated, in retrospect, I could have  
12 adjusted that one upward for location.

13 Q. The Mt. Sinai address does not quite -- doesn't have  
14 quite panache of the Gyrodyne location?

15 A. Of Stony Brook and St. James, I'd say probably not.

16 Q. All of your location adjustments are upward, correct?

17 A. Yes. Subject's well located in a very nice,  
18 residential area, high values, good school districts.

19 Q. Well -- withdrawn.

20 MR. RYAN: Judge, I'm perspiring. May I have a  
21 couple minutes' break?

22 THE COURT: Well, take ten minutes to 4:15.

23 MR. RYAN: Thank you.

24 (Off the record.)

25 CONT'D CROSS-EXAMINATION

1 BY MR. RYAN:

2 Q. Mr. Taylor, referring you to page 67 of your report --

3 A. Yes.

4 Q. -- in addition to the adjustments we were just  
5 speaking about for planning -- site plan approvals, you also  
6 make an adjustment for the time and cost associated with it  
7 obtaining the change of zone to PDD, correct?

8 A. Correct.

9 Q. And you make that a 5 percent adjustment --

10 A. 5 percent?

11 Q. -- downward across the board?

12 A. Per unit. Yes.

13 Q. Now you appreciate that PDD only applies in the Town  
14 of Brookhaven, correct?

15 A. Absolutely.

16 Q. All right. Is there any difference in an adjustment  
17 between the Town of Brookhaven units and the Town of Smithtown  
18 units?

19 A. Not in my opinion, no.

20 Q. Well, did you do an analysis of what could be done  
21 under the Smithtown multiple family clustered housing units as  
22 opposed to Brookhaven's?

23 A. I'm not sure I understand what you mean by "a study."

24 Q. Sure. Was there any comparison of the density  
25 requirements allowed in Smithtown versus Brookhaven?

1 A. Mr. Gulizio took care of that in his report for me.

2 Q. All right. And gave an overall rate that he thought -  
3 - or range that he thought would be possible --

4 A. Yes.

5 Q. -- in either town?

6 A. That's correct.

7 Q. And you accepted that overall range?

8 A. Yes.

9 Q. And is that overall range and the time to achieve that  
10 -- the zoning appropriate to getting to that range that you made  
11 this 5 percent adjustment to?

12 A. That's correct.

13 Q. And where do we find in your report any discussion of  
14 how long that would take?

15 A. There isn't.

16 Q. Where would we find in your report any discussion of  
17 the likely costs that would be involved in that?

18 A. I think it's built into the 5-percent adjustment on  
19 the low side at 12,030 units. It's almost an \$8 million  
20 adjustment.

21 Q. Well, the discussion would let us know whether the  
22 amount of your adjustment is reasonable high or low, correct?

23 A. I think reasonable, as I recall, your own expert  
24 indicted it might be a million dollars or so for some of the  
25 things that were going on there. I'm looking at it and saying

1 on the low side with 12,030 units you're looking at a war chest  
2 of \$8 million to get the zoning. Now that would account for  
3 those issues that we've spoken about. I think it's sufficient.

4 Q. And no discussion of the length of time.

5 A. No, sir.

6 Q. Then you do the 90 and -- well, Mr. Gulizio came up  
7 with different ranges of probability, correct?

8 A. Mr. Gulizio did. Yes.

9 Q. Gulizio? Isn't that what I said?

10 A. You keep calling Gulizio.

11 Q. Mr. Gulizio -- thank you --

12 A. You're welcome.

13 Q. -- came up with different ranges of probability for  
14 each town --

15 A. Correct.

16 Q. -- to achieve that four to six unit density range.

17 A. Three to six units.

18 Q. Three to six.

19 A. Correct.

20 Q. Right. And to develop this entire property at that  
21 density range, though, you would need the agreement -- full  
22 agreement of both towns?

23 A. I'm not sure I understand what you mean by --

24 Q. Sure.

25 A. -- "agreement." Would they have to approve it? I'm

1 not sure I understand --

2 Q. They would have to approve it in a --

3 A. -- your question.

4 Q. Well, if Smithtown were to approve multiple family  
5 units and Brookhaven single-family units detached there would be  
6 differences, correct?

7 A. What do you mean "differences?" The units themselves  
8 would be different? Yes.

9 Q. The density, perhaps?

10 A. I'm basing it on the density of between three and six  
11 units --

12 Q. All right. Well, what --

13 A. -- based on the probabilities.

14 Q. What if Smithtown approved four and Brookhaven  
15 approved six?

16 A. That's not the way we looked at it. We looked at it  
17 as a range of from three to six units and selected four to five  
18 units as being the numbers we were dealing with.

19 Q. All right. So that three to six units would have to  
20 be within the range of acceptance of each town.

21 A. And according to Mr. Gulizio, it was. Yes.

22 Q. Well, to a degree of probability.

23 A. Yes.

24 Q. And the differences in the degree of probability  
25 reflect that each town may act, not only independently, but

1 differently.

2 A. Yes.

3 Q. But your valuation is as if both towns acted  
4 uniformly.

5 A. No.

6 Q. And how is it that you have accommodated any  
7 differences in the potential zoning action of each town?

8 A. The probabilities.

9 Q. By probability?

10 A. Correct.

11 Q. That probably adjustment to value adjusts for any  
12 differences in the approach by each town to its approval?

13 A. I'm not sure I understand that question, Mr. Ryan.  
14 I'm not sure what you're asking me.

15 Q. Sure. Well, what is the difference in probability?  
16 What's the significance of the difference in probability?

17 A. The significance is that in Brookhaven Mr. Gulizio  
18 felt strongly that the probability of approval was high. In  
19 Smithtown, although he felt the probability was high, he didn't  
20 feel it was a high as it was in Brookhaven.

21 Q. Okay. So someone coming in and wanting to build a  
22 residential community here has to present a plan, as you  
23 understand it, to both towns, correct?

24 A. For the 308 acres, yes.

25 Q. And each town would be considering what's going to be

1 done on the adjoining property.

2 A. Perhaps. Yes.

3 Q. Well, it would impact each town -- what's done in one  
4 town impacts the other town, correct?

5 A. When you say "impact" -- I'm not sure what you mean by  
6 "impacting."

7 Q. Sure. Whatever density might be granted by Brookhaven  
8 may, since it's open communication and access between the  
9 parcels and exits onto the roadways in Smithtown, would affect  
10 Smithtown.

11 A. I still don't understand by what you mean, "affect."

12 Q. Well, it would have an impact on what Smithtown did.

13 A. I don't know that.

14 Q. It could.

15 A. Anything's possible.

16 Q. Okay. The environmental review of this property  
17 before any zoning change in either town would be of the entire  
18 property, correct?

19 A. When we're looking at the 308 acres, yes.

20 Q. Right. And it would be of a plan that covers the  
21 entire property.

22 A. I would think so. Yes.

23 Q. And it would consider the environmental affects of  
24 that entire project --

25 A. Yes.



1 Q. -- on each town.

2 A. Yes.

3 Q. And each town would have to approve that review, would  
4 it not?

5 A. Unless, as Mr. Gulizio said, they did a joint board  
6 together and approved it that way.

7 Q. Well, that's each town acting through one single  
8 board, correct?

9 A. Yes.

10 Q. -- correct?

11 A. Yes.

12 Q. Either each town does it separately by reviewing the  
13 same report and coming to complete agreement or a single entity  
14 of the two town meets and considers it and votes on it?

15 A. Correct.

16 Q. So the total agreement of both towns would be needed  
17 for -- the approval of both towns --

18 MR. CLASEN: Objection, asked and answered twice  
19 already.

20 THE COURT: I'm sorry.

21 MR. CLASEN: It's been asked and answered twice.

22 THE COURT: Yes, asked and answered. Sustained.

23 Q. If you need the approval of both towns, and it has to  
24 be a uniform approval of the SEQR requirements for a zoning  
25 change to occur, how can you have a different potential for the

1 zoning?

2 A. Because he's reflecting in -- and again, this is a  
3 question Mr. Gulizio might be able to answer. It's my in my  
4 report. That was his indication of what the probabilities were.

5 Q. But you have used it. You've adopted it.

6 A. Yes.

7 Q. Okay. And you agree that there has to be a coherency  
8 between the towns to approve any change in zoning for the  
9 property?

10 A. I didn't say there had to be a coherency. You've  
11 indicated yourself one could do three. One could do five. I  
12 mean, you know, it'll get worked out in the planning discussion.  
13 And what I relied on was Mr. Gulizio's percentages to reflect  
14 the probability. That's all it is. It's just reflecting the  
15 probabilities.

16 Q. If you're reflecting a probability, though, do you  
17 have to use the lower probability for the entire project?

18 A. No.

19 Q. No? Okay. You would separate the probability for  
20 each town?

21 A. Just the way I did it.

22 Q. Okay. Thank you.

23 MR. RYAN: Nothing further.

24 A. Thank you.

25 THE COURT: What are you anticipating?

1 MR. CLASEN: I thinking maybe 15, 20 minutes.  
2 Should we give it a run?

3 THE COURT: Okay. Go ahead. But that's right  
4 against the time I have to -- I understand, you know --

5 MR. CLASEN: I'll go as fast as --

6 THE COURT: I have to shut it down after that.

7 MR. CLASEN: Okay. I'll go as fast -- Your  
8 Honor, I'll do it any way you'd like.

9 THE COURT: I'm trying to --

10 MR. CLASEN: Let me just say this, I'm not saving  
11 anything. He's coming back in here. He's going to be  
12 here. He's going to be here the whole length of the trial.

13 THE COURT: Okay.

14 MR. CLASEN: So it's not like I'm saving my  
15 witnesses of having to be back or anything like that.

16 THE COURT: Oh, fair enough.

17 MR. CLASEN: It's a different spot is what is it.

18 THE COURT: Then go ahead, but grab your  
19 microphone.

20 REDIRECT EXAMINATION

21 BY MR. CLASEN:

22 Q. We spent a fair amount of time this afternoon talking  
23 about if a retailer was the purchaser of the industrial  
24 properties you used as comparable, if that had any impact on  
25 anything, okay.

1 A. Yes.

2 Q. Does it matter who the buyer is?

3 A. No. It matters who the seller is.

4 Q. Right. "Cause the --

5 A. He is setting up the asking price.

6 Q. Right. And a buyer is not going to pay more than the  
7 property is worth either, right?

8 A. No. No.

9 Q. Now the fact that the property is suitable for retail,  
10 right, is that taken into account under your location  
11 adjustment?

12 A. Yes, because of the superior locations.

13 Q. So you've made an adjustment for that already. The  
14 property could be used for retail, right?

15 A. Correct.

16 Q. And in fact, you did that in two ways -- utility and  
17 location?

18 A. Correct.

19 Q. Okay. So you're already adjusting for the fact that  
20 this is a better located for retail, among other things, right?

21 A. It's got that potential because of its location. Yes.

22 Q. Now we also talked about -- and I wasn't sure if we  
23 were talking about single user or single use that he pointed out  
24 in the comparatives, okay. Some of them were single use and  
25 some were single users, right, that we looked at?

1 A. In regard to?

2 Q. A couple of the comparatives. One was just using one  
3 as a school. One was using one --

4 A. Right.

5 Q. -- as a Lowe's.

6 A. Correct.

7 Q. One was using it as three boxes --

8 A. Correct.

9 Q. -- which was single use, but three different users.

10 A. Correct.

11 Q. Right?

12 A. Yes.

13 Q. Does it matter if it's a single user in the sense of  
14 the purchase price that they pay for it?

15 A. No. No. I mean they're going to pay what the market  
16 is for that property. What they choose to put in there for  
17 multiple use or not is a decision that's made afterwards.  
18 They're paying a price for it. They can put three in. They  
19 could put two in and they could put one. They could put 20 in,  
20 in some cases.

21 Q. Right. But a seller doesn't get more money if he's  
22 selling it to a single user?

23 A. No. The seller normally is not aware of what the  
24 purchases is doing, nor do they care. They're asking a price  
25 based upon their anticipated value.

1 Q. Tell me about the Yaphank property.

2 A. The Yaphank property is located on River Road, as I  
3 said, in Broadway, was purchased by the Lake Grove School, has a  
4 one-lane entryway up on River Road coming into the property, is  
5 located between two exits where there is not the advantage of a  
6 service road. So you'd really have to make sure you knew where  
7 you were going to get to the property to use it. It's about 30  
8 acres of land zoned L3. And as I said, the purchaser on that  
9 was the Lake Grove School, Mr. Towee (phonetic) Brason  
10 (phonetic).

11 Q. Yeah. Vis-à-vis the subject property --

12 A. Correct.

13 Q. -- which one's closer to the Expressway?

14 A. The River Road one.

15 Q. River Road one, right?

16 A. Yeah. And how about east/west?

17 A. Subject property.

18 Q. Subject property? Okay. But you made a fairly  
19 dramatic adjustment for the location on this property.

20 A. Correct.

21 Q. Okay.

22 A. Correct.

23 Q. Saying that this property is just no -- it's -- when I  
24 say fairly dramatic, it's a negative 35 percent, right?

25 A. The subject is -- the sale is 35 percent worse --

1 Q. Plus.

2 A. -- than the subject.

3 Q. Yeah.

4 A. So it's a plus adjustment. Yes.

5 Q. Now why? Why is this so much worse?

6 A. Well, it's again the location is a difficult location  
7 to get to. You have to know where you're going with it to get  
8 there and it was considered far inferior, in my opinion, to  
9 where the subject is.

10 Q. And it's never been developed, right?

11 A. It's never been developed, no.

12 Q. Now there was mention of the Laurel Hill property, do  
13 you remember that?

14 A. Yes.

15 Q. That's the one out in Mt. Sinai?

16 A. Yes.

17 Q. And you only used part of that property --

18 A. Correct.

19 Q. -- of the total development, right?

20 A. Correct.

21 Q. Why?

22 A. That's the part that sold.

23 Q. Right. So you couldn't use the rest of it 'cause it  
24 wasn't sold, right?

25 A. Right.

1 Q. Okay, you weren't selecting out the best piece or  
2 anything?

3 A. No.

4 MR. CLASEN: This is going fast too, Your Honor.

5 THE COURT: You're doing very good, Mr. Clasen.

6 MR. CLASEN: It's nice when you've met the  
7 witnesses before.

8 THE COURT: Oh, I understand. Yes. I am wearing  
9 a stopwatch, but I don't have it on.

10 (Laughter.)

11 MR. CLASEN: No, no. I'm going to get us out of  
12 here. We have enough times to close the doors down.

13 THE COURT: I'm in no early. I was actually  
14 worried about Mr. Taylor returning. But if he's returning  
15 on Monday anyway, take your time.

16 MR. CLASEN: I only have a couple more questions  
17 actually.

18 THE COURT: Go right ahead.

19 Q. You had this overall 5 percent adjustment that you  
20 made for the time it would take to get the property re-zoned,  
21 the Gyrodyne property re-zoned --

22 A. Correct.

23 Q. -- right?

24 A. Yes.

25 Q. You mentioned an \$8 million number. How did you come



1 up with that number?

2 A. It's 6500 a unit, 5 percent considered all the factors  
3 necessary to get it, and establishing a fund of \$8 million and  
4 that's for the 12,030 units. If you went to the 1500 units,  
5 you're at \$9 million. To cover costs for filings, time, et  
6 cetera, it seems like more than a reasonable number.

7 Q. Now you also mentioned a \$1 million number you saw  
8 somewhere -- in some other report?

9 A. Oh, I think I read it -- and again, I don't remember  
10 exactly. I thought I read it in Mr. Gulob's report. There was  
11 some reference to it cost upwards of a million dollars.

12 Q. Money wise. So you \$8 million --

13 A. I think in the narrative.

14 Q. Your eight million is well in that range?

15 A. I think it is.

16 Q. Okay. Were you able to find -- we're talking about  
17 now the industrial part of this. Were you able to find any  
18 property that had sold and been zoned industrial that was more  
19 than the 80 acres?

20 A. No, sir. I wish I could have.

21 Q. There's just none out there?

22 A. No.

23 Q. But it is true you said at some point at time -- I  
24 think you used 60 acres. At some point in time, people don't  
25 pay a premium anymore, right?

1 A. Correct.

2 Q. And I'm not so sure I fully understood the basis for  
3 that opinion. Can you tell us what the basis for that opinion  
4 is?

5 A. The basis for that opinion is it's a unit basis. As  
6 you go out in size and now you have to develop -- well, let's  
7 say in an 80-acre tract and if you were doing 60 lots out of it  
8 or 50 lots out of it, it's going to take you time like it would  
9 take time for something else. There's no scale off, in my  
10 opinion, as to what happens to the price-per-unit when you get  
11 out to that size.

12 Q. Is this something you've seen over your past 30 some  
13 odd years?

14 A. Yes.

15 Q. And was that forming the basis of your opinion on  
16 this?

17 A. Yes. My experience is part of my basis for my  
18 opinions. Yes.

19 Q. Okay.

20 MR. CLASEN: No further questions, Your Honor.  
21 Thank you very much.

22 THE COURT: Re-cross?

23 MR. RYAN: Nothing further, Your Honor.

24 THE COURT: Okay. Mr. Taylor, you're excused.

25 THE WITNESS: Thank you, Your Honor.

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THE COURT: Thank you.

(Witness excused.)

MR. CLASEN: Ten minutes too, Your Honor.

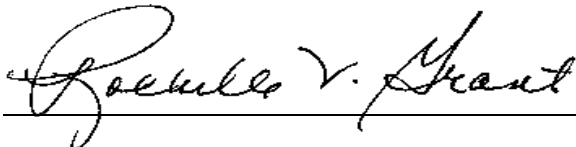
THE COURT: Less actually. Why don't we go off -  
- Susan, let's go off the record.

(Whereupon, the matter was adjourned to August  
17, 2009. This proceeding concluded at 4:38:59 p.m.)

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C E R T I F I C A T E

I, Rochelle V. Grant, certify that the foregoing transcript of the proceedings held on August 14, 2009, before the Honorable J. Lack, in the New York State Court of Claims, Hauppauge Part, in the matter of Gyrodyne Company of America, Inc. v. The State of New York, Claim Number 112279, was prepared using four-track electronic transcription equipment and is a true and accurate record of the proceedings.

A handwritten signature in cursive script that reads "Rochelle V. Grant". The signature is written in black ink and is positioned above a horizontal line.

Rochelle V. Grant

Date audio transcribed:

September 8, 2009

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