

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,

8:17:15 a.m.

Defendant.

(DAY-4)

-----x

August 18, 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.
DAVID E. ROSS, ESQ.
Robinson & Cole, LLP
Attorneys for the Claimant
855 Third Avenue, Suite 2800
New York, New York 10022-4834
(212) 451-2905

J. GARDNER RYAN, ESQ. (A.A.G.)
Attorneys for the Defendant
Andrew M. Cuomo, Attorney General
of the State of New York
Poughkeepsie Regional Office
235 Main Street
Poughkeepsie, New York 12601-3194

A SWIFT SCRIPT

201 S. Research Place, #102, Central Islip, New York 11722
(888) 866-5134 ♦ (800) 860-5722 fax

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
For the State:				
William Fitzpatrick				
By Mr. Ryan	671		727	
By Mr. Clasen		675		730
Kenneth Golub				
By Mr. Ryan	731			
By Mr. Clasen		763		

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)		
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	10
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 Management Zones and Water Supply Sensitive Area	10	10
11	Suffolk County Sewer Maps	10	10
12	Gyrodyne's Notice of Claim dated April 27, 2006, including a true and correct copy of the Acquisition Map filed by the State of New York around 11/2/05	10	10

A SWIFT SCRIPT

(888) 866-5134 ♦ (800) 860-5722 fax

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 - 6/21/04 Memo	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	Appraisal Report by American Property Counselors	260	319
I	Final Generic Environmental Impact Statement for Stony Brook Univ Research & Development Campus Stony Brook / Volume I / Date of Acceptance by lead Agency 8/23/04	257	260

A SWIFT SCRIPT

(888) 866-5134 ♦ (800) 860-5722 fax

STATE EXHIBITS

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>E.V.</u>
J	Town of Brookhaven Certification of Records		475
K	Map-Redevelopment Application of Gyrodyne		496
L	Smithtown Memorandum		
M	4 pages from Exhibit N - GYRO 00793-00796	499	
N	6/25/03 Redevelopment application of Gyrodyne submitted to Town of Smithtown	506	540
O	A binder of Kenneth Golub's Notes including his Report	735	

A SWIFT SCRIPT

(888) 866-5134 ♦ (800) 860-5722 fax

1 THE MONITOR: Hello. My name is Susan Mauro.
2 Today's date is August 18th, 2009. This is day for of the
3 Gyrodyne vs. The State of New York, Gyrodyne Company of
4 America, Inc. versus the State of New York, Claim Number
5 112279. And this is for the Honorable J. Lack, presiding.

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

8 (Off the record.)

9 THE COURT: Mr. Ryan?

10 MR. RYAN: Thank you, Your Honor.

11 THE COURT: Mr. Clasen?

12 MR. CLASEN: Your Honor, before we start, the
13 witness has got a pile of stuff on the table in front of
14 him.

15 THE COURT: Uh-huh.

16 MR. CLASEN: I mean, I think he can have his
17 report in front of him, but otherwise, if it's not in
18 evidence, he shouldn't be looking at it.

19 THE COURT: Well, unless you want to look at it.

20 MR. CLASEN: Well --

21 THE COURT: I mean, you can examine he brought up
22 and --

23 MR. CLASEN: Okay. But my understanding is, if
24 he's on the stand, he can't be looking at stuff that's not
25 -- he can look at his report, it's in evidence, but he

1 can't be looking at stuff that's not in evidence. If they
2 want him to look at it, okay, --

3 THE COURT: Well, you have the right to peruse it
4 if you want to put any into evidence, that's fine, if Mr.
5 Ryan wants to refer to any of it, it's going to go into
6 evidence.

7 MR. CLASEN: But what I --

8 THE COURT: Well, it's going to be marked in any
9 event, --

10 MR. CLASEN: What I'd like --

11 THE COURT: -- and whether or not it goes into
12 evidence, it's --

13 MR. CLASEN: What I'd like to do is take it off
14 and if he wants to peruse it, he asks him, he shows it to
15 him, he moves it. Okay. That way, yesterday for example
16 we --

17 THE COURT: Fine. If you put it on the --
18 testify the monitor, anything other than the report itself,
19 and if Mr. Ryan wants to utilize it, we'll go from there.
20 So if he needs something that Mr. Ryan asks the question,
21 we'll go from there.

22 MR. CLASEN: Yeah, I don't have a problem with
23 that, Your Honor. What I have a problem is, I don't want
24 to keep jumping up after two seconds to -- as he did
25 yesterday from time to time, to flipped and looked at a

1 book.

2 THE COURT: Oh, I'm sorry, I wasn't noticing.
3 Okay.

4 MR. CLASEN: Yeah. He looked at -- well, I know
5 which one --

6 THE COURT: Fair enough.

7 MR. CLASEN: -- particularly he was looking at,
8 so it wasn't as much of a problem.

9 THE COURT: Okay.

10 MR. CLASEN: Okay.

11 THE COURT: Mr. Ryan.

12 MR. RYAN: I was just waiting for Mr.

13 Fitzpatrick --

14 THE COURT: Yeah, I understand.

15 MR. RYAN: -- to settle himself, Your Honor.

16 W I L L I A M F I T Z P A T I C K , was recalled as a witness
17 herein after having been duly sworn and testified
18 as follows:

19 CONT'D DIRECT EXAMINATION

20 BY MR. RYAN:

21 Q. Mr. Fitzpatrick, referring you to page 15 of your
22 report.

23 A. Yes, sir.

24 Q. You've described the intersections and signalization
25 at Route 347, MaRichards (ph) and Stoneybrook (ph) and County

1 Road 97?

2 A. Yes, sir.

3 Q. That description includes an indication that these
4 signals are all coordinated. What's the significance of that?

5 THE COURT: I'm sorry?

6 Q. What is the significance of that?

7 THE COURT: Thank you.

8 A. The significance is that when you -- when a signal is
9 coordinated with adjacent signals, what it basically means is
10 that the signal does not operate independently. It's also
11 dependent upon what's happening on either side of it on the
12 intersections that occur on either side of the one that you're
13 reviewing.

14 So, therefore, when you analyze it, you must analyze
15 it as a system. If you propose certain changes to the phasing
16 or timing of one of the intersections, you have to consider its
17 impact upon the system, the coordinated system. So that's the
18 significance of it, and it's very important when you analyze it,
19 an intersection.

20 Q. How does that affect the analysis of its capacity or
21 level of service?

22 A. It will be factored into the software capacity. When
23 you're doing it, you have to input the information properly that
24 it is coordinated, and in fact, you may want to analyze the
25 adjacent intersections to see how it operates as a system.

1 The software, the synchro software will allow you to
2 analyze systems, not just isolated intersections.

3 Q. At page 29 of your report, Mr. Fitzpatrick, you've
4 described the trip generation that you determined for a full
5 build-out of the 313 acre Gyrodyne parcel, under the proposal
6 that had been made by Gyrodyne in 2003, right?

7 A. Yes, sir.

8 Q. And what were those trip generation that you had
9 determined would arise with the development of 336 single family
10 units on a golf course?

11 A. Well, using the IT manual, I -- for the 336 units and
12 the 18-hole golf course, the generation is enumerated for the
13 AM, both the entering and exit; entering is 96 vehicles, exiting
14 is 196. PM, entering is 237 and exiting is 152, and that's a
15 combination. Those numbers reflect a combination of the golf
16 course generation and the single family homes. And it's coming
17 from the IT manual.

18 Q. And how do those numbers compare to the generation
19 that you considered for a development of 150 units, living
20 units?

21 MR. CLASEN: Pardon me?

22 Q. Or 1,500 living units.

23 THE COURT: I'm sorry. Oh, 1,500?

24 MR. RYAN: I'll withdraw. 1,500, I misspoke.

25 MR. CLASEN: Your Honor, he never did that.

1 MR. RYAN: Your Honor, he does that at page --

2 MR. CLASEN: He gives him -- he just says --

3 MR. RYAN: -- 33 of his -- the bottom of page 33
4 of his report.

5 THE COURT: Well, the last sentence where he
6 says, will be far greater?

7 MR. RYAN: Yes.

8 MR. CLASEN: That's all he says, Your Honor. If
9 he wants to say far greater again, but if he starts getting
10 into numbers, that's not in his report.

11 MR. RYAN: Your Honor, we have -- don't have an
12 answer to be objected to. We don't have a question to be
13 objected to. He comments on it.

14 THE COURT: All right. Mr. Ryan, therefore, just
15 go on until you hear me make a ruling. Fair enough?

16 MR. RYAN: Fine, sure. I apologize. I do
17 apologize.

18 THE COURT: No, go ahead.

19 A. The greater the density, the greater the impact. So
20 the more units you have, the more impact is going to be on the
21 infrastructure, both the intersections and the roadways, and the
22 safety issues.

23 Q. And your conclusion was that there can be no
24 mitigation of the impacts from 336 units provided on this
25 property?

1 A. I have not -- looking at the intersections and -- I
2 agree that number of units would be problematic to mitigate, or
3 anything greater than that.

4 MR. RYAN: Thank you, nothing further.

5 THE COURT: Mr. Clasen?

6 MR. CLASEN: Yes, Your Honor.

7 MR. RYAN: If I may, just in anticipation, I'll
8 move around.

9 MR. CLASEN: May I proceed?

10 THE COURT: You may.

11 MR. CLASEN: Thank you.

12 CROSS EXAMINATION

13 BY MR. CLASEN:

14 Q. Good morning, Mr. Fitzpatrick.

15 A. Good morning, sir.

16 Q. First of all, when did you start working on this
17 traffic study?

18 A. I believe it was some time in 2007.

19 Q. 2007, okay. Now, what I'd like to do is walk you
20 through your report. Do you have that in front of you?

21 A. Yes, sir.

22 Q. So we can figure out what you did do.

23 A. Uh-huh.

24 Q. Okay. Now, the first -- and again, I'm going to skip
25 the summaries and backgrounds and everything else, because the

1 first step you actually take is in chapter three, right, page
2 11?

3 A. Well, the first step in my assessment, no, because the
4 background is very important --

5 Q. Okay.

6 A. -- to the assessment.

7 Q. Well, when we're dealing with the background, did you
8 understand -- strike that.

9 When you did your report, did you look at Mr.
10 Gulizio's report before you did it?

11 A. I believe I glanced through it. I did not digest it.
12 It wasn't --

13 Q. Okay.

14 A. The numbers that I were -- was using at the time I did
15 this report, were based on another document.

16 Q. Okay. What other document?

17 A. It was the proposal of Gyrodyne for the entire
18 property of 336 luxury single family homes and an 18-hole golf
19 course, and that's what I made the comparison to the SUNY data,
20 but is that --

21 Q. We're going to walk all through that, but what
22 document are you looking at? You looked at the golf course
23 proposal, that's what you're saying?

24 A. Yes.

25 Q. Okay.

1 A. The only thing I had there was the application which
2 delineated what it was going to be.

3 Q. Well, are you aware of the fact that there was a
4 suggestion certainly in Mr. Gulizio's report that the entire 300
5 acres could be developed for residential between the three to
6 six per unit per acre density?

7 A. Yes.

8 Q. Okay.

9 A. And I addressed that at the report --

10 Q. Okay.

11 A. -- at the end of the report. It would not have made a
12 difference. All I was --

13 Q. I didn't ask you yet if it makes a difference, okay,
14 but you'll have a chance, okay. Because I do want you to
15 explain, but I want you to first of all, I want to define the
16 Gyrodyne scenario as being that proposed by Mr. Guilizio in his
17 report. Okay?

18 A. I'm sorry?

19 Q. Okay. When I use the word Gyrodyne scenario, --

20 A. Uh-huh.

21 Q. -- I'm talking about the build-up for residential,
22 that is mentioned in Mr. Gulizio's report. And did you actually
23 see Mr. Taylor's report, or appraisal?

24 A. Yes, I did.

25 Q. Okay. And you saw his second scenario, which was a

1 build-out for residential purposes?

2 A. I don't recall what it was. The only reference and
3 recollection I have is what's in my report at the end.

4 Q. Okay. I want you to -- then let me -- I'm referring
5 to those two reports, but I'll simplify. The Gyrodyne scenario
6 is that the property is going to be rezoned, and it's going to
7 be developed for residential at a three to six unit per acre
8 density, okay.

9 A. Yes, sir.

10 Q. So when I use that, that's what I'm talking about.

11 A. Fine.

12 Q. Okay. Now, in 3.0, what you examined at this point in
13 time is the existing traffic conditions in 2004, right?

14 A. Taken from the SUNY final generic EIS.

15 Q. Okay. But that's -- we're talking about 2004, right?

16 A. The existing for that document was 2004.

17 Q. And what was existing at that point in time was the
18 Gyrodyne property consisted of some industrial use at that point
19 in time?

20 A. Yes, sir.

21 Q. So the numbers for the traffic generation for
22 Gyrodyne's industrial use are included in the 2004 numbers that
23 you're looking at?

24 A. That's correct.

25 Q. Okay. Now, the 2004 numbers that you're looking at,

1 they go from page 11 to 19, right?

2 A. Yes, sir.

3 Q. Okay. What we have on pages 11 to 19, that's a
4 scenario where as of 2004, the property -- Gyrodyne's property's
5 merely being used for industrial purposes as it was being used
6 in those days, right?

7 A. Yes.

8 Q. Okay. That's not the Gyrodyne scenario, obviously,
9 right?

10 A. That's not the build scenario. That's the --

11 Q. Wait.

12 A. -- existing scenario.

13 Q. We have -- let me step back, because I don't want to
14 have to keep doing this. The Gyrodyne scenario is a defined
15 term, okay? It's defined as Gyrodyne building out the property
16 for residential purposes at a density of three to six units per
17 acre.

18 So when I use the Gyrodyne scenario, that's what I'm
19 saying, okay?

20 A. I understand.

21 Q. Okay. The analysis on page 11 to 19, that doesn't --

22 MR. RYAN: Your Honor --

23 THE COURT: Mr. Ryan.

24 MR. RYAN: If I may object to that definition.

25 It's going to have to reference particular times.

1 MR. CLASEN: I stand corrected.

2 Q. That's -- the Gyrodyne scenario is as of November
3 2005, the property is built out at -- for residential purposes
4 at a density to three to five units per acre, okay?

5 MR. RYAN: If I may, Your Honor, that is not
6 true. That scenario never existed.

7 THE COURT: Excuse me?

8 MR. RYAN: There was never a build-out in 2005 of
9 1,500 homes.

10 THE COURT: Well, that's the assumption.

11 MR. RYAN: It's an assumption -- well, it never
12 existed, how --

13 THE COURT: Well, none of this ever existed. I
14 mean, what's the news about that?

15 MR. RYAN: No, Your Honor, the industrial use
16 does --

17 THE COURT: Neither does 327 luxury townhouses
18 and a golf course. I mean, you know.

19 MR. RYAN: But industrial use does exist.

20 THE COURT: Fine. Industrial use does exist, but
21 there is a proposed scenario as of November 2005 of three
22 to six units per acre of a build-out of 900 to 1,500 total
23 units, and this is about a traffic report --

24 MR. RYAN: Right.

25 THE COURT: -- assuming that that existed.

1 MR. RYAN: All right.

2 THE COURT: And I grant you then, this is August
3 2009, but that's not what we're talking about.

4 MR. RYAN: No, Your Honor, I just want the record
5 clear, that each of these questions then is a hypothetical.

6 MR. CLASEN: Well --

7 THE COURT: Of course it's a hypothetical.

8 MR. RYAN: I just wanted it clear.

9 THE COURT: Fine. Mr. Ryan, and it's a
10 hypothetical, Mr. Clasen has chosen to use the term of this
11 scenario, the Gyrodyne scenario for this. You could use
12 1,500 build-out too or anything else, but that's what he's
13 referring to.

14 MR. RYAN: Right.

15 THE COURT: Based on the report of his expert,
16 which made those assumptions, as a hypothetical.

17 MR. RYAN: Right. I understand, Your Honor, I
18 just want the questions to indicate that they are
19 hypothetical when being asked.

20 THE COURT: I'm sorry, Mr. Ryan, but I've assumed
21 since this is the fourth day of trial, everything we're
22 talking about, except for the current industrial use has
23 been a hypothetical.

24 MR. RYAN: Thank you.

25 THE COURT: You're welcome.

1 MR. CLASEN: Actually, not everything's a
2 hypothetical, Your Honor, here. Because although I said --
3 we're looking at what he actually did here. Okay. On
4 pages 11 to 19, and 11 to 19 does not actually, not even
5 hypothetically, does not actually analyze the Gyrodyne
6 scenario.

7 Q. Isn't that correct?

8 A. As you defined it, yes.

9 Q. Okay. And have you seen the highest and best use that
10 was proposed by Mr. Golub in his appraisal?

11 A. I may have perused it, but I don't recall what it was.

12 Q. I want you to assume it involves the building of an
13 industrial park. Does your analysis on pages 11 to 19, does
14 that analyze the trafficked impact, if any, on the building of
15 an industrial park of 256 plus acres?

16 A. No, it only defines the existing conditions at that
17 point in time, 2004. That's all those pages do, and it's a
18 repeat of what the SUNY document presented.

19 Q. Okay.

20 A. This is simply a comparison, that's all.

21 Q. Okay. Now, let's take the next thing you did. That
22 starts on page 20, right? And what you do from pages 20 to 27
23 of your report, right, is you then make certain projections as
24 of 2007; is that correct?

25 A. What it does, it takes the 2004 set of conditions, and

1 it projects it using a growth rate, other projects, to the year
2 2007 without the SUNY build condition. So it follows --

3 Q. All you've done now is you've --

4 A. It follows the IT manual's standard procedure for
5 projecting existing to the no-build year.

6 Q. Just so I know where we are here. You have the 2004,
7 you just took SUNY's numbers, right?

8 A. Yes. I adopted SUNY's numbers. It's very clear in
9 here, I say that over and over.

10 Q. And then you applied a growth rate and got us to 2007
11 from 2004, right?

12 A. Well, SUNY -- the SUNY document applied a growth rate
13 and surcharges, specific project surcharges to the background
14 traffic, which takes it up to the no-build year or the design
15 year, or the year -- the horizon year, they call it.

16 Q. Of the SUNY?

17 A. Of the SUNY proposal.

18 Q. Okay. So what you did was, you just -- essentially
19 you've just taken SUNY's proposal again and telling us what it
20 says as of 2007, right?

21 A. Yes. Essentially and then the report is an assessment
22 of what else the infrastructure could handle, and if it could
23 handle that, too, the SUNY.

24 Q. Let me -- let's -- you're jumping ahead of me. I'm
25 just doing --

1 A. I'm sorry.

2 Q. -- the pages here. We're just -- right now what
3 you've done is bring us up to 2007, right?

4 A. Yes.

5 Q. You still don't have anything built other than the
6 Gyrodyne's still using the property for industrial purposes.

7 A. That's what we have done then, apparently.

8 Q. Right. So this 27 -- 2007 analysis is, other than --
9 well, strike that.

10 The 2007 analysis, you've just taken us from 2004 to
11 2007, right?

12 A. Correct.

13 Q. You've assumed that the Gyrodyne's property is not
14 being used for any purposes at any of the appraiser's side, but
15 they're still being used for the industrial seven buildings that
16 were being used.

17 A. The existing.

18 Q. The existing, right, okay. And you also -- well, SUNY
19 made some tweaks and you've accepted those tweaks, right?

20 A. Well, we'd have to talk about those tweaks. I'm not
21 sure what you're referring to.

22 Q. I'm referring to the items, I assume, on page 20 to
23 21. You talk about some other projects occurring.

24 A. Well, the proper methodology, according to the IT
25 doctrine of how to do a report, is to not only put in the

1 background growth rate, okay, but also to recognize two other
2 things. One are any other projects that are before various
3 boards, and also any local conditions that might be appropriate
4 that would increase the growth.

5 Q. Okay. And you -- these three items that we've got
6 listed here, you got these projections from the SUNY report done
7 in 2004, right?

8 A. Projections. This information came from the SUNY
9 report.

10 Q. And the adjustments that you're making here are the
11 adjustments that SUNY made in 2004 for what it expected in 2004
12 to occur in 2007?

13 A. Yes.

14 Q. Okay.

15 A. It would've been in concert with the municipality,
16 because there's a conversation that goes on, what do you want me
17 to include in the report, what projects do you want me to
18 include besides my own proposal. That's how that usually works.
19 So that would come from a municipality.

20 Q. Now, you did your report, though, in 2009, right?

21 A. I believe so. 2008.

22 Q. Okay. When you did your report in 2008, you knew
23 indeed because it was in 2008, whether or not any of these items
24 that are referred to on pages 20 to 21 actually occurred, as of
25 2007, right?

1 A. That was not the intent here. The intent was to
2 utilize the SUNY information and then compare any other
3 development to that, and look at the infrastructure, both at an
4 existing, at a no-build and a build, and make an assessment of
5 whether the infrastructure -- remember, my charge was to find
6 out if the infrastructure evaluated to find out what it could
7 take, how it existed, and operated today, and how it would in
8 the future, given all different sorts of scenarios. That's all
9 this report is meant to do.

10 There may have been other projects that by 2008 were
11 actually underway that could have been in there. It's --
12 there's an infinite number of possibilities. All you can do is
13 at a certain point in time, use that point in time and do your
14 analysis.

15 Q. Okay.

16 A. There may be changes. Maybe things not happening.
17 Maybe they haven't happened by that time by, in this case 2007,
18 and maybe they will happen later. Or maybe there are other
19 things that have replaced that specific project. It's -- you
20 can't keep changing things.

21 Q. But the numbers that you're giving us are for 2007,
22 right? Those numbers are numbers -- those aren't the actual
23 numbers for 2007, because you never really looked at what
24 happened here, did you?

25 A. I never looked at what -- did I do counts in 2007, is

1 that --

2 Q. Yeah.

3 A. -- what you're asking me?

4 Q. You took the projected -- two things. You took the
5 projected growth rate that SUNY used in 2004, and used that to
6 calculate your 2007 number, right?

7 A. I didn't do it. I adopted what they did.

8 Q. Right. But in 2008, when you're doing your report,
9 you knew exactly what the growth rate really was during this
10 period.

11 A. It doesn't matter --

12 Q. Okay. Okay. Now, let me -- the other thing is, you
13 also took what SUNY had in its report, was adjustments they made
14 for three things that they anticipated happening, right?

15 A. As I said before, it wouldn't be their call, it would
16 be the municipality's call, as to what the municipality wants
17 them to include.

18 Q. Right. But it was your call when you're building the
19 2007 scenario to accept their projections as to the impact on
20 traffic on three things that they said were going to happen, and
21 you did accept it, their projections.

22 A. I accepted what they had in their report for the
23 parameters that were in that report and their results in 2007.
24 I did not do the analysis. I adopted the analysis and made an
25 assessment based on existing conditions that I saw for myself,

1 okay, when I was there, and what was in this report, and
2 anything else that may come down the pike.

3 Q. Well --

4 A. Whether it's 436 at this one or whether it's 1,500 or
5 whether there's some density between three and six, or it's
6 industrial, whatever it is.

7 Q. Let me ask you this, the pages we're looking at here,
8 20 to 28, okay, any of the numbers contained in there based on
9 any analysis you made other than what you got out of the SUNY
10 report.

11 A. The numbers, no.

12 Q. Right.

13 A. Is that -- you said through 28?

14 Q. Up to 28.

15 A. Up to 28, yeah, correct.

16 Q. Up to 28. Now, the analysis for 2007 traffic
17 conditions that you make here, right, is that an analysis in any
18 way of the Gyrodyne scenario?

19 A. As you defined it? No.

20 Q. Okay. Is it an analysis of what Mr. Taylor appraised,
21 you saw his appraisal?

22 A. Those pages, no. Afterwards, yes.

23 Q. Okay. Is it an analysis what Mr. Golub appraised?

24 A. I don't remember the details of those reports.

25 Q. Were you here for Mr. Grover's testimony?

1 A. Yes.

2 MR. CLASEN: Your Honor, one second.

3 Q. Mr. Grover's report on page 24 says, the most likely
4 result of this whole process of rezoning, I'm paraphrasing that
5 part, would be the approval of a plan with low density, light
6 industrial, or mixed use that preserves open space, and
7 minimizes traffic degeneration.

8 Does your 2007 numbers that we're looking at, does
9 that take into account the traffic impact for any one of those
10 two scenarios that I just mentioned to you?

11 A. It takes into account, as I said before, any possible
12 scenario. It doesn't -- you know, it can be from one to six
13 density. It could be industrial. Yes, it's --

14 Q. Let me rephrase.

15 A. -- just sets background.

16 Q. It's -- right. This 2007 isn't analyzing anything,
17 it's setting a background for something to use later, right?

18 A. It's a basis for a comparison, that's all.

19 Q. Okay. Okay. But it's not analyzing any of the
20 alternatives yet that have been proposed by anybody?

21 A. Well, those alternatives have changed over time. At
22 the time my report was done, there were multiple alternatives,
23 and I think Mr. Grover correctly stated yesterday that there
24 will be alternatives analyzed, demanded to be analyzed by the
25 municipalities.

1 Q. Okay. Let's move to the next step that you took,
2 okay. That starts on page 28, right, and goes to page -- not
3 including, but goes to page 33. So it's through 32.

4 A. Yes, sir.

5 Q. Now, exclude -- I just want you to exclude the trip
6 generation chart on page 29, okay, which -- okay. But what
7 these pages are dealing with is you're evaluating SUNY's
8 proposal to build something on the property it was taking,
9 right?

10 A. I'm not evaluating. I am reporting. I am assessing
11 what they said, and then using it as a basis for other things.

12 Q. Okay. What were you assessing? What was Stoney Brook
13 (ph) doing -- going to contemplate on doing the property that
14 you're using here to come up with your results?

15 A. These results are the SUNY results. What I was doing
16 was assessing, using their results as a basis, and assessing
17 what any other development would cause to the infrastructure,
18 what effect it would have on the infrastructure.

19 And so what I did here, basically, was to look at the
20 existing conditions, research the history of the infrastructure,
21 research the history of the property, so I would have an
22 understanding of the character of the roadways, of the
23 community, thoughts on the roadways and the intersections.

24 It's just not the SUNY data, it's a compilation of all
25 my research as to how these intersections and roadways operate.

1 Q. Let's stay with me now. I'm trying to do this step-
2 by-step-by-step, okay?

3 A. I'm trying to help you.

4 Q. Okay. I appreciate that. And this next step you're
5 doing, you're look -- you're analyzing something that SUNY's
6 going to be doing on the property, right?

7 A. Yes, sir.

8 Q. What was SUNY going to do on the property that you're
9 looking at, at this point in time?

10 A. The only thing included here is the first stage or
11 phase of their research and development park and it was one
12 building that was going to be done in 2007.

13 Q. Okay.

14 A. And the overall plan called, I believe, for ten
15 buildings, and this was the first one.

16 Q. So you're looking at the traffic impact for them
17 putting one building on the property, right?

18 A. Correct.

19 Q. Okay. Now, just so we're all clear, and this is
20 something you're looking at in 2007?

21 A. Well, that's what the SUNY document -- that was the
22 build year, that was the design year. You must go out to the
23 build year and that's the year, in theory, that you've taken all
24 the background information, pulled it up to that year, okay, and
25 then you apply whatever's going to be operating in that year, so

1 that you can actually get an accurate representation of the
2 impact in the build year.

3 Q. What we're looking at here then is you looking at SUNY
4 building one building as of 2007.

5 A. That was the first stage, yes.

6 Q. Right. And that's what these pages are dealing with,
7 except for that one little chart we'll get to in a minute?

8 A. Oh, even part of that chart deals with that.

9 Q. Okay. Now, that's -- by the way, that's not the
10 Gyrodyne scenario at all, right?

11 A. As you defined it, no.

12 Q. Right. It's not what Golub said was Eisen's (ph) best
13 use, is it either, right?

14 A. It's not any of the other alternatives.

15 Q. Right.

16 A. It's this alternative.

17 Q. All right. Now, it's this alternative in 2007, not
18 2005, right?

19 A. Well, you have to, as I said before, in order to
20 analyze the build year, you have to take it to the build year,
21 the design year. And that building was supposed to be in
22 operation in 2007. All right. So that's -- they correctly took
23 everything out to 2007. They didn't pretend that it was
24 operating at a prior year. They couldn't do that.

25 Q. Now, your analysis in these pages here regarding what

1 SUNY's doing, assumes they built a connector road, right?

2 A. It assumes that at that point in time, they built a
3 connector road, yes, from their property across Stoney Brook.

4 Q. So the --

5 A. And a connect -- I'm sorry, a connector, what they're
6 talking about is an overpass or underpass.

7 Q. And indeed, if we look at page 30 to 31, you have some
8 italicized stuff starting on the bottom, and going to the top,
9 that's all coming out of the SUNY report, right?

10 A. Yes. Practically everything here comes out of the
11 SUNY report.

12 Q. Right. So what you're doing here, is you're telling
13 us what SUNY said back in 2004 it believed was going to happen
14 to the property, if it took it, built this one building and
15 built a connector, right?

16 A. Excuse me. That is correct.

17 Q. Okay. Now, first of all, did SUNY build a connector?

18 A. No. It indicated the connector would be built when
19 this first building begin to operate.

20 Q. Do you know if SUNY's said they're not going to build
21 a connector?

22 A. I have no idea whether it's going to be built, or it's
23 not going to built, or when it's going to be built?

24 MR. CLASEN: Your Honor, may I show him Exhibit

25 7?

1 THE COURT: You may.

2 A. Thank you.

3 Q. Mr. Fitzpatrick, I'd like to show you what's been
4 marked as Exhibit 7.

5 A. Yes, sir.

6 Q. A flyer that was sent out by Stoney Brook. And if you
7 take a look at the bottom of the first page on the right-hand
8 side, under the question, "Does the university plan to build a
9 bridge or underpass connecting its campuses." Do you see that?

10 A. Yes, I do.

11 Q. And then it goes on to say, "There are no plans to
12 connect the two campuses at this time. The town has said it
13 does not believe that the construction and operation of this ED
14 C-E-W-I-T will impact traffic enough to require a connection
15 between the two campuses." Do you see that?

16 A. I see that.

17 Q. Now, if you had known that SUNY was ultimately going
18 to conclude that they didn't have to build the road because the
19 impact of what they were doing wouldn't have any serious impact,
20 would that have changed your conclusions on the pages we're
21 looking at?

22 MR. RYAN: Objection, Your Honor. The statement
23 made is that the town does not feel it necessary.

24 MR. CLASEN: It said the university doesn't have
25 any plan to do it.

1 THE COURT: Overruled.

2 A. No. Because even the statement says that not at this
3 time, and there's only one building in operation. Looking at
4 the conditions out there, the overpass is going to be necessary
5 or underpass, some connector is going to be necessary, unless
6 you're going to overwhelm Stoney Brook road.

7 Q. Okay.

8 A. So, no, it would not have had an impact in my report.

9 Q. So let me see if I've got what we've got here, okay.
10 On pages 28 through 32, what you've done here is now you've told
11 us about what Stoney Brook projected in 2004 would happen if it
12 built one building on the property, which was completed as of
13 2007, right?

14 A. Correct.

15 Q. And you -- in your conclusions here, you're assuming a
16 connector road got built, right?

17 A. Yes.

18 Q. Yes, of course.

19 A. Assuming that the connector road would be built upon
20 completion of that first building.

21 Q. And I take it you're also assuming that the Gyrodyne
22 property is being used for something at that point in time?

23 A. You mean the existing industrial?

24 Q. I mean the -- right now, SUNY has -- in SUNY's
25 projections on the -- what you're looking at now, they've taken

1 some of the property, right?

2 A. That's what they're building on, yes.

3 Q. Right. So what wasn't taken, what are you assuming is
4 happening here?

5 A. Right now, there's no specific in this report, in the
6 SUNY report, there was no specific use, if you're talking about
7 the remainder. The remainder was not developed. If the
8 remainder is developed, there's going to be more traffic.

9 Q. Well, are you assuming -- and when you're looking at
10 this, you took this right out of SUNY, do you know if SUNY was
11 contemplating that the Gyrodyne property, the remainder was
12 still being used as industrial at that point?

13 A. Well, yes. See, those are the existing conditions,
14 and we've talked about the two factors being the background
15 growth rate and then specific projects that the towns, town or
16 towns wanted included in the SUNY report. And I don't see
17 anything about the remainder. So the remainder is still being
18 used as it has been for years.

19 Q. Okay. So what we've got set up here now, because
20 you're going to use this to compare something, so I want to make
21 sure we know what we're comparing. You've got the property in
22 2007, one building being built by Stoney Brook, okay, the
23 property's still being used for -- the remaining Gyrodyne
24 property is still being used for industrial purposes, okay, and
25 a connector road being built, as well as three things that

1 Stoney Brook contemplated, projects that they've contemplated in
2 2004 would occur in 2007, but you don't know if they really
3 occur, right?

4 A. No, but I'd have to say that you keep referring to
5 Stoney Brook. I keep saying to you that those additional
6 surcharges would've been at the behest of the towns.

7 Q. Now, what we just identified is -- in these pages
8 right now, is that the Gyrodyne scenario?

9 A. Is this the same question you've asked me two or three
10 times, this is your scenario? No, it's not. That -- your
11 scenario's not in here.

12 Q. Not my scenario, it's the Gyrodyne scenario, I've
13 defined it.

14 A. Well, I meant that. I meant as you defined it.

15 Q. Okay. So this is not the Gyrodyne scenario. Is it
16 the scenario that anybody looked at here as the highest and best
17 possible use?

18 A. That has no relevance to me. What I was doing here --

19 Q. So the answer is no, right, it's not? This scenario -
20 -

21 MR. RYAN: Objection, Your Honor. The witness
22 was in the middle of an answer.

23 MR. CLASEN: I apologize, Your Honor.

24 Q. Please continue.

25 A. That has no relevance to me. What I was attempting to

1 do was evaluate the infrastructure. And so I utilized what was
2 available to me. The first thing was to look at the
3 intersections, understand what was going on and observe them.
4 That's very important.

5 The second thing is to take manual counts that are
6 available, and they were available with this SUNY and capacity,
7 and understand what was happening in 2004, since I wasn't there
8 in 2004.

9 The SUNY document enabled me to do that, all right.
10 And then when I saw the intersections and I looked at the
11 results of the SUNY document, I said, yes, this -- that's what
12 it looks like, okay. So then the idea was, well, how much more
13 can it take, how much more can the infrastructure take without
14 mitigation and with mitigation.

15 And so then the proposal that had been done for the
16 entirety of the property by Gyrodyne I had a proposal 336 units
17 plus a golf course. So I said, well, that's a reasonable way to
18 compare --

19 THE COURT: Excuse me. Can we take a two-minute
20 break, please?

21 MR. CLASEN: Can I just throw in an objection so
22 I don't forget, Your Honor?

23 THE COURT: I'm sorry?

24 MR. CLASEN: I move to strike all that. That
25 wasn't responsive to the question. The question was -- is

1 this --

2 THE COURT: It'll be stricken.

3 MR. CLASEN: Okay. Thank you.

4 (Off record.)

5 (On record.)

6 MR. CLASEN: May I continue, Your Honor?

7 THE COURT: You may continue. Sorry for the
8 interruption.

9 MR. CLASEN: No problem.

10 Q. Let me try again.

11 A. Okay.

12 Q. We've just been talking about the analysis you made on
13 pages -- pardon me, 20 through 32, where you're talking about
14 what SUNY was contemplating in 2004 doing in 2007, right?

15 A. Yes.

16 Q. Okay. And that scenario that we're now looking at,
17 right, that's not the scenario that was looked at by any of the
18 appraisers or Mr. Grover; isn't that correct?

19 A. Correct.

20 Q. So you're not analyzing the impact of any of those in
21 this scenario at this point in time?

22 A. Correct.

23 Q. Okay.

24 A. I make reference to density.

25 Q. Right.

1 A. Or not in those pages, I'm sorry.

2 Q. Right. Not in those pages. In these pages, what you
3 do mention a little bit about the golf community that was
4 proposed, right?

5 A. Well, I just indicate that was proposed.

6 Q. Right. That's on page 29, you talk about some
7 additional trips that you're anticipating happening under the
8 Stoney Brook proposal and the golf community, right?

9 A. Yes.

10 Q. Page 29, right?

11 A. Yes, the chart.

12 Q. Now, where are you getting these numbers for the golf
13 community?

14 A. That was from the IT manual.

15 THE COURT: Excuse me, would you repeat that?

16 THE WITNESS: The IT manual. They breakdown, as
17 we already know trip rates for various land uses. And so
18 for a single family homes, they have a trip rate, and then
19 for an 18-hole golf course, they have a trip rate. And
20 these numbers that are shown in the bottom of that table
21 are the trip rates for those two land uses combined.

22 Q. And do we still have in here somewhere the continued
23 industrial use of some of the buildings on the Gyrodyne
24 property?

25 A. Yes, that's in the existing set of conditions. That's

1 existing. That's counted and is already there.

2 Q. Now, these trips that you're forecasting here for the
3 -- assuming the golf community was developed, right, what year
4 are we talking about?

5 A. That would be any time from 2007 and beyond into the
6 future.

7 Q. So the numbers we've got on page 29 for the golf
8 community, those are numbers that you're anticipating would
9 occur if the golf community was built as of 2007?

10 A. No, any time after 2007. What this -- what the
11 document here has done is taken a SUNY information, and they
12 correctly went from the existing to the no-build and then the
13 build, and their build was 2007.

14 So we indicated what the impact would be from that
15 build scenario. And then basically all I'm saying is that the
16 only other proposal that we have that was for the entirety of
17 the site was this 337 homes, a golf course, and I just made a
18 comparison that that would generate more than double, in the
19 peak hours, adding the a.m. in the p.m. together, it would more
20 than double what was proposed for the first building of the
21 SUNY, and I knew what the first building of the SUNY did to the
22 roadways, and obviously, if you double the generation, those
23 roadways are not going to get better, they're going to get
24 worse.

25 And that's all this report was supposed to do, is make

1 an assessment, evaluate the existing, and make certain
2 conclusions based on that.

3 Q. Okay. How much of these additional trips are -- that
4 you're having on page 29 relate to the uses of a golf course?

5 A. If I may refer to my -- some of the documents, I have
6 the print-out from the ITE generation. It's minor. It's
7 probably -- well, the trip rate for the homes are about -- it's
8 about one, so if you have 336 homes, you're going to have about
9 one vehicle during the peak hour, so it'll be about -- well,
10 actually it's a little less in the a.m.

11 But if you want me to give you specifics, if I could
12 refer to my notes, I could give you that information.

13 Q. Well, let me -- now let's just follow-up on what you
14 just said. Take a look at page 29.

15 A. Uh-huh.

16 Q. You just said that you assumed one trip per house per
17 peak hour?

18 A. No, no. I said -- I'm trying to recall what the rates
19 are, all right, and it's somewhere around one. In the a.m. it's
20 obviously less because the total is less than 336. All right.

21 Q. And the p.m. it's obviously less?

22 A. No. The p.m. is a total of 387, and we have 336
23 homes, so I'd have to see how much the golf course contributed,
24 but it's some -- you know, the homes is somewhere around one,
25 but I can give you that information if you want it.

1 Q. Okay. And when you -- we'll get to it in a second.
2 When you do that, are these numbers also including the
3 industrial use as of 2007, for the Gyrodyne property?

4 A. Which? The existing industrial?

5 Q. Yeah, 96, 196, 237, do they include the industrial
6 use?

7 A. No. I already said those are in the existing counts.

8 Q. Those are in the existing? Okay.

9 Now, before -- and I'm going to come back because I
10 want to take a break to take a look at your stuff, okay.

11 A. That's fine.

12 MR. CLASEN: At some point in time, Your Honor,
13 but if I can continue forward, then we'll come back a
14 little bit to this, rather than break up the --

15 Q. The Gyrodyne golf community that you're talking about
16 here, --

17 A. Yes, sir.

18 Q. -- okay, that's not the Gyrodyne scenario that I
19 mentioned before, right?

20 A. That you defined, no, it's not.

21 Q. Okay. And it's not what any of the people looked at
22 as a possible highest investment?

23 A. No, it's not.

24 Q. Okay. And indeed, in this case, you're looking at
25 2007, you're comparing it to the, for want of a better term, the

1 SUNY scenario, okay, and you're -- what you're telling us is
2 more trips can't be good for traffic.

3 A. Correct.

4 Q. Okay. Now, you do eventually get to what I'm calling
5 the Gyrodyne scenario, I think. On page 33, --

6 A. Yes, sir.

7 Q. -- okay, what you're referring to on the bottom, where
8 you talk about a development of three to six units per acre, as
9 proposed by Daniel Gulizio.

10 A. Yes, sir.

11 Q. Are you referring to what I've identified as the
12 Gyrodyne scenario there?

13 A. Well, three to six, and yours is 1500 units -- I'm
14 sorry.

15 Q. No, my Gyrodyne scenario -- let me state how I define
16 it.

17 A. Okay.

18 Q. I define it as a build-up of the 300 acres, at a
19 density of three to six units per acre. That's how I defined
20 it.

21 A. Okay. So --

22 Q. And that's what we have here, right?

23 A. That is correct.

24 Q. Okay. Now, this is the first time in your report you
25 get to the Gyrodyne scenario, right?

1 A. As you define it, yes.

2 Q. As I define it, right? Okay. And if I understand
3 your analysis here, what you tell us is, is well if the golf
4 development's going to have an impact and it's only got one unit
5 per acre, three units per acre here or more is going to have a
6 bigger impact, right?

7 A. Pretty much.

8 Q. That's the extent of the analysis, right?

9 A. That was the evaluation charge I had was to say, let's
10 look at the roadways, see how they operate, and then let's talk
11 about alternatives. And this is one alternative, three to six
12 units. So my conclusion was, if the intersections are not
13 working well now, they will not work well in the future with a
14 density of three to six.

15 Q. Now, just so we're all clear. What this -- your
16 conclusion here on the Gyrodyne scenario is, you're comparing it
17 to the impact the golf scenario would have on the SUNY scenario?

18 A. No.

19 Q. That's what you've just walked us through.

20 A. No. In essence what --

21 Q. No, no, no, wait. Let me see -- let me withdraw the
22 question.

23 A. I'm sorry.

24 Q. Okay. You compared the golf scenario to the SUNY
25 scenario, right?

1 A. Yes.

2 Q. And you said that the golf scenario is going to have
3 more of an impact than the SUNY scenario, because here's what
4 the SUNY scenario's already going to have, right?

5 A. It's going to have additional impact.

6 Q. Let me ask you this. if the SUNY scenario did not
7 have the impacts that it thought might happen in 2004, right,
8 that would change your comparison of the golf scenario to the
9 SUNY comparison?

10 A. If I understand you correctly, you're saying if some
11 of the background growth didn't occur, that -- is that what
12 you're saying?

13 Q. Or if some of the impacts didn't occur that SUNY was
14 anticipating when they did their 2004 projection for 2007.

15 A. We'd have to define what you're saying about impacts.

16 Q. Okay. It is (indiscernible). Let me do it different
17 way.

18 When you did your report, right, you could've done a
19 traffic impact study, analyze the impact of the so-called
20 Gyrodyne scenario, right? You could've done that.

21 A. Yes, certainly --

22 Q. Okay.

23 A. -- I could've. That's not what I was asked to do --

24 Q. Right.

25 A. -- and I'm not sure -- or I'm sorry, yes, I did not do

1 that.

2 Q. In fact, none of what you've done here is a traffic
3 impact study, right?

4 A. Right.

5 Q. Okay. And a traffic impact study is an attempt to
6 scientifically analyze the impact of a proposed development,
7 right, on existing conditions?

8 A. When you say -- as far as you go is correct, but --

9 Q. Okay.

10 A. -- what a traffic impact study is supposed to do is
11 identify the most probable and potential impacts that could
12 occur from a development, in other words, a worst case scenario,
13 okay. That's what it -- that's how it can help people make
14 decisions, by accurately representing what is happening and into
15 the future.

16 Q. Now, ultimately your conclusion is, is if Gyrodyne
17 does the Gyrodyne scenario, there's going to be a negative
18 impact on traffic, right?

19 A. Three to six, your definition?

20 Q. Yes.

21 A. I'm sorry, I keep repeating that, but I just want to
22 make sure I understand.

23 Q. Uh-huh.

24 A. Yes, that's correct.

25 Q. Okay. Let's go intersection-by-intersection and

1 figure out what that impact's going to be, okay? Your report
2 doesn't do that, right?

3 A. It does not.

4 Q. Okay. Are all the intersections negatively impacted
5 in the morning, as a result of the Gyrodyne scenario?

6 A. I don't recall the distribution of traffic, but --

7 Q. You didn't analyze the distribution of traffic
8 under --

9 A. Well --

10 Q. -- the Gyrodyne scenario, right?

11 A. -- I very carefully analyzed what was done for that
12 scenario when I was able to review it, and I have a lot of
13 issues with that analysis.

14 So when you say -- talk about the impacts on various
15 intersections based on that analysis, I can't do that.

16 Q. I'm not based on that analysis. I'm talking about
17 your analysis.

18 You've now told us that there's going to be a negative
19 impact if the Gyrodyne scenario is developed, right?

20 A. That is correct.

21 Q. And I'm asking you, did you, yourself, at or about the
22 time you issued your report, actually go intersection-by-
23 intersection and analyze the impact?

24 A. I would not have enough information to do that at the
25 time of my report. All I knew --

1 Q. Okay. Okay.

2 A. -- all I --

3 Q. Okay, you didn't, right?

4 A. Can I --

5 MR. RYAN: Your Honor, can we have Mr. Clasen not
6 interrupt the witness during an answer?

7 THE COURT: He's correct, Mr. Clasen, please let
8 the witness fully answer the question.

9 MR. CLASEN: Thank you, Your Honor. I'm sorry.

10 A. At the time of this report, I did not -- all I had was
11 a three to six density, that's not enough information. I had --
12 I would have no idea of what type of units we're talking about,
13 to understand what the generation would be. I have no idea what
14 the distribution might be at that point in time, so there's no
15 way I could distribute or analyze individual intersections. All
16 I can do is the generic overview that that type or that degree
17 of additional traffic is going to have an impact.

18 Q. You had Dan Gulizio's report before you did your
19 report; isn't that correct?

20 A. Yes.

21 Q. And you had Mr. Taylor's report before you did your
22 report, right?

23 A. At about the same time, yes.

24 Q. Right. And you saw what was proposed and analyzed in
25 both of their reports, right, before you did your report?

1 A. Yes, but that was not specific information. It was
2 conceptual information.

3 Q. Let's go through the intersections. 25A and Mill Pond
4 Road.

5 A. Yes, sir.

6 Q. Did you even look at that intersection?

7 A. Yes, of course.

8 Q. Okay. What was the LOS on that intersection in the
9 a.m. under the no-build scenario, which I take it for you is the
10 2007 with Gyrodyne still using it as industrial?

11 A. Correct.

12 Q. Okay.

13 A. That's a no-build 2007 in that report.

14 Q. So your no-build is 2007 with Gyrodyne still using the
15 property for about -- for industrial?

16 A. Right.

17 Q. Okay. What's the LOS in the morning under that
18 scenario?

19 A. I don't recall. It's poor. The gaps on 25A are few
20 and far between and so, you know, any traffic trying to get out
21 of Mills Pond Road has difficulty. Now, there's not an awful
22 lot of traffic in the morning on Mills Pond compared to some
23 other times, but it's not a good operation. And the sight lines
24 are very limited.

25 Q. As a result of the Gyrodyne scenario being developed,

1 right, does that length of service change at all on 25A and
2 Mills Pond Road in the morning?

3 A. I don't recall. There's not -- there wasn't -- on
4 Mills Pond, there was not -- I'm sorry, you said the SUNY
5 development, right?

6 Q. No, no, no. No, no. Ultimately --

7 A. I'm sorry.

8 Q. -- what I'm talking about now is, you've said at the
9 very end in the last paragraph of your report, --

10 A. Uh-huh.

11 Q. -- that the Gyrodyne scenario is going to have a
12 negative impact on the traffic.

13 A. Yes.

14 Q. And I'm trying to figure out what negative impact
15 here, if I can, going intersection-by-intersection.

16 A. Uh-huh.

17 Q. Now, you've told 25A and Mills Pond Road in the
18 morning has a poor LOS, but you don't know what it is.

19 A. I don't recall what it is.

20 Q. Okay. As a result of the Gyrodyne scenario, does that
21 LOS change at all?

22 A. Yes. Gyro -- I was thinking of the SUNY. Yes. The
23 Gyrodyne will put additional traffic on Mills Pond, and the
24 Gyrodyne that we're talking about is your definition?

25 Q. Uh-huh.

1 A. Okay. And there would have to be access on to Mills
2 Pond, and therefore, you would have additional traffic on Mills
3 Pond. So both north and south of wherever the access is, you're
4 going to have additional traffic.

5 Q. Now, you understand under the Gyrodyne scenario, the
6 property's no longer being used for industrial purposes, right?

7 A. Yes.

8 Q. So your no-build scenario had -- it continuing to be
9 used for industrial purposes, right?

10 A. Well, you're trying to compare apples and oranges
11 here.

12 Q. Well, that's what we've been trying to do here,
13 unfortunately. But your 2007 no-build situation has the
14 property being used for industrial purposes, though, right?

15 A. That's -- yes, that is correct, this report does.

16 Q. So if you want to compare the impact of the Gyrodyne
17 scenario, you've got to back out numbers out of the 2007 first,
18 right?

19 A. Of course. But now you're throwing in the idea that,
20 under your definition, I need to address the Gyrodyne proposal,
21 which is three to six units and that will have impact, and yes,
22 you will subtract out the minor industrial use that's there now,
23 but the three to six density is going to overwhelm that. You
24 have a big number, subtracting a small number.

25 Q. Well, did you do it?

1 A. That was not my charge to do. I did what I was asked
2 to do, which is evaluate the system, and I said the system is
3 not good.

4 Q. Let me ask you this, if I go through -- because I
5 don't want to belabor things necessarily. If I go through each
6 one of these intersections, right, --

7 A. Uh-huh.

8 Q. -- are you going to be able to tell me what the length
9 of service was, or do you --

10 A. Level of service.

11 Q. Level of service, pardon me. Level of service for
12 each one of these intersections as of your no-build scenario in
13 2007?

14 A. Well, if you give me the ability to look at some
15 documents, I probably could. But I can't recall it off hand.
16 But what I can tell you is that, most of these intersections do
17 not operate well, and you can't dismiss 347 intersection, based
18 on the fact that they're already operating poorly, which you
19 know, you can't ignore that.

20 Q. Okay. You know, yesterday you did mention here
21 something about, I think saturation of intersections. Do you
22 remember that?

23 A. Actually Your Honor mentioned saturation.

24 Q. Right. What do you mean by saturation?

25 A. It basically means that when the volume of the

1 capacity level is over one. In other words, there are more cars
2 that are waiting to be handled by the signal than the signals
3 can handle.

4 Q. And that would be a level of service at?

5 A. E or F.

6 Q. E or F, okay. Now --

7 A. Actually, excuse me, V over C could actually exceed
8 one and be saturated, over saturated, even when the level of
9 service overall is good. You can even have a D or a C and you
10 can have specific lane movements or approaches over saturated,
11 so I retract what I said.

12 Q. Okay. Now, just because an intersection is saturated,
13 doesn't mean it can't handle more cars, right?

14 A. That's correct. I mean, it has to, it will.

15 Q. It has to, just time alone is going to give it more
16 cars, right?

17 A. It will just simply take more time to get through the
18 intersection.

19 Q. And when you're looking at the impact of a development
20 on traffic, what you're looking at is, how that will impact the
21 existing level of service, right?

22 A. Not only the level of service, but safety.

23 Q. Okay. One of the things you're looking at is a level
24 of service though, right?

25 A. One of the things as a --

1 Q. Now, if an intersection, for example, of Route 347 and
2 Stoney Brook Road in the morning, do you know if that was a --
3 pardon me. Let me just -- an easier one.

4 Route 347 and Stoney Brook Road in the afternoon, do
5 you know if that level of service there was an F or not?

6 A. Are you talking about overall level of service or
7 various approaches? You've got to be more specific.

8 Q. Overall service as of the p.m. peak hour.

9 A. I don't recall that it was good. I don't remember
10 exactly what level of service it was. Once you get to an E,
11 most people can't tell the difference whether it's an E or an F,
12 and as it gets worse, as the F gets worse, it's just longer and
13 longer time. And the more time people spend, the more anxious
14 they get, and they start doing silly things.

15 Q. Do you know what it was in 2005?

16 A. It wasn't better than it was in 2004, and I probably
17 can research it and tell you what it was in 2004.

18 Q. If the level of service went from F to the no-build
19 and it stayed at F under the residential, that still doesn't
20 tell you anything, right?

21 A. Well, it tells you that it hasn't gotten better.

22 Q. It hasn't gotten better, right?

23 A. And that the degree of additional traffic may cause
24 other things to happen. It's just not purely by the numbers, by
25 an F. You may be queuing up into another adjacent intersection,

1 you may be affecting that intersection. You may be affecting
2 other driveways if the que gets longer, and now they can't get
3 out.

4 You have to look at in the field, you just can't go by
5 pure numbers.

6 Q. And one of the things you look at is you look at the
7 delay at that intersection, right?

8 A. That's one of the things.

9 Q. Right.

10 A. But I keep mentioning to you that extensive delays
11 lead to safety issues; running reds, running yellows.

12 Q. Right. But if the delay, at this intersection, in the
13 p.m. peak hour was already 99.2 seconds, that's a lot, right?

14 A. Well, you'd have to give me a -- it's more than we
15 want, but --

16 Q. More than what you want, right?

17 A. -- there are many intersections that are more than
18 that.

19 Q. And if the delay after the build under residential,
20 with the 99.9, otherwise another .7 seconds, that's not really a
21 negative impact, --

22 A. Well --

23 Q. -- for purposes of you as a traffic expert looking at
24 negative impacts on traffic, right?

25 A. Well, that's not necessarily true. And first of all,

1 you have to assume that that is correct.

2 Q. Huh?

3 A. That that additional is correct, which I would have to
4 take issue with. But as I said, it may cause other things. You
5 may have a very slight change in a delay time, but it may --
6 have you looked at your que lengths. The que lengths could
7 extend, as I said, beyond where you want them to extend and
8 cause other problems.

9 So it's not simply looking at, you know, what happens
10 to the average delay.

11 Q. Right. Well, the average delay kind of tells you
12 about the que?

13 A. On that -- not the average delay for the entire
14 intersection. You have to look at the changes in delay, at
15 every approach, and look at the que change --

16 Q. Right, in --

17 A. -- for those approaches.

18 Q. Absolutely. In order to determine the impact on a
19 particular development, you have to analyze each one of the
20 things you talked about, right?

21 A. You said analyze the impact of --

22 Q. Each intersection, each coming each way --

23 A. Right.

24 Q. -- to tell you really what the impact is on the
25 traffic at that intersection, right?

1 A. Yes.

2 Q. And you didn't do that with a single intersection,
3 with respect to the Gyrodyne scenario; isn't that correct? You
4 just assumed more cars means bad things for traffic?

5 A. Well, in my 40 years, that's a pretty good judgment.
6 And obviously, there were intersections studied by the SUNY, and
7 I made reference to those, so we have specifics, if you'd like
8 to go through them.

9 The bottom line is --

10 Q. Are they in your report, the specifics?

11 MR. RYAN: Objection. Your Honor, again, --

12 MR. CLASEN: Oh, I'm sorry.

13 MR. RYAN: -- the witness is answering.

14 MR. CLASEN: I'm sorry. I jumped ahead. Go
15 ahead.

16 THE COURT: Continue.

17 A. The bottom line is that the infrastructure around this
18 property has a lot of traffic. It has a lot of community
19 concerns on local roads, Stoney Brook, Mills Pond, and those are
20 important things, and those have to be taken into consideration.

21 Q. Did you look at the impact of putting a 256 acre
22 industrial park, what that would have when you -- on any of the
23 scenarios that you looked at here? Did you compare the --
24 pardon me. I withdraw the question.

25 Did you compare the impact of 256 acres being

1 developed as an industrial park on the 2004 build-up, the 2007
2 build-up, your SUNY build-up, your golf build-up or the Gyrodyne
3 scenario?

4 A. Well, yes, if you keep in mind that the SUNY build
5 scenario in 2007 is a form of industrial -- it's research and
6 development, which it's --

7 Q. It's one building.

8 A. -- light industrial. Well, it's step-by-step. So you
9 asked me if I took anything into consideration, well this does
10 do that, okay. And then it says, basically, if you go any
11 further, you better do something. You better do a connector
12 road, because you're going to overwhelm Stoney Brook Road, and
13 that's not going to be allowed.

14 From everything I've seen back to 1996 from the town
15 of Brook Haven, that's not going to be allowed.

16 Q. That's the connector road that's never been built to
17 this day, right?

18 A. Not to this point in time, no, because there's only
19 one building that I'm aware of in operation.

20 Q. By the way, Stoney Brook Road, you mentioned has some
21 drainage problems.

22 A. Absolutely.

23 Q. Where?

24 A. Where it enters 25A, there's a downgrade as you enter
25 -- go the intersection, and I don't know if you're local or not,

1 but if you're local you'll know that in heavy storms that all
2 the drainage comes down Stoney Brook Road onto the state
3 highway, and seeks to go into that system. So there's a problem
4 there.

5 Q. Are you sure you've got the right road?

6 A. I am absolutely positive.

7 MR. CLASEN: Okay. Your Honor, could I have a
8 short break? Five, ten minutes?

9 THE COURT: We'll take a break to a quarter of
10 11:00.

11 MR. CLASEN: Thank you.

12 THE COURT: We stand adjourned.

13 (Off record.)

14 (On record.)

15 THE COURT: Proceed, Mr. Clasen.

16 MR. CLASEN: Thank you, Your Honor.

17 BY MR. CLASEN:

18 Q. Take a look if you could, Mr. Fitzpatrick at your
19 report page 29, that's those additional trip generations you
20 said are going to be made.

21 A. Yes, sir.

22 Q. Okay. You have enter in the morning of an additional
23 96, do you see that?

24 A. Yes, sir.

25 Q. Okay. The property has several access points; is that

1 right?

2 A. That's correct.

3 Q. Okay. How many are coming in each access point?

4 A. I have no idea. It would depend on the distribution.

5 Q. Okay. How many access points are there?

6 A. I don't know. I don't believe that it specified what
7 the access points were, I just had the application, and -- but
8 he would presume that they would try to get access on to the
9 adjacent roadways, which is Stoney Brook, Mills Pond and 25A.

10 Q. There are several ways in and out of the property,
11 though, right?

12 A. Proposed or currently?

13 Q. All right. Well, let's start with currently. Pardon
14 me. As of 2005, right, to the best of your knowledge, because I
15 know you didn't look at 2005 currently, but there's several
16 different ways to come in and out of the 308 acre site.

17 A. Yes.

18 Q. What were those?

19 A. I don't recall. A mall, there's access on to Stoney
20 Brook, there's access on to Mills Pond. There's access, I
21 think, 25A. I can't picture it right now. But I mean, it was
22 multiple access points.

23 Q. Okay.

24 A. But that has nothing to do with what would be approved
25 if a development came in. The access could change entirely. A

1 municipality, in this case, the towns and the state would have
2 control over that.

3 Q. Well, for purposes of analyzing impact, you're looking
4 at the impact of these additional trip generations, right?

5 A. I'm looking at the impact of the overall site
6 generation on the adjacent infrastructure. I cannot -- as I
7 said before, I cannot distribute them to the various
8 intersections, because I don't know enough about the proposal.

9 THE COURT: Mr. Fitzpatrick, could you speak a
10 little louder, please. That's not an amplified microphone.
11 Some people are indicating they can't hear you.

12 THE WITNESS: I'm sorry.

13 Q. Well, when you did the analysis on page 29 of the
14 Stoney Brook proposal for the one building and the golf course,
15 did you know where all these people were going to, what
16 intersections?

17 A. Just the SUNY piece. The Gyrodyne piece, no. No.
18 There are three possibilities and yeah, there are intersections
19 on each of those roadways, so those are the intersections that
20 would be impacted.

21 Q. Right. Now, when people are coming and going for
22 industrial purposes, they don't necessarily use the same
23 intersections as people coming and going for residential
24 purposes, right?

25 A. I don't know that that would be true. We'd have to be

1 a lot more specific than that.

2 Q. You'd have to analyze it, right?

3 A. I'd have to know more details.

4 Q. Well, for purposes of doing your comparison, you're
5 assuming that the residential people are coming and going on the
6 same roads, right, as the one building on SUNY was being done.

7 A. It's the same property we're talking about, and it's
8 abounded by certain roadways. Those are the roadways. Those
9 are the only opportunities to get to the property, so that's
10 what I'm saying, those roadways will be impacted.

11 Q. Assuming -- your impact, I think you said before was,
12 if you add more cars, you're going to have an impact, right?

13 A. Yes.

14 Q. Okay. But that assumes you're adding more cars to
15 intersections that are being impacted in the SUNY development,
16 right?

17 A. It presumes that the same roadways and intersections
18 will be utilized for the same property.

19 Q. The same way. The same way.

20 A. No, not the same way. I'm not being specific as to
21 there's going to be X number of cars here or X number of cars
22 there, I can't do that, because I don't have enough information.

23 Q. Okay. But when we're looking on page 29, let's just
24 say the SUNY people coming and going, right, are coming and
25 going by using the Mills Pond entrance, okay. Strike that.

1 They're using the Stoney Brook entrance, which is what they use
2 now, right?

3 A. To a degree, yes.

4 Q. Right. Well, they're not coming in through Mills
5 Pond.

6 A. Well, there's only one building in operation now.

7 Q. Right.

8 A. And I have not taken a count at that driveway. So I
9 can't answer you specifically.

10 Q. Okay. But what you've done here, very simplistically,
11 I believe, and you've told us, look at what SUNY's doing, and
12 the golf is going to be doing more, it's going to be more cars
13 at an intersection, so therefore there's more of an impact,
14 right?

15 A. Yeah.

16 Q. Now, the SUNY proposal has -- I assume SUNY was
17 proposing most of the people were going to come and go through
18 Stoney Brook Road, right, that access point?

19 A. Some of the traffic was going to be coming in and
20 leaving that way, and they had projected like 70 percent was
21 going to use a new connector road, so -- which has not been
22 built yet.

23 So, yeah, there are a lot of variables here, and there
24 usually are, but in this particular case, what we know so far,
25 when this report was on, there's a lot of variables.

1 Q. Right.

2 A. But the bottom line is, as we said before, the more
3 traffic you put on the infrastructure around this property, the
4 more it's going to impact the intersections and the roadways.
5 That's just a given.

6 Q. Okay.

7 A. You don't need to be an engineer to know that.

8 Q. How much more of the Gyrodyne golf course traffic was
9 going to be on the connector road?

10 A. There wouldn't be a connector road. They wouldn't had
11 the wherewithal, the property to do that. They wouldn't -- they
12 could not do that.

13 Q. Right. Because they're a private developer, right?

14 A. That's correct.

15 Q. All right. So if the property was built out for an
16 industrial park of 256 acres, right, that person wouldn't have
17 the ability to do the connector road.

18 A. Correct. Unless it was light industrial, research and
19 development, and it was done by SUNY, then they could.

20 Q. Were you here yesterday when Mr. Grover testified? I
21 think I asked you that before. I think you were, right?

22 A. Yes.

23 Q. Okay. Remember he talked about two projects, the
24 lighthouse project, and the heartland projects, remember that?

25 A. I remember that, yes.

1 Q. Are you familiar with those?

2 A. No.

3 Q. You mentioned yesterday that you said that you think
4 using the ITE numbers, which you refer to the ITE as the Bible,
5 I assume, using them for projects of more than 1,200 units was
6 inappropriate, right?

7 A. What I said was that people call the ITE manual the
8 Bible, and it is, but it has to be used with discretion. And
9 secondly, that for residential units, townhouses, and condos,
10 the chart only goes up to 1,300 and there are no samples much
11 above 500. I can't remember, but there's nothing out in the
12 larger end of it.

13 Q. Is the ITE used with projects involving more than
14 1,200 units?

15 A. Residential?

16 Q. Yes.

17 A. I -- it was here.

18 Q. Well, you know the lighthouse project, that involves
19 over 2,100 residential units. Are you familiar with that?

20 A. I have no idea.

21 Q. Do you know if they used the ITE?

22 A. I have no idea. I don't know anything about that
23 project.

24 Q. Okay. The heartland project, that involves over 9,000
25 units, residential units, right?

1 A. Uh-huh. If you say so, I don't know.

2 Q. Well, do you know if they used ITE data?

3 A. I know nothing about the project.

4 Q. If they used -- if you were told they used ITE data
5 for those number of units, would that change your statement that
6 you couldn't use the ITE data?

7 A. No, it wouldn't change it. What I've always said is
8 you have to use discretion. I keep saying that. If those are
9 all urban high rises, then there is a category of high rise in
10 the ITE, and I would have to see how far -- you know, what sizes
11 are included in that plot. You know, I can't answer these
12 questions without, you know, referring to the document.

13 MR. CLASEN: You know, I don't have any further
14 questions right now. Thank you.

15 THE COURT: Mr. Ryan.

16 There you go. You can have your pen back.

17 MR. CLASEN: Thank you.

18 REDIRECT EXAMINATION

19 BY MR. RYAN:

20 Q. Mr. Fitzpatrick, you were asked about the drainage
21 problems on Stoney Brook Road and it's intersection with 25A.
22 Can you describe what those are?

23 A. Well, there's a negative grade on Stoney Brook Road,
24 meaning it goes down to the intersection. The intersection is
25 lower than the approach at Stoney Brook, and I've not seen it

1 myself, but my understanding is, from my research, that water
2 flows down Stoney Brook onto the state highway. And the state
3 highway representatives don't appreciate that, because it
4 presents problems of putting material onto the roadway, of water
5 and in the winter, and so there is a problem, and it needs a
6 closed drainage system, according to what DOT is saying.

7 Q. Okay. And that's one of the improvements that might
8 be contemplated at the time of any development and a necessary
9 mitigation at that intersection?

10 A. It's not a might. It would have to be done. The
11 State would not allow it not to be done.

12 Q. Your analysis, Mr. Fitzpatrick, compared any
13 development on the Gyrodyne property to the existing conditions,
14 correct?

15 A. Correct.

16 MR. CLASEN: Your Honor, objection, it didn't.
17 It compared certain things that we've identified, not any
18 possible one. He said he didn't, in fact, use any of these
19 scenarios done by the appraisers.

20 MR. RYAN: Your Honor --

21 THE COURT: Overruled. Continue, Mr. Ryan.

22 A. Yes. It -- the various densities that was contained
23 in the report.

24 Q. And you'd concluded that any moderate density or any
25 development of this property would have to be very low density,

1 so as not to have unmitigated -- uncorrectable impacts?

2 MR. CLASEN: Objection, Your Honor, that's not in
3 his report.

4 MR. RYAN: Your Honor, this was --

5 THE COURT: Well, I'll sustain the objection
6 because it's leading, but you can go on from there.

7 MR. RYAN: All right.

8 Q. What was your conclusion regarding any -- regarding
9 the development on this property?

10 A. My conclusion was that the surrounding infrastructure
11 was stressed as it is today, and it was in 2004, 2005, et
12 cetera, and any development on the property would have to be
13 resensitive to that. And undoubtedly, would have to be low
14 density, so that you would minimize the number of cars that were
15 generated. And that goes whether -- regardless of the land use.

16 MR. CLASEN: Objection, Your Honor, move to
17 strike. It's not in his report.

18 THE COURT: Overruled.

19 MR. RYAN: Nothing further.

20 THE COURT: Thank you.

21 MR. CLASEN: May I ask a few more questions, Your
22 Honor?

23 THE COURT: As recross, yeah.

24 MR. CLASEN: That's right, I'm up to recross.

25 RECROSS EXAMINATION

1 BY MR. CLASEN:

2 Q. You just said any development of this property would
3 have to be low density; is that correct?

4 A. In my mind, yes, because otherwise the impact, you
5 would not be able to mitigate it, and I take into consideration
6 the character of the local roadways, and the community feelings,
7 and the town's feelings about those. So it's more capacity,
8 it's more than the numbers, it's the community vision.

9 Q. And that includes industrial would have to be low
10 density, right?

11 A. Yes.

12 MR. CLASEN: No further questions, Your Honor.

13 THE COURT: You're excused, Mr. Fitzpatrick.

14 Thank you very much.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Don't forget all your material.

17 THE MONITOR: You can have this back.

18 THE WITNESS: Thank you.

19 THE COURT: Mr. Ryan, your next witness.

20 MR. RYAN: Thank you, Your Honor. Mr. Golub.

21 THE COURT: Good morning, Mr. Golub.

22 MR. GOLUB: Good morning, Judge.

23 THE COURT: Four days of sitting around, you get
24 your chance.

25 THE MONITOR: Would you raise your right hand?

1 K E N N E T H G O L U B , was called as a witness herein after
2 having been duly sworn and testified as follows:

3 THE MONITOR: Okay. Please be seated. In a loud
4 clear voice, please state and spell your name and also
5 state your business address.

6 MR. GOLUB: Kenneth Golub, G-O-L-U-B, and my
7 address is P. O. Box 360, Armonk, A-R-M-O-N-K,
8 New York.

9 THE MONITOR: Thank you.

10 THE COURT: Okay.

11 DIRECT EXAMINATION

12 BY MR. RYAN:

13 Q. Good morning, Mr. Golub.

14 A. Good morning.

15 Q. Can you tell us something about your professional
16 background, Mr. Golub?

17 A. Yes. I've been a real estate appraiser since 1968. I
18 grew up in Faraquay (ph), I went to Harper College, graduated in
19 1966. I did some graduate work, and in January of 1968, I was
20 hired by a real estate appraisal firm, as a trainee, in
21 Bingmington (ph), New York. I worked in Bingmington for about
22 three years.

23 I went with another company and then was moved down to
24 Poughkeepsie to manage an existing appraisal office down there,
25 and I went out on my own in 1974 or 5, I guess about 1974, I

1 opened my own appraisal office. And subsequently, I relocated
2 to Westchester in 1980, and have been in the appraisal business,
3 and operating my own office since that time.

4 Q. In the course of your professional work, have you had
5 opportunity or what opportunity, if any, have you had to
6 appraise major development projects?

7 A. Over the years, I've had occasion to appraise a number
8 of major development projects. In the 1970s, I did a lot of
9 work for J.P. Morgan and Citizen's and Southern. There was a
10 lot of fall out from the 1974 recession. And in the mid-1970s,
11 I was going up and down the state looking at major mostly
12 condominium projects, many of them with golf courses in them,
13 analyzing them for restarting distressed projects.

14 I also did appraisals in Westchester of Heritage
15 Hills, which is a 3,000 unit condominium complex with a golf
16 course. I did a lot of analysis of the Sterling Forest
17 property, which the State acquired, I guess about four or five
18 years ago. But that's 17,000 acres, and that analysis involved
19 a lot of proposals. It was a master plan, including an
20 industrial park, several residential subdivisions, golf courses,
21 and some other commercial components, including a ski area, and
22 shopping center.

23 In within the past decade, I did a lot of consulting
24 work for the State on the New York psychiatric hospitals. Many
25 of those involved redevelopment plans. We did extensive studies

1 of -- the ones down state that we studied extensively, there
2 were too in Rockland County. We did Pilgrim and Islip, we did
3 the one in Poughkeepsie, we did the one in Wingdale, we did the
4 one in Locksack. There were -- most of these complexes were
5 generally about a million square feet of offices -- a million
6 square feet of buildings, rather, with large private campuses.

7 I also did a lot of industrial parks for Prudential
8 Insurance Company. I did a lot of analyses for them in New
9 Jersey, Massachusetts and Pennsylvania, and I did a lot of land
10 acquisitions for corporate parts for IBM Corporation in the
11 1990s in New York, Connecticut, Florida, and California.

12 MR. CLASEN: Your Honor, I don't mean to
13 interrupt, but I apologize.

14 THE COURT: Mr. Clasen?

15 MR. CLASEN: From my angle here, I can't see what
16 they've got in front of him. He's got something in front
17 of him. I don't think it's appropriate for him to have
18 anything in front of him while he's testifying until --

19 THE COURT: Do you have something besides your
20 report?

21 THE WITNESS: Well, I have some notes and my
22 report.

23 MR. CLASEN: He shouldn't have it in front of
24 him, Your Honor.

25 THE COURT: No, why don't you --

1 THE WITNESS: Okay.

2 THE COURT: If you want to keep your report,
3 fine, whether we move it or not.

4 THE WITNESS: Okay.

5 MR. CLASEN: Your Honor, why don't we have him
6 use the regular report, that we know he doesn't have some
7 notes on. The one that's in evidence.

8 THE COURT: Put it away and take whatever number
9 in evidence that is.

10 MR. CLASEN: Thank you, Your Honor.

11 THE WITNESS: Judge, the main thing I do with
12 this report, is put on tabs on it, just to accelerate the
13 testimony, so I can find pages quickly.

14 THE COURT: Is that the only thing you have?

15 THE WITNESS: Yes, yes.

16 THE COURT: Now, Mr. Clasen, if he can move
17 through his report faster with his page -- with his
18 clippings on the edge, that might be better.

19 MR. CLASEN: Actually, Your Honor, if he's saying
20 the only thing he's got there is no handwritten notes, are
21 there are little tabs, and it's his identical report, I
22 have no problem with that whatsoever, it'll expedite
23 matters.

24 THE WITNESS: All right.

25 MR. CLASEN: If there's handwritten notes or if

1 there's something more than that, Your Honor, I would at
2 least like to see it ahead of time. Because if it's just
3 trivial little notes, it'll make things go faster.

4 MR. RYAN: Your Honor, why don't we have Mr.
5 Clasen look at the document.

6 THE COURT: No, that's fine. Sure.

7 MR. CLASEN: No, I agree, I want to make it go
8 quickly, Your Honor.

9 THE COURT: No, Mr. Clasen, by all means, take a
10 look. Off the record.

11 (Off record.)

12 THE COURT: We'll mark it as O for
13 identification. Proceed, Mr. Ryan.

14 (Exhibit O marked for identification.)

15 MR. RYAN: Thank you. Your Honor, I'd ask that
16 Mr. Golub be permitted to retained his copy of the report,
17 with whatever reminder notes he may have, if it may help
18 him refresh his recollection as he goes along.

19 THE COURT: Mr. Clasen?

20 MR. CLASEN: Your Honor, I'm not sure precisely
21 what he's asking, is he asking to have it admitted into
22 evidence. If he does, I would object on numerous grounds.
23 If it's not into evidence, I object, he can't have
24 something -- there's no provision to bring crib sheets up
25 to a witness stand for a witness.

1 THE COURT: Mr. Ryan?

2 MR. RYAN: Your Honor, I -- let me lay the
3 foundation through Mr. Golub, if I may, Your Honor. He
4 needs to refresh --

5 THE COURT: Sure.

6 MR. RYAN: -- if I may.

7 BY MR. RYAN:

8 Q. Mr. Golub, your appraisal report here is in excess of
9 a hundred pages in length, correct?

10 A. Yes.

11 Q. And contains addenda of -- that carries it out to
12 approximately 170 pages, right?

13 A. That's correct.

14 Q. In testifying in about this report and the work that
15 you did in it, and your conclusions, would it be helpful for you
16 to use your working copy containing any reminder notes that
17 you've put in?

18 A. It makes it very helpful for me in navigating between
19 different sections of the report, because many sections of the
20 report are separated but interrelated. So a question about page
21 32 might relate to something else that's on page 120.

22 Q. Did you make any notes in your working copy of this
23 report of matters that are not contained within the report?

24 A. No. Everything is within the -- all of my notes
25 relate to what's within the report.

1 MR. RYAN: Your Honor, I would ask that the
2 witness have the assistance of his working copy in
3 testifying.

4 THE COURT: Mr. Clasen?

5 MR. CLASEN: I object, Your Honor.

6 THE COURT: I'm sorry?

7 MR. CLASEN: I object, Your Honor, first of all
8 again, he's asking him to move it into admission as
9 evidence, it's totally inappropriate.

10 MR. RYAN: I am not.

11 MR. CLASEN: Okay. For reasons I'd be more than
12 happy to lay out if you'd like to, Your Honor. But I think
13 it's self-evident. There's no number -- two, if he just
14 wants him to be able to use them, what is not in evidence,
15 I'm not aware of anything that lets a witness use crib
16 sheets, help -- no matter how helpful they may be, and
17 useful to remember answers and things like that. You can't
18 do that. And if so, I would have all my witnesses run up
19 with crib sheets, so when I asked them question number two,
20 they could just read it, so I object.

21 THE COURT: Yeah, I'm afraid, Mr. Ryan, I'm not
22 going to allow it to be used.

23 MR. RYAN: Very good, Your Honor.

24 THE COURT: What we have in evidence, of course,
25 is the official report from American Property Counselors

1 has been exchanged. The Court has it, and we're going to
2 go from the -- we're going to go from there. To the extent
3 that Mr. Golub has to refer to things, we'll have to do it
4 the old fashioned way, either follow your lead as to page
5 and reference numbers that you give him, or thumb through
6 it till we find the answer to whatever question you or Mr.
7 Clasen ask in the course of these proceedings.

8 MR. RYAN: Very good, Your Honor, I was just
9 trying to --

10 MR. CLASEN: I should add though --

11 MR. RYAN: -- ease the process.

12 MR. CLASEN: -- if this was only page references
13 in here, and more tabs, --

14 THE COURT: I understand.

15 MR. CLASEN: -- I'd have no objection.

16 THE COURT: Well, I haven't looked at it either,
17 Mr. Clasen. You say you have, you put in the objection,
18 and I'm going to sustain it.

19 MR. CLASEN: Okay.

20 THE COURT: So that's where we are.

21 MR. RYAN: All right.

22 BY MR. RYAN:

23 Q. Mr. Golub, can you find in your report where you
24 describe your view of the Gyrodyne property?

25 A. Yes. I have a description of the property beginning

1 on page eight.

2 Q. Can you tell us how you viewed this property or
3 describe it for us?

4 A. It's a 313-acre parcel. It's a contiguous parcel
5 bounded on the east by Stoney Brook Road, on the west by Mills
6 Pond Road, and on the north by 25A. And it's bisected by the
7 Long Island Railroad, and by the Brookhaven Smithtown town line.
8 It's an unusual property, because it's unusually large, by local
9 standards, and it also happens to be a very beautiful property
10 aesthetically. It's beautiful land. It looks like it's ripe
11 for development, and it is eminently buildable.

12 THE COURT: Can I just ask where 313 acres come
13 from? I've seen 307.89 and 30 or rounded to 308. There
14 seems to be an extra five acres that I --

15 THE WITNESS: I'd have to --

16 THE COURT: -- which I'm sure is very good. If
17 nobody wants them, I'll take them, but you know, other than
18 that.

19 THE WITNESS: I had two surveys. I had the --
20 the survey that Gyrodyne had made of the remainder
21 property, which was 62 some odd acres, and I had the
22 appropriation map which was 245 something acres, and I
23 added them together, and that's how I came to 313.

24 THE COURT: Okay.

25 MR. CLASEN: Your Honor --

1 THE COURT: I'm sorry, Mr. Clasen.

2 MR. CLASEN: -- there's five acres that's already
3 zoned for residential.

4 THE COURT: I'm sorry?

5 MR. CLASEN: There's five acres that have already
6 been zoned for residential.

7 THE COURT: I see.

8 MR. CLASEN: They're at the core of the property.
9 Everybody's basically not included it as an industrial
10 build-up or anything else.

11 THE COURT: Thank you for --

12 MR. CLASEN: Sure.

13 THE COURT: Continue, Mr. Ryan.

14 MR. RYAN: Thank you.

15 BY MR. RYAN:

16 Q. In the course of your appraisal of this property, Mr.
17 Golub, did you analyze what its highest and best use was?

18 A. Yes. That's a critical step in the appraisal
19 business, and it's an analysis that has to be done before you
20 move to valuation because you have to decide what the property
21 is going to be used for, what's the best way to achieve the
22 highest value. And --

23 Q. And where do we find that analysis in your report?

24 A. It begins on page 34 and it extends through 39.

25 Q. Now, did you analyze this highest and best use

1 yourself, or did you utilize any reports or recommendations of
2 others?

3 A. I was given and researched on my own a tremendous
4 volume of information relating to the property, which I
5 considered in formulating my own analysis of it. I started by
6 eliminating certain uses, which I felt were completely
7 unsuitable, such as retail, or a hotel, or a warehouse, because
8 it's far from a highway exit.

9 The two primary uses that I'm left with are
10 residential, and industrial, and industrial because it's zoned
11 industrial, and it's currently used for industrial purposes.

12 Q. And how did you further analyze the -- what the
13 highest and best use of this property was, as of the date of the
14 taking in November of 2005?

15 A. Analyzing the viability of residential use is very
16 complicated, because the property is surrounded by homes. And
17 it is in a very nice residential location, and I think most
18 developers would normally tend to gravitate to residential use,
19 simply because there are more home buyers out there, than any
20 other kind of buyer.

21 So if you want to do a project of this size and scope,
22 you want to build momentum as quickly as possible. And the best
23 way to build momentum is in a market sector that has the most
24 number of buyers, the most activity, and that's residential.
25 That's why you see more residential development than anything

1 else on Long Island.

2 There are a few problems with residential, largely
3 that land has been nationalized in the New York metropolitan
4 area. You don't really own the property, the local officials
5 and the local residents have all the control, they hold all the
6 cards, and it's very difficult to get approval. In this case,
7 residential is the more difficult path to follow, because it
8 requires rezoning, and it requires a higher degree of study,
9 because there are more alternatives, and it opens up more
10 potential options, and greater time and greater risk than the
11 approval process. The approval process is a huge obstacle to
12 overcome in changing the existing use.

13 On the other hand, if we could find some use that goes
14 with the existing zoning, some other development alternative for
15 this land that would either short circuit or make an end run
16 around even parts of the approval process, that would be very
17 beneficial for a developer. And I looked at a model of
18 industrial development that would be consistent with the
19 existing zoning, and I think that there are a number of
20 attributes this property has which work well for that.

21 The chief attribute is the proximity of the SUNY
22 campus, which is not only a big university campus, but one that
23 has a scientific orientation. And SUNY has tremendous resources
24 in its faculty, in its student body, in its existing incubator,
25 in its hospital. It has all kinds of biopharmaceutical

1 capability. It has electronic capability, and it also has a
2 certain implicit ability to attract brands, and there are
3 certain types of industrial research functions that would
4 benefit from being near SUNY, and particularly being in some
5 type of a campus-type setting that would be conducive to
6 research.

7 So I envision working with those attributes, with
8 those positive attributes in a way that would permit this
9 property to be more developed than it is now.

10 The other advantage of staying with industrial is that
11 we already have an existing, what I'll call an industrial
12 incubator. There are seven buildings on this property with an
13 existing rent roll in excess of \$2 million, and we've got over
14 50 tenants in there now. That would all have to be displaced in
15 a residential development scheme, but they would be consistent
16 with some kind of a research or business park scheme, and that
17 rent bulk could be retained.

18 So that all led me to conclude that going with some
19 kind of industrial business park use, and the existing zoning
20 would be more beneficial than attempting to rezone and develop
21 residential.

22 Q. You indicated that by proceeding to develop this
23 property consistent with this existing zoning, avoids the need
24 for a change of zoning. Why would that be important to a
25 prospective purchaser?

1 MR. CLASEN: Objection, it's leading.

2 MR. RYAN: Why?

3 THE COURT: Overruled.

4 A. One other issue in this property, is that it happens
5 to have an unusually high number of residential neighbors. In
6 the application that I was furnished, a copy of an application
7 which Gyrodyne prepared for 336 units and a golf course, it
8 included a map of adjacent owners who have to be notified of
9 certified mail. It's 120 owners.

10 When you take out the duplicates, it's still in excess
11 of a hundred neighbors, all of whom who would get invited, by
12 certified mail, to any public hearings held for approval,
13 development approval of this property. That's a lot of torches
14 and pitchforks. There will be a lot of opposition to any
15 rezoning, and the rezoning process is a completely separate
16 process as part of the application for approvals.

17 So anything you can do to short circuit that process
18 is beneficial, and would be attractive to a buyer.

19 Q. And considering the potential development of this
20 property, what -- how did you assess its limitations, in any
21 form?

22 A. Well, it's very hard to specify what the limitations
23 are, because the limitations are going to be imposed by the
24 public approval process, which I'm -- I take blame for calling
25 it a political process, but I stand behind the statement.

1 You can have some control over how you market the
2 property, but the approval process is really in the hands of
3 public officials and residents. And what I've tried to do is
4 propose a business park that would have flexible sites. I've
5 suggested, for a variety of reasons, five to ten acres. But my
6 intent was lot modules, that could be reconfigured, depending on
7 demand. So it could be that we would have five-acre lots to
8 sell off, or ten-acre lots or maybe combine some to create 20 or
9 30-acre lots if the buyer or a user emerged for that size lot.

10 In contrast, the residential alternative, it's
11 impossible to guess how many units you're going to get approved.
12 You could go into 336 and they might tell you you're approved
13 for 75, and there is precedent in the local market for that
14 happening. So I don't think any buyer could base a pricing
15 decision on a guess of how many units he's going to get
16 approved.

17 Q. In the course of evaluating the potential for this
18 property, what if any, investigation did you do of the approval
19 process locally?

20 A. Well, I started by checking the zoning ordinances in
21 both Smithtown and Brookhaven, and I got a lot of very good
22 background information from Gyrodyne's application for the 336
23 units, because it addressed some of the issues that the towns
24 consider, which go beyond the nominal zoning requirements.

25 And then I did quite a bit of research in the locale,

1 to look at other projects and see how they fared. When I did
2 that, I was very concerned, not just with the projects
3 themselves and how they turned out, but the time frame needed
4 for the approvals. Because if it takes you ten years to get
5 approvals, that's not going to be very attractive to a
6 developer. The developer asks the same question that all my
7 clients ask, what's it going to cost, and how long before it's
8 done.

9 And no developer wants to supervise a construction of
10 his project standing behind a walker. Developers don't want to
11 get the approvals, they want to build. And the sooner they get
12 to the building process, the sooner they get to ground breaking,
13 the sooner they're happy. That's what they live for.

14 So I looked at a total of ten projects -- well, I
15 looked at more than ten projects, but I selected ten projects,
16 and they are set forth in my report on pages 29 through 33.

17 I looked at a range of major projects. Most of them
18 in Brookhaven, two that I found in Smithtown. Some had happy
19 endings, some did not. But as a group, the examples I looked at
20 showed me a number of things. They showed me that you don't
21 always get what you ask for. You might go in for 500 units and
22 get approval for 300.

23 They showed me that sometimes things drag on longer
24 than you anticipate. They showed me that sometimes unexpected
25 things happen, like moratoriums that the town imposes, because

A SWIFT SCRIPT

1 they're swamped with applications, or elections that take place,
2 and a new administration comes in that has a completely
3 different policy towards development, and has completely
4 different objectives.

5 And they also showed me that sometimes you get
6 approvals from the town, and then the neighbors sue. And the
7 neighbors sue the town, too. So even when you get your
8 approvals, you still may not be able to break ground. All of
9 this makes the Gyrodyne property a pretty high risk proposition.

10 Q. And the -- how does the measure of that risk bear on
11 its value?

12 A. Well, I really used this as part of my determination
13 of highest and best use, and --

14 Q. I --

15 A. -- in my report, it receives the highest and best use
16 analysis, and it is part of my rationale of -- for concluding
17 what I did.

18 Q. All right. And how does that -- the degree of that
19 risk bear on your conclusion of highest and best?

20 A. I felt that the risks and the uncertainty and the
21 timing exemplified by these examples mean that any developer is
22 going to do whatever he can to expedite the approvals, and make
23 them as simple as possible, and avoid any dramatic changes.
24 He's going to go for what most of the local residents want to
25 see, which is as little change as possible.

1 In a way, Gyrodyne suffers from being such a nice
2 piece of property, because it is a tremendous tract of open
3 space, and most of the neighbors consider it an asset to their
4 own property. This is open space. Open space is a very big
5 issue in Suffolk County and in Brookhaven, and I give the town
6 or the county credit, they've put their money where their mouth
7 is. They have been acquiring public land, they've been floating
8 bond issues, and a number of the projects that I studied wound
9 up going into the public domain, getting purchased by the town
10 or the county or land trust for preserving open space.

11 Q. But it was not -- you did not conclude that the best
12 use of this land was this open space, though, did you?

13 A. No. I looked at it in financial terms of what's the
14 highest value that can be realized from the land under a
15 reasonable development scenario.

16 Q. And what was that scenario?

17 A. That scenario was maintaining the existing industrial
18 park and creating some sort of a business park on the remaining
19 property.

20 Q. After having reached that conclusion, how did you go
21 about valuing that, or the entire property?

22 A. When you have a property this large, there are other
23 large properties on Long Island, what I call development
24 opportunities. But they tend to have different components, and
25 I'm trying to get inside the mindset of a typical buyer, and

1 predict how a typical buyer is going to view this property, and
2 I think the only way that a buyer could view this property and
3 analyze the property is as components. I think that the best
4 way to appraise it, is by looking at the value of the existing
5 industrial component, which is the seven occupied buildings with
6 the \$2 million plus rent roll, then by looking at the potential
7 of the development land and analyzing that separately.

8 I did separate appraisals of that. I did a sales
9 comparison approach. I found other improved industrial
10 properties, and I came up with a price per square foot of
11 building which I applied to the existing industrial buildings.
12 I also did an income analysis, based on the rents and operating
13 expenses in the existing buildings. That -- those two
14 approaches formed the basis for my concluding a value for the
15 existing buildings.

16 When it came to the development land, I projected a
17 business park development, and I did it by the acre, rather than
18 project a certain number of lots or a certain number of square
19 foot developed because --

20 Q. Why?

21 A. Again, you're dealing with uncertainty. When you
22 develop a business park, and try to market industrial sites or
23 business sites, the size of the buildings is going to be
24 dictated by the users who come along. And some users will want
25 bigger buildings than others. Some users may want a small

1 building with a lot of outdoor land, for whatever reason,
2 because there are businesses that have those needs. And you
3 really can't predict how these users are going to emerge.

4 So the only certain figure that I have is the acreage.
5 So I suggested certain lot sizes, but I did my analysis based on
6 a per acre price.

7 Q. Now, who ultimately will decide the number of lots or
8 of what actually is built on this property?

9 A. The market will decide. It's -- it depends on
10 marketing, it depends on chance and opportunity. Somebody might
11 come along and say, this is a great corporate campus for me, and
12 I'd like a hundred acres or 50 acres, or you might get some
13 reasonable buyers who want to buy ten acre parcels, and they
14 will build whatever size building they need, and can fit on the
15 parcel of land they buy.

16 Q. And the impacts of that projected construction, how
17 would they be addressed locally?

18 A. They would be addressed based on the individual
19 project, and this is one of my thoughts. This property is
20 comprised of a number of different tax parcels. I think it's
21 possible that the owner of the Gyrodyn property could circumvent
22 some of the seeker process by selling off the tax lots. No
23 subdivision is needed. And if these tax lots were owned by
24 separate entities, the planning process would be completely
25 different. The towns would not have the same leeway that they

1 have under unified ownership.

2 MR. CLASEN: I object and I don't believe that's
3 in his report, this hypothetical.

4 THE COURT: All right. His hypothetical?

5 MR. CLASEN: This hypothetical about spinning off
6 some of the tax lots.

7 THE COURT: All right. Yes, first time I'm
8 hearing it too.

9 MR. CLASEN: Yeah, so move to strike to the
10 extent it's not in his report.

11 THE COURT: Okay. What's the objection?

12 MR. CLASEN: I move to strike, it's not in his
13 report. He's now talking about another possibility,
14 spinning off tax lots. That's --

15 MR. RYAN: If I may, Your Honor, the witness is
16 not giving testimony as to value as to that. It's just
17 what he's considering in the range of possibilities.

18 MR. CLASEN: But he -- in his report, he purports
19 to tell us the range of possibilities he's considered.
20 Spinning off tax lots is not one of the ones that I saw in
21 his report.

22 THE COURT: There's no valuation on that.

23 MR. RYAN: No.

24 THE COURT: All right. I'm going to allow it to
25 stand. Go ahead, Mr. Ryan.

1 MR. CLASEN: Your Honor, just -- there's no
2 valuation issue, then what's the relevance? It's not going
3 to valuation.

4 THE COURT: Well, then I'll evaluate its
5 probative value when I write a decision. Since there's
6 nobody to influence but me, and you've already heard my
7 comment on it, then you know, I'll just let it stay where
8 it is, and then we'll go from there.

9 BY MR. RYAN:

10 Q. How did you appraise the existing buildings, Mr.
11 Golub?

12 A. I compared them with other recently sold industrial
13 buildings, light industrial buildings, and I analyzed the net
14 operating income, based on rents being paid in the existing
15 complex.

16 Q. And where did you get that information from?

17 A. I received rent rolls from Gyrodyne, and I received
18 some operating expenses from Gyrodyne. Others I obtained from
19 their annual reports.

20 Q. And your analysis of that, of the existing buildings,
21 industrial buildings, and their contributing value, where is
22 that found?

23 A. It begins on page 43, and it extends through page 61.

24 Q. And in valuing these buildings, you're valuing all of
25 the buildings that existed on the entire 313 acres?

1 A. Yes, the entire property as it existed before the
2 appropriation.

3 Q. And what was your conclusion as to the value of the --
4 the value that those buildings contributed?

5 A. \$15 million.

6 Q. And where is that found?

7 A. On page 61.

8 Q. All right. And that conclusion is -- there's a grid
9 that I find on page 57 and 58. How does that relate to your
10 conclusion?

11 A. The -- there are grids on pages 57 through 60, and
12 these relate nine improved property sales to the subject
13 buildings, used -- this is the sales comparison approach. This
14 is part of the sales comparison approach, and it shows my
15 development of a value estimate for the existing buildings on
16 allocated land areas.

17 Q. I see that you've valued separately buildings east and
18 west of the railroad tracks.

19 A. Yes.

20 Q. Why is that?

21 A. Well, mostly because I wanted to illuminate the
22 separate values, as part of a before and after appraisal.

23 Q. All right. It was just a matter of the convenience of
24 doing that, in view of the taking that occurred?

25 A. Yes.

1 Q. And there's no qualitative difference between the east
2 and west buildings?

3 A. Yes, there is some qualitative difference, but that's
4 not really the main issue. The main issue was that I did it to
5 explicate the damages in this case.

6 Q. All right. To the extent that there might be any
7 qualitative difference, that's reflected in your adjustments?

8 A. Yes.

9 Q. Where can we find that reflected in your analysis?

10 MR. CLASEN: The objection was going to be
11 leading, Your Honor. Has been three or four been leading,
12 and before he stuck the answer to the last one, I was going
13 to say leading, but I missed it, so.

14 THE COURT: Understood. Mr. Ryan, please.

15 MR. CLASEN: Yeah, sure.

16 THE COURT: Can we --

17 MR. RYAN: Do you want me to rephrase the
18 question, Your Honor?

19 THE COURT: Well, no, you've already asked the
20 question and given the answer. I don't know -- there's
21 nothing --

22 MR. CLASEN: Just going forward now.

23 THE COURT: Again, there's really nothing left
24 for you to not to do here, except in the future, please
25 refrain from --

1 MR. RYAN: I will try to do that, Your Honor, but
2 I always thought if I --

3 THE COURT: Unless you want to change places, --

4 MR. RYAN: Right.

5 THE COURT: -- Mr. Golub would like to ask you
6 the questions, and you can answer them.

7 MR. RYAN: I always thought it was best practice
8 to get the --

9 MR. CLASEN: No objection to that, Your Honor.

10 MR. RYAN: -- answer from the witness. Judge, I
11 always think it's best practice to get the answer from the
12 witness, too.

13 Judge, can we take five minutes? It's -- the
14 heat is getting to me, I apologize.

15 THE COURT: Sorry about that. Sure, why don't we
16 go to -- I'll give you 15. We'll go to five minutes of
17 12:00.

18 MR. RYAN: Thank you.

19 (Off record.)

20 (On record.)

21 MR. RYAN: Thank you, Your Honor.

22 THE COURT: Go ahead, Mr. Ryan.

23 BY MR. RYAN:

24 Q. Mr. Golub, you've indicated how you and what you
25 valued the buildings at. How is it you went about valuing the

1 additional acreage?

2 A. I used sales comparisons to value the additional
3 acreage. I did research in the local market and I found, I
4 believe, nine or ten industrial site sales that I compared using
5 price per acre as a common denominator.

6 The sales that I found were all single sites, all but
7 one in existing industrial parks, which is the situation that
8 ultimately would prevail under my highest and best use scenario
9 for the Gyrodyne property.

10 So in order to equalize the per acre or to equalize
11 the comparables to the subject, I have to also posit that the
12 subject sites, when sold for that per acre price, would also be
13 in an existing industrial park.

14 And so what I did was, set up a discounted cash flow
15 analysis, allowing a certain time schedule in which to get
16 approval for a business park, create the infrastructure, and
17 have those sites be worth what I said, which was \$195,000 per
18 acre. The discounted cash flow analysis is fairly standard
19 procedure in appraising, and it is standard in -- a standard
20 part of business school curriculum.

21 Q. What we're dealing -- is Gyrodyne an industrial park
22 currently or is it something else?

23 A. No, it's not. In order to realize the value or
24 estimate the value of what this land would be worth as an
25 industrial park, you have to project some reasonable assumption

1 of how much time it would take and the expenses that would be
2 involved to create that industrial park.

3 Q. And where do we find that analysis in your appraisal?

4 A. My development of the land value, \$195,000 an acre is
5 -- starts on page 62 I believe or -- 62. And I have some sales
6 comparison grids, which show the adjustments I made with the
7 comparable land sales, and then on -- starting on page 68, I
8 have a discussion of the discounted cash flow analysis, and the
9 schedule that I set forth is on page 71 of the appraisal.

10 Q. Why is it that you did it this way instead of
11 comparable sales of vacant industrial park lands?

12 A. I was not able to find any large tract sales of
13 industrial properties. All of the industrial land sales that I
14 found were industrial sites in business parks. And so I had to
15 go with what I had. If I had found other large industrial
16 tracts, or industrial tracts, I would have used them. But the
17 sales that I found indicated a value of \$195,000 per acre, and
18 that is not appropriate for raw acreage. That is appropriate
19 for an industrial site in a business park. And in order to
20 utilize that per acre value, I have to apposite a business park
21 and all of the costs and time delays needed to create that
22 business park on the Gyrodyne parcel.

23 Q. What costs and time delays did you consider?

24 A. I considered three years for approvals, and I
25 considered certain infrastructure costs, the costs of legal

1 representation, consulting fees, planning studies, road
2 construction, and sales costs, and developer's fees.

3 Q. Where did you draw those estimates from?

4 A. Well, I projected them. I projected them, because
5 that's the only way to do it. There is a certain amount of
6 guesswork, but I explained it starting on page 68, and the
7 schedule on page 71 summarizes my assumptions.

8 Q. Now, are those assumptions, once you've arrived at
9 them, how do they impact your analysis of the value of
10 Gyrodyne's property?

11 A. What I'm valuing here is the development land
12 component. I've got the existing buildings as one component,
13 and I've got the development land as a second component, and I'm
14 now focusing on the development land. And this gives me a value
15 of the development land, which I will later add to the value of
16 the existing buildings.

17 Q. Is -- what, if any, flexibility is there in those
18 assumptions?

19 A. There is a lot of flexibility in the assumptions.
20 This is a schedule that an investor would use to make a pricing
21 decision. If someone were considering purchasing the Gyrodyne
22 property, he would probably make this sort of analysis, if he
23 wouldn't, his investors, his backers, his lenders, would make
24 this sort of analysis.

25 Anybody who uses a discounted cash flow analysis on a

1 routine basis understands that there are different assumptions
2 that can be used, and people tend to develop a range of values,
3 using a discounted cash flow analysis. I did that using
4 different discount rates, and I show that on the bottom of page
5 73. I show that using different discount rates, the final value
6 would be a little bit different, depending on what the
7 investor's expectations of yield were, or depending on how much
8 competition the investor anticipated, he might bid higher if he
9 really wanted the property, and he thought there were competing
10 bidders.

11 I also just for illustration, suggested some
12 completely different scenarios for discounted cash flow
13 analysis, and I set those forth at the back of the report,
14 behind my appraisal conclusions, beyond my appraisal
15 conclusions, on page 158 through 164. And in those, I would
16 call them alternate trials. I posited what the effect would be
17 if it took five years to get approvals, or if the land were sold
18 off at a faster pace than I originally expected.

19 Q. You indicated that this analysis is a projection,
20 right?

21 A. Yes.

22 Q. Why are you projecting forward into the future?

23 A. Investors always project forward into the future.
24 They don't care as much about the past, as they care about the
25 profits they're going to realize in the future.

1 Q. Using that analysis, how -- what did you value the
2 additional lands not assigned to the buildings at?

3 A. I concluded a value of \$22,500,000.

4 Q. And your total value of the lands and the buildings
5 then?

6 A. \$37,500,000.

7 Q. And was that your conclusion as to its market value?

8 A. That was my conclusion of the market value before the
9 appropriation.

10 Q. Did you also analyze the property after the
11 appropriation?

12 A. Yes, I did.

13 Q. And how did you go about doing that?

14 A. I used essentially the same techniques, except that
15 the remainder property is different. There are fewer industrial
16 buildings remaining, and there is less development land
17 remaining.

18 Q. And how did those changes -- well, what if any
19 consideration did you give to the highest and best use of the
20 remainder?

21 A. I analyzed the remainder in much the same way as I did
22 before, and I concluded that the highest and best use would be
23 the same. I think that the after property might actually prove
24 somewhat more marketable, because of the smaller package and
25 it's not as alarming to the public officials, and it's within

1 the purchasing power of more potential investors. So it might
2 tend to be a little bit more marketable than the property
3 beforehand, but the -- but I took that into account in my final
4 value conclusion.

5 Q. And how did you go -- and your processes in valuing
6 the remainder, what were they?

7 A. I used an income analysis on the rent roll on the
8 remaining buildings, and I did my sales comparisons also with
9 the remaining buildings. Then I prepared a discounted cash flow
10 analysis for the remaining development land.

11 Q. And how large was the remaining development land?

12 A. I believe there were 62 and a half acres remaining of
13 which 51.4 were development land. The other 16.2 acres is an
14 allocated site for the existing buildings.

15 Q. And your -- was your -- how did your conclusion as to
16 the highest and best use of that development land relate to the
17 analysis you had done of the entire property?

18 A. Well, as I said, I think the remainder property might
19 be a little bit more marketable because of its reduced size. I
20 think the development potential is somewhat similar, in fact, in
21 this case, it might be even a little bit better because SUNY is
22 now closer to the remainder property than before. But the
23 logistics of attempting to value this as residential development
24 land or the same as before the taking, which is that not only
25 are you completely uncertain about how many units would get

1 approved, but you really have virtually no control over the
2 process, because it's a public process.

3 Q. What was your conclusion as to the value of the
4 remainder?

5 A. I concluded remainder value of \$15,400,000.

6 Q. And the total amount of value attributed to those
7 lands that were taken by Stony Brook then?

8 A. Well, the value difference worked out to be
9 \$22,100,000. In fact, because of my size adjustments and the
10 after taking, the per acre value comes out a little bit higher
11 than the after taking, and I recognize that that was an
12 appraisal technicality. My understanding is that the direct
13 damages have to be for the land actually taken. So I appraised
14 actual damages of \$22,450,000.

15 Q. Okay. And is that found at page 94 of your report?

16 A. Yes, it is.

17 Q. You indicated that you made size adjustments for the
18 remainder property. What were those adjustments in relation to?

19 A. Those adjustments were in relation to the sales that I
20 found.

21 Q. And the remainder property, I think you indicated was
22 62.5 acres?

23 A. Yes, 62.

24 Q. Does the size of the remainder impact your taking of
25 the -- a size adjustment, or what effect did it have on your

1 taking of the size adjustment?

2 A. My recollection is that it was not a literal size
3 adjustment on a grid. I think it was simply because there was
4 development land to sell off, so the sell off was achieved more
5 quickly.

6 MR. RYAN: Thank you, nothing further.

7 THE COURT: Mr. Clasen, I'm just being advised of
8 some other things that are going on here, which means we
9 might break now for lunch, which will give you time. And
10 because of some things going on in the court right now,
11 we're going to break till 2:00.

12 MR. CLASEN: Thank you, Judge.

13 MR. RYAN: Very good, Your Honor.

14 THE COURT: Acceptable?

15 MR. CLASEN: Yes.

16 THE COURT: Thank you. We adjourn till 2:00
17 o'clock.

18 (Off record.)

19 MR. CLASEN: May I proceed, Your Honor?

20 THE COURT: You may proceed.

21 MR. CLASEN: Thank you.

22 CROSS EXAMINATION

23 BY MR. CLASEN:

24 Q. Good afternoon, Mr. Golub.

25 A. Good afternoon.

1 Q. Now, you were requested to do a highest and best use
2 analysis; is that correct, of the Gyrodyne property?

3 A. I was requested to make an appraisal, and that's an
4 integral part of an appraisal.

5 Q. An integral part of doing the appraisal, is you have
6 to perform the highest and best use analysis.

7 A. Yes.

8 Q. And in order to form the highest and best use
9 analysis, you have to look at the four criteria that are cited
10 in your report, right?

11 A. Well, I -- yes, I guess you do.

12 Q. All right. On page 34, you mention the four criteria,
13 you quote this, page 34, the four criteria, the highest and best
14 use must met are, legally permissible, legal permissibility,
15 physical possibility, financial feasibility, and maximum
16 profitability, right?

17 A. Yes.

18 Q. And those are the four criteria that you were talking
19 about a minute ago, right, that you need to satisfy?

20 A. Yes.

21 Q. Okay. And in this particular case, did you attempt to
22 identify uses which would satisfy those four criteria?

23 A. Yes, I did.

24 Q. Okay. Now, I take it the analysis that you perform
25 is, you identify what's legally permissible, was physically

1 possible, and what's financially feasible, and then once you've
2 identified that category, which fit those three, you then do the
3 appraisal to find out which one is the most profitable.

4 A. That's one way to do it. I don't always use that as
5 an outline for my highest and best use analysis. I tend to
6 follow my own outline, but those four criteria are an important
7 part in determining how to reach a highest and best use
8 conclusion.

9 Q. In this particular case, the property is zoned as
10 light industrial, right?

11 A. Yes.

12 Q. Okay. So that satisfied the legally permissible.

13 A. Yes.

14 Q. And so it was physically possible, right?

15 A. Yes.

16 Q. And it was financially feasible?

17 A. Yes, I think it is.

18 Q. Yeah. And then as for maximum productivity, it
19 depends on if that's the only one or not. If it's the only one,
20 it sure is going to be the maximum profitability, right?

21 A. Profitability, yes.

22 Q. Okay. Now, that's the only use you actually used in
23 your report, right, was light industrial?

24 A. Well, I analyzed two uses. I analyzed the existing
25 industrial use, and I analyzed the residential development or

1 the industrial development potential.

2 Q. And the industrial development -- the industrial unit
3 residential development.

4 A. No, the industrial development potential.

5 Q. Okay. Did you analyze the residential development
6 potential?

7 A. No, I did not.

8 Q. Okay. And that was because you found it not to be
9 legally permissible, right?

10 A. The main reason was because of the uncertainty
11 involved in the number of units. I looked for residential land
12 sales, and the only reasonable land sales I found with this type
13 of property, residentially, were properties that sold approved
14 or they sold conditioned on an approval based on a price per
15 unit, and I could develop a price per unit, but I have no idea
16 how many units would be permitted on the Gyrodyne property.

17 Q. Legally permissible, in order to satisfy that
18 category, you look at first of all as zoned, right?

19 A. Yes.

20 Q. If it's as zoned, it's legally permissible, right?

21 A. Yes.

22 Q. Okay. And then you also have to look at whether or
23 not there's a reasonable probability of rezoning, right?

24 A. Yes.

25 Q. Okay. Because if a property, even though not zoned

1 for something, could reasonable be done so, you'd consider it,
2 as a possible highest and best use, right?

3 A. Yes, in fact, I did consider it. I didn't appraise
4 it, but I did consider it.

5 Q. Did you consider residential use in any permeation to
6 be something that would have been legally permissible, because
7 it had a reasonable probability of it being rezoned?

8 A. I don't think it has a reasonable probability of being
9 rezoned, and if there is such a probability, I don't know how it
10 would be rezoned.

11 Q. Okay. So the answer is, you didn't think any
12 residential property was -- had a reasonable probability of
13 being rezoned? Any residential development at all, had a
14 reasonable probability of being rezoned, for use of this
15 property?

16 A. Well, it's a possibility, but not a reasonable
17 probability, and if it were a reasonable probability, I couldn't
18 specify what it would be.

19 Q. Okay. Well, first of all, you found no residential
20 use to have a reasonable probability of being rezoned for this
21 property; is that correct?

22 MR. RYAN: Asked and answered, Your Honor.

23 MR. CLASEN: I'm not sure I got an answer yet.

24 THE COURT: I'm sorry?

25 MR. RYAN: Asked and answered, Your Honor.

1 THE COURT: Not yet, Mr. Ryan.

2 MR. RYAN: Okay.

3 THE COURT: Getting close, but he keeps putting
4 an extra comment in.

5 MR. CLASEN: Right.

6 THE COURT: I'm going to allow it. Go on.

7 A. It's hard for me to give a yes or no answer. Do I
8 think that this could be rezoned or would be rezoned, it very
9 well could be, but I can't predict how the town is going to act
10 or how the towns are going to act, in this instance. And it's
11 just too hypothetical for me to base an appraised value on it.

12 Q. But my question was a little more particular. Did you
13 find any possible residential use, to have a reasonable
14 probability of being rezoned, for use of this property?

15 A. Possibility, but not reasonable probability.

16 Q. Okay. If this property was rezoned for residential
17 use at a one to two unit density, okay, assuming that the
18 property was -- had a reasonable probability of being rezoned
19 for that, okay, would such a use be physically possible?

20 A. Yes, it would be.

21 Q. Would it be financially feasible?

22 A. I don't know.

23 Q. Would it be the maximum profitability?

24 A. Again, I don't know. It might be marginal, because
25 you need to have a certain number of units to justify the

1 infrastructure costs and all the investment.

2 Q. It might be more profitable, it might be less
3 profitable than the industrial, right?

4 A. That's correct, it could go either way.

5 Q. Now, did you hear Mr. Grover testify yesterday?

6 A. Yes, I did.

7 Q. And he mentioned that he thought the property, the
8 Gyrodyne property could get redeveloped -- pardon me, could get
9 rezoned for residential, at a density of one to two units per
10 acre. Do you remember him saying that?

11 A. Yes, I do.

12 Q. Okay. Now, in doing your appraisal, did you rely upon
13 Mr. Grover at all, in determining what were the highest and best
14 uses?

15 A. I would say he had an influence on my thinking,
16 because we had some meetings before the appraisal was written,
17 but I did not have his report at the time I wrote my appraisal.

18 Q. Did you talk to him before you did your report?

19 A. Yes, I did.

20 Q. Okay. And did he have a significant influence in your
21 analysis?

22 A. He had an influence, I don't know if it was a
23 significant influence, but we discussed some of the
24 ramifications of the approvals process, as it is handled in
25 Smithtown and Brookhaven, and he gave me some examples, and we

1 discussed some of the procedures that were involved in
2 approvals.

3 Q. Can I show you your second report, please?

4 MR. CLASEN: Your Honor?

5 THE COURT: You may.

6 (Monitor and Mr. Clasen confer.)

7 MR. CLASEN: Oh, excuse me, Your Honor, may I --
8 I knew both of them had been marked, his second report.

9 THE WITNESS: My second report?

10 MR. CLASEN: Yeah. We marked four expert reports
11 from respondent.

12 THE COURT: I'm not so sure the --

13 MR. CLASEN: H, Exhibit H. No?

14 THE COURT: -- second --

15 MR. RYAN: This is H.

16 THE COURT: The second appraisal report?

17 MR. RYAN: Are you referring to the blue binder
18 that --

19 MR. CLASEN: No, no, referring to Exhibit H.

20 THE COURT: That's this one.

21 THE MONITOR: Oh, this one here.

22 MR. CLASEN: No, this is not -- oh, here it is,
23 here it is.

24 THE COURT: There it is.

25 MR. CLASEN: There it is.

1 Q. Let me show you --

2 THE COURT: What's the letter?

3 MR. CLASEN: E, as in Edmond.

4 THE COURT: Oh, yeah, okay.

5 Q. Have you seen that before?

6 A. Yes, I wrote it.

7 Q. And I'm going to direct your attention to the first
8 page of Exhibit E. The last sentence says, "Mr. Grover had a
9 significant influence on my analysis and conclusions, as they
10 are set forth in my appraisal."

11 A. Yes.

12 Q. Okay. Does that refresh your recollection as to
13 whether Mr. Grover had a significant influence on your analysis
14 and conclusions that you put in your appraisal report?

15 A. Yes, he had a significant influence on my thinking,
16 yes.

17 Q. Okay. Was Mr. Grover's analysis that a rezoning to
18 PDD for one to two unit density had a reasonable probability to
19 occur, was that significant in your coming to your conclusions
20 in your report?

21 A. He didn't tell me that in any of our meetings. We
22 discussed other issues.

23 Q. Have you seen Mr. Grover's report?

24 A. Yes, I have.

25 Q. And you've looked at his conclusion, right?

1 A. I don't think I have actually read through his report.
2 I read a draft of his report, but I don't know that I read
3 through his full report.

4 Q. Did Mr. Grover tell you that he concluded that the
5 most likely result of the rezoning process, which I'm
6 paraphrasing rezoning process, but that's what he's referring to
7 in his report, would be the approval of a plan with low density
8 light industrial or mixed use, that preserves open space, and
9 minimizes traffic generation. Did he tell you that before you
10 prepared your report?

11 A. I don't recall him telling me that specifically, but I
12 did hear him testify to that effect, and I agree with the
13 statement.

14 Q. Okay.

15 A. I agree with his opinion.

16 Q. That mixed use, right, mixed use had a potential for
17 being -- the property had a reasonable probability of being
18 rezoned for mixed use.

19 A. I was not focusing on mixed use, I was focusing on low
20 intensity. Mixed use, no, I don't know about that.

21 Q. You don't know -- when you say you don't know about
22 it, he didn't tell you, or you don't know that he believed that
23 that was a likely result?

24 A. I don't recall discussing mixed use at the time we
25 met, at times we met.

1 Q. Had he told you that he thought there was a reasonable
2 -- that the likely result of a rezoning process would be the
3 property would be rezoned for mixed use. Would you have then
4 considered that to be a possible highest and best use and valued
5 it as such?

6 A. I think I would still have a very hard time appraising
7 mixed use, because mixed use is a very vague, generic term. I
8 need to have some kind of a model, some type of a prototype in
9 my mind, that I can base evaluation on. I based it on acreage,
10 because I know what the acreage is. I did not base it on
11 proposed amount of building space, because that I don't have,
12 the same thing with the residential, I don't have a count.

13 Q. If you were told that a property had a reasonable
14 probability of being rezoned for a mixed use residential, okay,
15 would you not have then inquired as to what that meant, so that
16 you could've then appraised it?

17 MR. RYAN: Objection, Your Honor. There's no
18 indication in Mr. Grover's report that it's a mixed use
19 residential.

20 THE COURT: Sustained.

21 Q. I want to refer you to Mr. Grover's -- well, let me
22 tell you. In Mr. Grover's report, on page 20, he says, and I
23 can wait -- he refers at the bottom of the page to a mixed use
24 plan, "such as one including assisted living, senior housing,
25 and low density residential might be able to be developed, that

1 would have a low traffic impact."

2 Assume that we use his definition of mixed use --

3 MR. RYAN: Objection, Your Honor.

4 Q. -- which is --

5 MR. RYAN: Your Honor, that's a partial reading
6 and a misreading of -- although it's an accurate reading of
7 the sentence, it completely excepts it from the context,
8 which is lead agency consideration of various uses.

9 MR. CLASEN: Your Honor, first of all, it's a
10 question. I think I'm entitled to ask a question on cross,
11 number one. Number two, his conclusion was mixed use --

12 THE COURT: Yeah, I -- Mr. Clasen, I'd rephrase,
13 I'd rephrase your question.

14 MR. CLASEN: Okay.

15 Q. Assuming mixed use, that Mr. Grover's referring to, is
16 referring to a plan which would consist of assisted living,
17 senior housing, and low density residential, okay, understand
18 what I mean by mixed use?

19 A. Well in general terms, but not specific terms.

20 Q. Okay. If you were told that in general terms, such a
21 mixed use development had a reasonable probability, in fact, it
22 was going to be the likely result, would you not then have
23 appraised the property, as if it had been rezoned for that use?

24 A. I could not do so, unless I had more specifics about
25 the nature of the mixed use, perhaps the acreage allocated to

1 each use, and which specific uses they would be, and how many
2 units in each component.

3 Q. Your job, as an appraiser, right, is to go find out
4 what the highest and best use for the property is, right?

5 A. Yes.

6 Q. So you don't wait for somebody to come to you and tell
7 them, oh, I think this is the highest and best use, you have to
8 figure it out, right?

9 A. Well, I could figure it out, but in this case, I
10 can't, because the mixed use would be determined through a
11 public process. And I have no idea what will emerge after a
12 public approval's process.

13 Q. Well, you made -- are you a planner by the way?

14 A. No.

15 Q. Okay. And are you a zoning expert?

16 A. No, I'm not.

17 Q. Okay. In order to determine the highest and best use,
18 though, right, you -- I think everybody agreed, residential, if
19 it was permitted, right, high -- in fact, a density residential
20 that's proposed by Gyrodyne, if that was permitted, that would
21 be the highest and best use, right? If it was legally
22 permissible, it would be the highest and best use?

23 A. I'm not sure. If it's 200 units, it might not be. If
24 it's 300 units, it might not be. If it's 1,500 units, it would
25 be.

1 Q. And in order to determine -- right, if 1,500 would
2 definitely be the highest and best use, right?

3 A. Pretty likely would be, yes.

4 Q. And 200 may or may not be, right?

5 A. Correct.

6 Q. Okay. So -- but the property otherwise could be
7 physically done to that, it would otherwise be financially sane
8 to do that, all the other requirements exist, right?

9 A. Well, other than access, there are no real physical
10 limitations to development.

11 Q. Right. So you know the property perhaps -- you know
12 the property could be used for residential at 200 units for the
13 property, 500, 1,500, it could be used, right?

14 A. Physically.

15 Q. And if it could be rezoned for that, right, you knew
16 you then had to look at it and analyze it, and decide it was the
17 highest and best use, right?

18 A. Well, there's a --

19 Q. If it had a reasonable probability of being rezoned
20 for any of those uses, you would've then had to analyze it and
21 determine whether those are the highest and best uses, right?

22 A. There's a limit to what I can do as an appraiser, and
23 my answer is no, it's not right. Because I have to have some
24 quantification of number of dwellings that would be permitted.
25 Otherwise, I have no basis for evaluation.

1 Q. Who made the decision that a -- the property did not
2 have a reasonable probability of being rezoned for 1,500 units?
3 Who made that determination?

4 A. Well, I never considered 1,500 units. I think -- I
5 still think the idea is preposterous.

6 Q. Okay. Did you personally come to the conclusion that
7 developing this property for residential, at a density of three
8 to six units per acre, did you come to the conclusion that that
9 was not a reasonable probability of rezoning?

10 A. As I said, I never even considered it, because I think
11 that density is beyond the realm of possibility.

12 Q. Okay. So when you say you think it's beyond the realm
13 of possibility, you're making the determination that it can't be
14 done?

15 A. Yes.

16 Q. Okay. So you've decided that it can't be rezoned for
17 that, right?

18 A. Yes.

19 Q. How about being rezoned for a thousand units? Did you
20 make the determination that it couldn't be rezoned for a
21 thousand units?

22 A. Well, I didn't really think of it in those terms, but
23 I think a thousand units is equally difficult, or almost equally
24 difficult.

25 Q. It had no reasonable probability of being rezoned for

1 that?

2 A. I would say so, yes.

3 Q. And you made that determination?

4 A. Well, I didn't make the determination. I didn't
5 consider it. You're asking me now, and now I will tell you I
6 think it's highly improbable.

7 Q. Why? You mean before you did your report, you didn't
8 figure out what the reasonable probability was of rezoning for
9 other uses, besides light industrial?

10 A. Well, I considered a whole bunch of other uses. I
11 automatically eliminated commercial. I automatically eliminated
12 hotel. I automatically eliminated warehouse. I automatically
13 eliminated heavy industrial. And I guess you would say the same
14 thing with thousand or fifteen hundred units.

15 Q. You automatically discounted that as a possibility?

16 A. Well, I've been doing this for a while, and some
17 things I do reflexibly.

18 Q. Okay. How about --

19 A. I mention them in my appraisal in passing. I
20 automatically eliminated the possibility of commercial center,
21 of a retail center, but --

22 Q. But we're focusing now on residential.

23 A. Okay.

24 Q. Did you automatically say, there's no possibility of
25 the property being rezoned for residential at 500 units?

1 A. I think the main plan I focused on was the proposal
2 that I was given, which was 336 units and a golf course, and I
3 looked at that as a possibility.

4 Q. Now, when you're appraising property, right, to the
5 highest and best use, are you not obligated to find the highest
6 and best use regardless of whether the property's actually being
7 used for that?

8 A. Yes.

9 Q. Okay. And regardless of whether someone is proposing
10 to do something different?

11 A. Yes.

12 Q. Okay. So the fact they proposed a golf course,
13 doesn't stop your analysis, right? You've still got to find the
14 highest and best use.

15 A. It didn't, that's correct.

16 Q. Right. And one possibility is residential, clearly,
17 right?

18 A. Yes.

19 Q. Okay. And the impediment for president -- for
20 residential is simply, it's not legally permissible?

21 A. No, it's more complex than that. I'm saying this is a
22 high risk property for development under any circumstances. And
23 I think that any way you can circumvent or short circuit the
24 approvals process or shorten the approvals process, lessens the
25 risk and increases the likelihood of realizing the highest and

1 best use, or realizing an approved plan, that will enable you to
2 break ground.

3 Q. That's a value determination you're talking about.

4 A. Yes, it is.

5 Q. Okay. Did you make that value determination on the
6 property as being rezoned for residential?

7 A. When you say value determination, are you --

8 Q. Well, let me --

9 A. -- referring to a value system, or are you referring
10 to dollars and cents?

11 Q. I'm talking dollars and cents.

12 A. Well, as I say, some things I do are flexibly, and in
13 this case, I considered it, but didn't fully develop the value
14 scenario.

15 Q. In not considering the property as having a reasonable
16 probability being rezoned for residential, right, you said it
17 didn't have a reasonable probability of being rezoned for
18 residential; is that correct?

19 A. Yes.

20 Q. And that's at any density, right?

21 A. No, it's not at any density.

22 Q. Okay. What density did it have a reasonable
23 probability of being rezoned?

24 A. If they went in for one acre lots, or two acre lots,
25 I'd say the chances are excellent. They might post right

1 through the process.

2 Q. Okay. How about half acre lots?

3 THE COURT: I'm sorry, what?

4 MR. CLASEN: Half acre lots.

5 A. It's possible, I don't know.

6 Q. How possible?

7 A. I couldn't tell you.

8 Q. Well, you must have tried to decide whether it was
9 reasonably probable or not, right?

10 A. Well, I went to the planning board in Brookhaven. I
11 went to the planning department in Smithtown. I talked to the
12 personnel there. I looked at other projects in both towns. I
13 went through the files, I did a lot of research on other
14 projects, and I reached an opinion.

15 Q. And as a result of all that work, how reasonable
16 probable was it that the property could've been rezoned for
17 let's say, one acre zoning?

18 MR. RYAN: Objection, Your Honor. Degrees of
19 reasonable probability, I don't understand the question.

20 THE COURT: Rephrase, Mr. Clasen.

21 MR. CLASEN: Okay.

22 Q. Were you able to calculate the percentage of the
23 probability that the property could be rezoned for one acre
24 zoning?

25 MR. RYAN: Objection, Your Honor. How can you

1 have a percentage of reasonableness, a percentage of
2 probability?

3 MR. CLASEN: I think the law requires you to do
4 that, Your Honor, if you're evaluating --

5 MR. RYAN: I don't know about that.

6 MR. CLASEN: -- reasonable probability, you have
7 to put a percentage on the reasonableness of the
8 probability. That's what Mr. Gulizio did.

9 THE COURT: I don't know if it requires a
10 percentage, Mr. Clasen, so I see where you're trying to get
11 to, I don't think you've gotten there yet.

12 MR. CLASEN: I want to keep looking at it.

13 THE COURT: Well, you go ahead and keep working
14 on it.

15 MR. CLASEN: I think we've gotten now that it had
16 a reasonable probability of being rezoned for residential
17 at one acre. Okay.

18 THE COURT: Yeah, I mean, you --

19 MR. RYAN: Is there a question to the witness or
20 is this speeches?

21 THE COURT: Yes, he's trying to work on density,
22 as you well know, Mr. Ryan, and he's trying to feel his way
23 there, and he's going to feel his way there. You can keep
24 objecting, but sooner or later, he'll get there, but go
25 ahead.

1 MR. RYAN: Your Honor, I'm just trying to --

2 THE COURT: No, no, I'm not criticizing you, Mr.
3 Ryan, there's no problem at all. Why don't you just let
4 Mr. Clasen try. You can keep standing, because he'll
5 probably have other --

6 MR. RYAN: I just hope we get there more
7 directly, Your Honor.

8 THE COURT: Well, I understand that, Mr. Ryan,
9 but that's -- Mr. Clasen obviously needs your assistance in
10 reframing his questions, so you'll -- he'll sooner or later
11 get there.

12 MR. CLASEN: Your Honor, I've always said, I'll
13 take anybody's help.

14 THE COURT: I understand.

15 MR. CLASEN: Okay.

16 Q. What was the highest density that you believed
17 property had a reasonable probability of being rezoned for?

18 A. I'm an appraiser, I'm not a bookmaker. I can't give
19 you odds on this, and I really didn't get any guidance from any
20 of the staff that I talked to in either of these towns, and I
21 only have to imagine how a developer would perceive this, and a
22 developer would have no more guidance than I have. So a
23 developer would have to conclude, as I did, that this is an
24 unpredictable high risk type of development, and you're going to
25 have to apply to the towns and take your chances and see what

1 happens.

2 MR. CLASEN: Move to strike, Your Honor.

3 Q. The question was, what is the highest density per acre
4 that you believe the property had a reasonable probability of
5 being rezoned?

6 THE COURT: I'm not going to strike. I'm going
7 to leave his comments in. He's trying to answer it his
8 way. You can keep asking questions, but I'll leave his
9 comments on record.

10 MR. CLASEN: All right. Your Honor, eventually
11 I'll get a number or maybe not. I got one number so far,
12 let's see if we can get any further.

13 A. I can't answer that. I know that Gyrodyne submitted
14 an application for three to the 36 units, and I'm sure that they
15 had meetings with both towns at the time that they developed
16 that plan, and perhaps they got some indication after detailed
17 discussions with the town planning board or planning boards or
18 the town staff or whoever they talked to, that 336 was a
19 reasonable application number.

20 So perhaps 336 is a cap.

21 Q. Well, that also -- what they were talking about also
22 had a golf component, right?

23 A. Yes.

24 Q. Do you know if the golf development proposed by
25 Gyrodyne had a reasonable probability of being granted the

1 rezoning?

2 A. I don't know. I think it sweetened the application a
3 little bit. It may have helped.

4 Q. Well, do you know if that had a reasonable probability
5 or not?

6 A. I couldn't say.

7 Q. Did you value the property as if it was a golf
8 community?

9 A. No, I did not.

10 Q. Okay. If it had a reasonable probability of being
11 rezoned for that, you would've had to do so, right?

12 A. If I felt that that reasonable probability existed, I
13 would have developed that value.

14 Q. Oh, so you made a determination that it didn't have a
15 reasonable probability for being rezoned as a golf community?

16 A. Yes.

17 Q. You did? Okay. Based on what?

18 A. Well, --

19 Q. Your -- is it you or are you relying on Grover and
20 Fitzpatrick?

21 A. No, it was me. It was me.

22 Q. Okay. So I'm clear now, I think before I got a little
23 confused on some of your answers. You're now telling us you're
24 sure the golf development did not have a reasonable probability
25 of being rezoned?

1 A. You're taking my statements out of context. We're
2 talking about the application that they made, which was 336
3 units and a golf course, and there are two issues. One is the
4 reasonable probability that it would be rezoned, and the other
5 is how soon.

6 Q. Well, I'm not up to how soon. I'm not that quick.
7 I'm taking --

8 A. There are --

9 Q. -- it one point at a time. Did it have a reasonable
10 probability of being rezoned?

11 A. The two issues are intertwined.

12 Q. The two --

13 A. If you tell me there's a reasonable probability of
14 getting that approved in ten years, I am not interested in
15 undertaking development of this property, because I'm not
16 willing to wait ten years.

17 Q. But here we're kind of different. You're not being
18 asked to develop the property, you're being asked to appraise
19 the property. Okay?

20 A. Yes, but I --

21 Q. So now in -- and when you're appraising the property,
22 you take into account what a developer or others would pay for
23 it, right?

24 A. Yes, but I also have to go to the developer's motives,
25 and I have to try to get into the developer's mindset.

1 Q. By the way, what you proposed for the property is an
2 industrial park, right?

3 A. Yes.

4 Q. And that park is going to take ten years to be
5 developed, right?

6 A. It may take longer to be developed, but it may sell
7 out sooner.

8 Q. Well, you -- in fact, you have 30 percent of it being
9 sold out the last year.

10 A. Yes.

11 Q. Because you don't even think it's going to sell out in
12 ten years, right?

13 A. It may take a while to absorb that land, yes.

14 Q. Okay. So what you're telling me now is, if even there
15 was a reasonable probability of rezoning, you're telling me no
16 developer would pay anything because it may take ten years.

17 A. Yes.

18 Q. How long was it going to take, in your opinion, for a
19 golf course proposal to be rezoning, the rezoning that was
20 requested for the golf course to be granted?

21 A. I don't know. Mr. Grover estimated, I believe, seven
22 years.

23 Q. Okay. And five of that was for the SEQOR (ph) part,
24 right?

25 A. I believe so, yes.

1 Q. Right. And your light industrial use that you're
2 proposing, that's going to have to also jump through the SEQR
3 hoops, right?

4 A. It may, it may not.

5 Q. Okay. So if Mr. Grover said it did have to go through
6 SEQR, that's wrong?

7 A. It depends on the magnitude of the proposal.

8 Q. The magnitude of your proposal is 256 acres of the
9 property being sold off for light industrial use, right?

10 A. Yes.

11 Q. Under that scenario, SEQR's clearly going to apply,
12 right?

13 A. It would for the 256 acres, but if they sold off part
14 of it, the SEQR might not apply.

15 Q. But back to the -- I don't want to lose this
16 probability of rezoning, okay. Separating it into two issues,
17 whether a developer would be willing to wait the time, and
18 whether or not whatever occur, right, was there any reasonable
19 probability of being rezoned for golf? What do you decide it
20 was going to take?

21 A. I would say there's a reasonable probability.

22 Q. Okay. And how long is that going to take?

23 A. I don't really have any precedent for that. I can
24 only -- I can't even guess, because it depends entirely on the
25 town boards.

1 Q. It's beyond your expertise to evaluate the time it
2 would take, right?

3 A. Well, it isn't the matter of expertise, it's a matter
4 of familiarity with the local politics, and how they're going to
5 treat a completely new proposal.

6 Q. But there are people who could've answered that
7 question, right?

8 A. I don't think anybody could really answer that
9 question. It's a political process, and however long it takes,
10 it takes.

11 Q. So let me see if I understand you. The property had a
12 reasonable probability of eventually being rezoned for golf, but
13 because you couldn't figure out how long that would take, you
14 discounted that as a use that needed to be taken into account
15 for the highest and best use analysis?

16 A. Well, I didn't think that the golf course would be the
17 highest and best use. I was considering the entire proposal,
18 which was a golf course plus the housing.

19 Q. Right.

20 A. But I discussed golf courses and I discussed the cost
21 of a golf course, and the decrease in golf play over the past
22 few years.

23 Q. Let me rephrase that. Because I did say just golf
24 course. And when I say -- it's the golf course community, which
25 includes the residences. You said that had a reasonable

1 probability of being rezoned, but you couldn't quantify the time
2 for it, right?

3 A. Yes.

4 Q. Okay. And because you couldn't quantify the time, you
5 didn't appraise it for the purposes of your analysis?

6 A. That's correct.

7 Q. And there's nobody that you're aware of that could put
8 a time frame on that, it would take -- the time it would take to
9 do the rezoning?

10 A. Well, there are people who could give you an estimate.
11 Mr. Grover gave you an estimate, but that doesn't mean it's
12 going to take seven years or five years. It might take three
13 years, it might ten years.

14 I looked at ten other projects in this region, major
15 projects of this magnitude, some a little smaller, some a little
16 bigger, and I got a sense that the results are always different.

17 Q. Did mixed use have a reasonable -- mixed use, as I
18 defined mixed use before from reading from Mr. Grover's report,
19 remember, do you want me to read that again for you?

20 A. Yes. But you didn't really define mixed you, you
21 described mixed you.

22 Q. Okay. Well, let me describe mixed use. As a use
23 involving assisted living, senior housing, and low density
24 residential, that's how I'm describing the mixed use,
25 development.

1 Did a mixed use development have a reasonable
2 probability of being rezoned for use for the subject property?

3 A. It depends on the exact specifics of the plan.

4 Q. Is there a plan of mixed use, that you believe had a
5 reasonable probability of being rezoned?

6 A. I can't give you such a plan. Mixed use is too vague
7 a term.

8 Q. Was there -- is there any mixed use plan that you, as
9 an appraiser, could envision that the property had a reasonable
10 probability of being rezoned for?

11 A. If I had done an appraisal like that, it would be
12 completely hypothetical.

13 Q. Okay. Well, as we learned earlier today, all
14 appraisals are hypothetical here, because you're projecting --
15 in this case, you're projecting something, a highest and best
16 use analysis, which is in your report, which is in Mr. Taylor's
17 report, none of which occur, right? You're projecting a
18 hypothetical now.

19 A. Well, it's a degree of hypothesis.

20 Q. Well, that goes to the reasonable probability. What's
21 the reasonable probability in your mind, that the property could
22 have been rezoned for mixed use?

23 A. It could've been rezoned for mixed use.

24 Q. What mixed use could it have been rezoned?

25 A. They had an approval for, I believe, 120 units of an

1 adult home.

2 Q. That's for just ten acres, too.

3 A. That was ten acres. Well, there's one component of
4 the mixed use. And at one point, they had a proposal for
5 apartments on 25 acres, so maybe that's another component.
6 Beyond that, the rest might be low density single family homes.
7 If you had some sort of a mixed use, I would think the town
8 might come in and ask for workforce housing or some kind of low
9 income housing. I can't begin to guess what the town would ask
10 for under that kind of a mixed use plan.

11 Q. Did you attempt to identify a mixed use for the
12 property, okay, that would maximize the profitability, --

13 A. No, I did not.

14 Q. -- if it had been rezoned?

15 Okay. Is that because you never even thought about
16 this possibility when you were doing your appraisal, that a
17 mixed use --

18 A. No --

19 Q. -- rezoning could've occurred?

20 A. No, it's because you have to have something more
21 specific in mind, in order to measure it. You can't measure an
22 unknown. You have to put some dimensions on it before you can
23 put a ruler against it.

24 Q. And as an appraiser, isn't that exactly what you're
25 supposed to do, try to figure out possible uses, and put a yard

1 stick to it, try to measure out and contemplate what it could be
2 used for, and then once you've done that, and figured out what
3 it can be used for, you value it, right? That's what you do.

4 A. That's what I do, but the mixed use didn't get past
5 the contemplation stage.

6 Q. By the way, the industrial park use, no one had
7 submitted a proposal for an industrial park for this property
8 before, right?

9 A. I don't know. I'm not aware of one.

10 Q. You're not aware of one. You can up with it, right?

11 A. Yes. Yes.

12 Q. Right? And nobody told you how many units per acres
13 or how many acres per lots, or any of the dimensions, you came
14 up with the dimensions for what you thought was a possible
15 industrial use as an industrial park, right?

16 A. I took the lot dimensions from the comparable land
17 sales I found. I used those as yard sticks to come up with five
18 or ten-acre modules.

19 Q. And if you wanted to come up with dimensions and
20 numbers, you could've looked at the sales of mixed use
21 communities, right, as a helpful guide in designing what would
22 or would not have fit on this property?

23 A. I don't know of any sales of mixed used properties.

24 Q. How about residential properties, developments? Are
25 you aware of any -- the sale of any residential properties,

1 developments, that could've assisted you in determining what mix
2 of properties could possibly be used on this property, that
3 would've had a reasonable probability of result?

4 A. Well, I was aware of some residential land sales, but
5 they sold by a price per unit, and I couldn't use those, because
6 I don't know how many units would fit on the Gyrodyne property,
7 or how many units would be approved.

8 Q. Okay. Well, let's take that, too. How many would fit
9 on it. That's the sort of thing that you are capable of
10 figuring out, right?

11 A. How many fit on it is --

12 Q. Yeah, as an appraiser.

13 A. -- probably an engineering study, but you could put
14 high rise buildings on this land. I don't really see any
15 physical impediment to that. The likelihood of that getting
16 approved I think is nil.

17 Q. But we're talking about residences, townhouses,
18 assisted living, single residence, single family residences.
19 We're talking about that. Those were all possible for this
20 property, right?

21 A. Yes.

22 Q. And did you attempt to figure out what the mix of
23 those could go on this property, physically, we've said?

24 A. Physically, I just came back from visiting my children
25 in Los Angeles, and there are very nice projects there that are

1 20 units to the acre. I don't think there's a chance of 20
2 units to the acre here. Physically possible, yes.

3 Q. If you had read -- if you had had Mr. Grover's report,
4 and had spoken to him about what he ultimately said on the stand
5 before you did your appraisal, would you have then asked him
6 some questions about some of the likely alternatives that he
7 identifies?

8 A. I don't think so, because he really can't answer what
9 the town boards would approve in a mixed use project.

10 Q. He said -- his conclusion was, "the likely result
11 would be the approval of a plan," okay, he is, indeed, telling
12 us what he thinks the likely approval of a plan by the town
13 would be, and he then adds, "would be for either low density
14 light industrial or mixed use." Right?

15 A. Yes.

16 Q. Now, if he had told you that before you did your
17 report, would you have asked him at least, what do you mean by
18 mixed use, how much, where are the units going to be? What is
19 it that you think would get blessed, so that I can value?

20 A. I might have asked him that, yes.

21 Q. Okay. And would you have asked him what he meant
22 about the light industrial, low density light industrial that
23 he --

24 A. I believe we discussed that.

25 Q. Did -- by the way, did Mr. Grover tell you that there

1 was any reasonable chance of getting this property actually
2 developed as an industrial park?

3 A. It's many months ago, I can't recall every detail of
4 our conversations.

5 Q. Well, he mentions the likely result in a low density
6 industrial use. Yours is not a low density industrial.

7 A. That's what I envisioned, low density.

8 Q. 256 acres being sold out for development is low
9 density?

10 A. Yes, in five and ten-acre lot modules that could be
11 combined into 20-acre lots, so, yes, I envision very low density
12 campus style business park.

13 Q. Well, we'll get to that in a few minutes.

14 You mentioned on direct that one reason why you
15 thought the industrial use that you were contemplating here over
16 the residential was good, because it was going to be so close to
17 Stony Brook, right?

18 A. Yes.

19 Q. And that would be natural that Stony Brook would spin
20 off all these businesses that may come and rent space in this
21 property or buy lots.

22 A. Well, I would say the potential is there.

23 Q. Do you know about the Belle Meade property?

24 A. The Belle Meade property?

25 Q. Yeah.

1 A. Which one? Belle Meade in New Jersey?

2 Q. No, there's one actually in New York. It's adjacent
3 to Stony Brook.

4 A. No, I'm not familiar with it.

5 Q. Do you know if that was a property that somebody had
6 the same idea in the '70s of putting it right next to Stony
7 Brook because it was going to spin off all this potential
8 tenants. Do you know if that was a plan that occurred in the
9 '70s?

10 A. No, I've never heard of it.

11 Q. So obviously you don't know how it worked out, right,
12 on Belle Meade?

13 A. Well, I know SUNY has its own incubator, and it hasn't
14 gone very far.

15 Q. Did Mr. Fitzpatrick's report play any role in your
16 determination of highest and best use?

17 A. Yes, it did. Mr. Fitzpatrick, again, I didn't see his
18 report until after I completed my appraisal, but I met several
19 times with him and we discussed some of the issues relating to
20 this property.

21 Q. Okay. Now, when did you meet with him?

22 A. It would've been during 2007, I don't recall.

23 Q. Before your report, right?

24 A. Before my report, yes.

25 Q. Right. Because, obviously, neither Mr. Grover nor

1 Mr. Fitzpatrick's reports that they handed in could play a
2 significant role, because they weren't generated until after you
3 generated your appraisal, right?

4 A. I believe so, yes.

5 Q. Okay. But are you telling us both of them had a
6 significant role in your determination of highest and best use?

7 A. Yes.

8 Q. In your appraisal, is there any mention of Mr. Grover
9 -- Messrs. Grover or Fitzpatrick?

10 A. I don't recall, but I don't think so.

11 THE MONITOR: Your Honor, may I?

12 THE COURT: You may.

13 Q. I'd like to show you what's been marked as Exhibit 15,
14 if I could. Are you familiar with Exhibit 15?

15 A. No, I saw it when I came into the trial, because
16 Mr. Gardner -- Mr. Ryan had it. I had not seen it previously.

17 Q. Do you know what that document is?

18 A. Yes.

19 Q. What is it?

20 A. It's appraisal standards.

21 Q. USPAP?

22 A. Yes.

23 Q. Okay. And those are the standards that your appraisal
24 has to comply with, right?

25 A. It should, yes.

1 Q. It should. Okay. Take a look at standard 2-2 Roman
2 numeral VII. It's on page U-23.

3 A. U-23?

4 Q. U-23. Just read that to yourself.

5 A. What am I looking for?

6 Q. You're looking at VII.

7 A. "Describe the scope of work used to develop the
8 appraisal"?

9 Q. Uh-huh, and then this -- if you'd look -- read both
10 paragraphs to yourself, and just tell us when you're up to us.

11 (Pause)

12 Now, you've read it, right?

13 A. Yes.

14 Q. Okay. This is one of the standards in your report,
15 your present report, how to satisfy, right?

16 A. Yes.

17 Q. Okay. And one of the things you have to do, is you
18 have to identify the names of those providing significant real
19 property appraisal assistance, right?

20 A. Yes.

21 Q. Does your report identify Grover and Fitzpatrick? No,
22 right, we already decided?

23 A. No, they didn't give me appraisal assistance. This is
24 intended for somebody who writes part of the appraisal or does
25 part of the analysis.

1 Q. Someone who is giving you significant -- strike that.
2 You said, "Mr. Grover had a significant influence on
3 my analysis and conclusions." Right?

4 A. Yes.

5 Q. Okay. So he played a significant role in your
6 analysis and conclusions, yet you say that under the standards
7 you don't have to mention his name?

8 A. I don't -- as I understand it under the standards, no,
9 I do not have to mention his name.

10 Q. And you mentioned a few minutes ago, Fitzpatrick
11 played a significant role.

12 A. Yes, I did.

13 Q. And again, you didn't mention him, right?

14 A. No, because they are -- have specialized expertise,
15 and I consulted with them, and they helped me formulate some of
16 my own analyses and appraisal conclusions.

17 Q. One of the conclusions they helped you with, I think
18 you said a few minutes ago, was your highest and best use
19 analysis.

20 A. Yes.

21 Q. Which is fairly important for an appraisal, right?

22 A. It's very important.

23 Q. Very important. Let me look, if I could for a second,
24 what you do propose to do with this property, okay.

25 As I understand it, you're going to -- it's going to

1 become an industrial park, right?

2 A. Yes.

3 Q. And you're going to develop or sell at least 256 acres
4 of that or develop, right?

5 A. Yes.

6 Q. Okay. Now, what's --

7 (Phone ringing.)

8 THE COURT: Is that that phone again?

9 MR. UNIDENTIFIED: Yes.

10 THE COURT: Would you escort that gentleman out
11 of here, please? Sorry.

12 Q. What's the maximum density that's allowed for
13 development in Smithtown, for light industrial?

14 A. In Smithtown, the floor area ratio is 42 percent.

15 Q. And what is it in Brookhaven?

16 A. 35 percent.

17 Q. Let's, just because it's easier to do the math. If
18 you use the Brookhaven maximum density, which is less than
19 Smithtown, right, for the entire project?

20 A. Yes.

21 Q. So we're just using 35 percent, right? We know that
22 what you do is you say there's 256 acres, but only 35 percent of
23 it is allowable to be built on, right?

24 A. Yes.

25 Q. Okay. If you do that math, and I can get you a

1 calculator, you get to 89.78 acres, does that sound right to
2 you?

3 A. That sounds about right.

4 Q. Do you want a calculator?

5 A. No, I'll trust you.

6 Q. Okay. Now, if I have this correct, right, there's
7 43,560 feet -- 60 square feet in an acre.

8 A. That's correct.

9 Q. And it's amazing that's the one thing appraisers know
10 that number off the top of their head. The next thing -- the
11 harder question is, when's your anniversary, right?

12 Now, if we multiply the 89.78 by the 43,560, we'd come
13 up with the -- a square footage of three million and 910, right?

14 A. That's about right.

15 Q. So that's the maximum density that you're
16 contemplating for the undeveloped land?

17 A. Well, I wasn't really contemplating that, but that's
18 the maximum that you could be allowed under zoning, yes. That
19 would be quite a bit of space.

20 Q. Right. And when you're selling these lots, you're not
21 -- nothing in your report said you were restricting what anybody
22 could do on the lots if they get it.

23 A. No, no.

24 Q. They could do to the maximum, right?

25 A. They would probably do whatever they need.

1 Q. Now, this isn't the entire property because you still
2 have the property with the current light industrial existing
3 use, right, that's about 200,000 square feet.

4 A. Yes.

5 Q. Right? So the entire property being built out, as you
6 envisioned it, is going to have about 4.1 million square feet.

7 A. No, that's not what I envisioned. I envisioned very
8 low intensity, a very low intensity business park.

9 Q. In your report, can you point me to a page where you
10 indicate that any -- when any of the lots are sold, the person
11 buying the lot is going to be restricted in any way from
12 developing the lot, to the maximum square footage allowed under
13 Brookhaven and Smithtown?

14 A. I don't make such a statement.

15 Q. Your contemplation that it was going to be not
16 developed to the maximum committed, is that in your report? All
17 of these 256 acres that just sold off. Because you do take off
18 of the 308 acres some acres that aren't going to be developed
19 for various reasons.

20 MR. RYAN: Objection, Your Honor, is there a
21 question or are we just --

22 MR. CLASEN: All right. I withdraw.

23 MR. RYAN: -- a serial discussion?

24 THE COURT: Thank you. Mr. Clasen, Mr. Ryan
25 rephrase.

1 MR. CLASEN: I am sorry, Your Honor.

2 Q. Your -- we start off with the total acreage of being
3 over 308 acres, right, sir?

4 A. Total --

5 Q. We start off with a total acreage of a little over 308
6 acres.

7 A. Correct.

8 Q. Okay. And your industrial park, you've already
9 contemplated that a certain portion --

10 MR. RYAN: Your Honor, was the last question
11 withdrawn? He asked the witness to tell him whether there
12 was something in the appraisal. And I don't know if that
13 question was withdrawn.

14 MR. CLASEN: I withdrew the question.

15 THE COURT: He withdrew the question, Mr. Ryan.

16 MR. RYAN: I thought he had spoken -- asked
17 another question after that, that was being withdrawn.

18 THE COURT: Not yet. You're anticipating.

19 MR. RYAN: No, this is the third question, Judge.

20 MR. CLASEN: Your Honor, I thought I withdrew the
21 question, and asked --

22 Q. Okay. We start off with a total of 308, right, sir?

23 A. Yes.

24 Q. Okay. And then from that, in your contemplated
25 industrial park, you took off a certain amount of acreage that

1 you believed would not get developed for various reasons?

2 A. Yes.

3 Q. Okay. And that left us with 256 acres, right?

4 A. Correct.

5 Q. And those are all being sold off?

6 A. Yes.

7 Q. Okay. Now, I then asked you before, where in your
8 report, do you indicate that these acres, right, that are being
9 sold off are going to be restricted in the density for the
10 development?

11 A. I didn't say that they were going to be restricted,
12 but I discussed a campus style setting and low intensity light
13 industrial use. I think the type of occupant that would be
14 attracted to a business park in this location would want to have
15 some sort of a campus style setting, and there would probably be
16 more land and less building.

17 Q. It's not they're going to be restricted, then they can
18 do anything they want to do, it's just they're probably not
19 going to do something, is what you're saying?

20 A. Well, I didn't state any restrictions. It's possible
21 that you would have a business park like this, and maybe have
22 some clause for architectural approval or some kind of approval
23 by the developer, but I did not suggest that in my appraisal.

24 Q. Well, in the 256 acres that are being sold off, all
25 right, what square footage did you imagine was going to be

1 developed?

2 A. I did not envision a specific number. It would depend
3 on opportunity and whoever emerged as an occupant.

4 Q. Did you, when you were doing your whole analysis, have
5 to figure out what would the traffic implications be of
6 developing the 256 acres, okay, which had a maximum square
7 footage of almost \$4 million?

8 A. Well, I stated -- I didn't say anything about 4
9 million square feet, that's your number, not mine. But I did
10 state that there are traffic problems, and there are narrow
11 winding roads, and there are access issues that would have to be
12 resolved.

13 Q. When you were doing your analysis of highest and best
14 use, did you attempt to, in any way, compare the traffic
15 implications of what you were contemplating doing with a
16 residential scenario of any sort?

17 A. No, I did not.

18 Q. Okay. When you were at least, I assume, in some way,
19 making a probability of rezoning analysis, did you take into
20 account the fact that if the property was not rezoned, the
21 industrial use may result in significant traffic to the
22 surrounding community?

23 A. Any development of this property, beyond what's here
24 now, will increase traffic, and the roads are already difficult,
25 and I know that any development will make them more difficult.

1 Q. Are you aware of any community opposition to
2 Gyrodyne's proposal to develop the property as a golf
3 residential community?

4 A. No, I'm not personally aware of it.

5 Q. Are you aware of any opposition that's been lodged at
6 any time to any residential development of the Gyrodyne
7 property?

8 A. No, I am not.

9 Q. Okay. Now, would you have contemplated that the
10 residents who surround this property would complain about the
11 possibility of developing 256 acres of this property for an
12 industrial park?

13 A. I believe that the neighbors will protest any change
14 in any development at all.

15 Q. And do you believe if the neighbors were faced with
16 the possibility of rezoning industrial, as you contemplate, or
17 having residences, which will they complain more, that -- the
18 Gyrodyne scenario?

19 A. I can't say. The protest might be equal, but I don't
20 think they're going to be given a choice. An application will
21 be presented, and they will protest that application, whatever
22 it happens to be.

23 Q. Let me move for a minute to and I want to come back to
24 some of this stuff again, but when you do appraise the property
25 in this case, what you did was, you divided it into two pieces,

1 right? One was, as used for industrial purposes already, that's
2 the seven buildings, and then you looked at the rest of it as
3 undeveloped, right?

4 A. Yes.

5 Q. And the developed portion, the way you analyzed that,
6 was the first thing you did was you applied an income approach
7 to the seven buildings rent generation, right?

8 A. Yes.

9 Q. Now, in order to properly do that for appraisal
10 purposes, the rents you have to use are market rents, right?

11 A. Yes.

12 Q. Okay. Now, in this case, you used actual rents,
13 right?

14 A. I used both, because the actual rents are market
15 rents.

16 Q. Okay. Now, the market rent we should be looking at
17 for appraising this property, right, is the market rent that
18 someone would pay to rent the property in November 2005, right?

19 A. Yes.

20 Q. So it would -- that's the rent we're trying to figure
21 out for each one of these buildings, the rents that would be
22 generated if somebody came in and rented in November 2005,
23 right?

24 A. Right.

25 Q. And I believe you're telling us that the actual rents

1 are the market rents, right?

2 A. Yes.

3 Q. Now, if we could take a look at your report for a
4 minute, page 45. Page 45, 46 and 47 are your calculations that
5 you're making to determine the market rate for each one of these
6 buildings, right?

7 A. Yes.

8 Q. Now, on building number one, right, the projected
9 square -- per square foot market rate, you believe is to be 14
10 48, right?

11 A. That's' the average of the existing rents.

12 Q. Okay. But you're supposed to use market rate, right?

13 A. Yes.

14 Q. And you said market rate, your determination of market
15 rate was the average of the existing rates.

16 A. When you have 50 tenants, you have a market.

17 Q. Okay. But, no, no, you said average rate. I want to
18 make sure we're all talking the same thing. You're calling 14
19 48 the market rate, right?

20 A. Yes.

21 Q. Okay. Is anybody paying the market rate?

22 A. Some are a little higher, some a little lower, the
23 average is 14 48.

24 Q. East End Furs is paying 25.71, do you see that?

25 A. East End Furs, yes.

1 Q. Okay. That's over -- almost what 80 percent more than
2 the market rate?

3 A. It's much higher than the average.

4 Q. No, no, when I say the average, 14 48 is the market
5 rate according to you, right?

6 A. That's the average, and it is also a market rate.

7 Q. The market rate.

8 A. Well, for this building.

9 Q. Right.

10 A. You have to understand that there are a lot of
11 different spaces here --

12 Q. Right.

13 A. -- and each space has slightly different
14 characteristics. But on average, building one has a market rent
15 of \$14.48 a square foot, that's what I applied to the space
16 which did not have tenants listed.

17 Q. You've got number 376 as only paying \$5.54 a square --

18 A. Yes.

19 Q. Right? Even though the market rate's 14 48.

20 A. That's because it's only 390 square feet.

21 Q. Well, isn't it true that normally the smaller the
22 space you have, the higher rent you have?

23 A. In this case, they must have found a small tenant, and
24 they gave him an office for \$180 a month.

25 Q. Okay. Well, East End Furs who only had 420 square

1 feet, right, pretty close, they're paying 25.71, right?

2 A. Right.

3 Q. Okay. Almost the same size space, right?

4 A. Yes.

5 Q. Now, in order to really to determine the market rate
6 by using existing rates, don't you have to at least look at when
7 was this lease entered into?

8 A. I believe I had commencement dates on some of the rent
9 rolls that I was given.

10 Q. Okay. And once you have the commencement date, right,
11 you then have to adjust the market rate, the -- pardon me, you
12 then have to adjust the rent in the lease to take into account
13 that it may have been entered into a long time before, right?

14 A. That's a lot of fancy footwork for what is basically a
15 business incubator, and there -- is it's almost a self-contained
16 market. The actual rents are the best indication of what you
17 can get for this space.

18 Q. It may be a lot of heavy lifting, but in order to
19 really figure out what the market rate is, don't you want to at
20 least find rents for leases that are entered into as close to
21 the magic date as possible?

22 A. Under ideal circumstances, if you had a standard
23 product, if you were working with modern office space, for
24 example, then you would do that. But when you're working with
25 this type of incubator space, I think there's got to be a basic

1 assumption that the property managers are getting the most they
2 possibly can, and trying to rent as much space as they possibly
3 can. And the best indication in this type of property is the
4 average rent.

5 Q. Well --

6 A. I mean, you'll notice also that the average is
7 different from one building to another. That's partly for the
8 reasons I just mentioned, and it's also partly because the
9 buildings are different from one another, it's slightly
10 different in quality.

11 Q. This incubator space that Gyrodyne has, it's not
12 terribly unique, right? There are other examples of this
13 throughout Suffolk County?

14 A. There are some, but this is fairly unique in this
15 neighborhood. There aren't many other places, where you can go
16 and find this kind of space, small spaces, spaces where you can
17 do almost anything.

18 Q. Other than just looking at the actual rents, adding
19 them all up and dividing by the number of square foot, right,
20 did you take any other attempts to find out what the market rate
21 would be for this space?

22 A. I think I looked at some other leases --

23 Q. Is that --

24 A. -- just to see that they were reasonable. But I felt
25 in this instance, the actual rents were the best indication of

1 what you can get in this space.

2 Q. Well, let me ask you this. The 25.71, East End Furs,
3 when was that lease entered into?

4 A. I can't tell you off hand.

5 Q. Is that the best indication of what this building was
6 renting for at a particular time?

7 A. It's the best indication of what you could get for
8 that particular space under those terms.

9 Q. When that person entered into it, right?

10 A. Well, that's one element. There are --

11 Q. What else is there?

12 A. There are other elements, because a lot of these
13 tenants have different arrangements for utilities. Some have
14 utilities included, some pay utilities separately. Some are
15 advertising tenant fit-up. So that all factors into making the
16 differences in rent.

17 Q. Right. And if --

18 A. And that's why the average is so much better.

19 Q. Well, if somebody's paying their own electricity,
20 right, and paying 14.48, that's different from somebody paying
21 14.48 and not paying electricity, right?

22 A. No, that's different than somebody paying \$5.54 and
23 somebody paying \$25.71.

24 Q. In this particular case, 14.48 is the best indicia of
25 actual rent, actual market rent, according to you, right?

1 A. In my judgment.

2 Q. Right. And yet, not a single tenant's paying it.

3 A. That's the average.

4 Q. No, not -- that's the market. Not a single tenant is
5 paying the market.

6 A. Not a single tenant is exactly paying 14.48.

7 Q. Let me take -- look at building number two, all right.
8 That one you have a market rate of 11.43, and when I say market
9 rate, I'm using your definition of market rate, which is just
10 add all them up, and divide by the square foot, and that gives
11 you the market, right? That's the market?

12 A. In the space, yes.

13 Q. Right. Is anybody paying that amount?

14 A. The first tenant is 11.32, that's close, but they're
15 all clustered around there, and the average is 11.43.

16 Q. They're all clustered around there, right, 9.65 is
17 what Amazing Concretes pay, right? And indeed there's several
18 of them paying in the \$9 area, right?

19 A. Yes.

20 Q. And there's also some paying higher, like Sports Car
21 Haven, is paying 14.

22 A. Yes.

23 Q. Do you know when Sports Car Haven entered into their
24 lease for 14.

25 A. Excuse me?

1 Q. Do you know when the Sports Car Haven lease was
2 entered into?

3 A. Not without looking at my notes.

4 Q. Would you assume that leases which have a higher per
5 square foot rate probably are more recent leases than ones with
6 lowers?

7 A. No, there are a host of other reasons why the rent
8 might be different.

9 Q. Did you make that analysis here, as to why the rents
10 were different?

11 A. Not tenant-by-tenant, no. That's why I took an
12 average.

13 Q. Not tenant-by-tenant, you didn't in any way, take into
14 account the difference in leases, you just added them up and
15 divided them, and figured the average would handle it.

16 A. That's what I calculated, yes.

17 Q. All right. If we go through each one of these
18 buildings, I don't want to jump ahead, but if we do the same
19 analysis and questions, we're going to get the same answers,
20 nobody's paying what you call the market rate, right?

21 A. The market rate which I applied only to the vacant
22 space in each building is the average, and those spaces that
23 have no vacancies, I did not do that. The average is only
24 applied to the space in each building that's vacant. Otherwise,
25 I used the actuals.

1 Q. Well, actually let me ask you this. If the actuals
2 came out the way they did, and you had independently made a
3 determination that the market rate for the square footage for
4 these buildings should be different, you would've applied the
5 market rate, not the actuals, right, for the entire building?

6 A. If I had found information that indicated that the
7 market rate was completely different than the average, yes, I
8 would've used the market rate.

9 Q. If the market rate for building 8, you have is 11.80
10 if you had independently gone out and checked the market rates
11 and determined that indeed the market really was 14.31 as Long
12 Hill property was paying, you would've applied the 14.31 for all
13 the square foots for the building, for purposes of appraising
14 the building, right? Because you have to use market rate for
15 everything, including the ones that have actual leases.

16 A. I might have, but you're trying to apply that to a
17 much more complicated property. You're trying to apply it to a
18 property that already has over 50 tenants, and is a self-
19 contained market. The actual rents themselves are the best
20 indication of what the property could rent for.

21 Q. Okay. But what I'm saying to you now is, and I
22 believe you agree, you have to use the actual market rate,
23 regardless if -- right, that's what you use, and that's why
24 you're trying to figure out market rate, because you use market
25 rate not actual rates, right?

1 A. Right.

2 Q. Okay. And if the market rent had differed, you
3 would've used the market rent for all the square footage for the
4 building, regardless of what the actual rents were, in
5 calculating the value of the property, right?

6 A. If it were significantly different than the actuals, I
7 might have.

8 Q. If you look at all the buildings you looked at here,
9 right, and each one of them, they have leases, which are
10 significantly more per square foot than what you have as the
11 market, right? I'll go one-by-one, if you want. Building
12 number one --

13 A. Yeah, but --

14 Q. -- you have one at 25.71 and you've got it at 14.48,
15 that's a significant difference, right?

16 A. That's a reasonable statement, yes, I will not
17 disagree with you.

18 Q. Okay. Did you make any attempt on a lease-by-lease
19 basis to find out if the ones that are on the high end which is
20 significant differences might be more indicative of market rate
21 than the average?

22 A. I recall that there were a few that I did inquire
23 about, because they were abhorrent rents. One of them, in
24 particular, I remember was spaces that had been leased to the
25 Steinberg Hospital (ph) for abhorrent rents, and I was told that

1 there was some kind of arrangement where they were paid
2 quarterly, and I equalized it to monthly rents.

3 I did go over the rent roll in detail.

4 Q. Okay. Other than taking one which was quarterly and
5 dividing by the quarters, did you make any attempt to adjust or
6 find out if any of the high end rents, which we have for each
7 one of these properties was actually more indicative of the
8 market rent than the average?

9 A. I think it was more than one rent. It was spaces 34
10 and 36.

11 Q. Okay.

12 A. In building seven.

13 Q. Other than --

14 A. So it was two rents.

15 Q. Okay. Other than those two?

16 A. No.

17 Q. Now, the next thing you did here in your income
18 analysis, right, was you have it -- apply a cap rate after you
19 calculated the market rent for the properties, right. You then
20 had to do an income analysis of the rent of the income projected
21 out for these lots, the -- pardon me, for these buildings that
22 were already developed, right?

23 A. Yes. Can you speak a little more slowly, please?

24 Q. Yeah.

25 A. Thank you.

1 Q. Let me ask it again. Once you calculated the market
2 rent, you then had to do an income analysis, to determine the
3 value --

4 A. Yes.

5 Q. -- of the seven buildings, right?

6 A. Yes.

7 Q. Okay. And in doing the income analysis, you had to
8 apply for the cap rate and an equity yield rate, right?

9 A. Yes.

10 Q. Okay. And the cap rate that you applied was 9.4
11 percent, right?

12 A. Excuse me?

13 Q. The cap rate you applied -- I'm looking at page 52 of
14 your report.

15 A. Yes.

16 Q. The cap rate is about 9.4 percent.

17 A. That's correct.

18 Q. And the equity yield rate you applied was 15 percent,
19 right?

20 A. Yes.

21 Q. Okay. Your report doesn't mention where you got those
22 numbers. Where'd you get those numbers?

23 A. The 15 percent yield?

24 Q. The 15 percent equity yield and the 9.4 cap rate.

25 A. Well, the 9.4 cap rate is explicated on page 52. I

1 give you the mathematics of it and I explained it on page 51.
2 It starts with a weighted average of what I think is a probable
3 mortgage rate, mortgage interest rate and mortgage terms, and a
4 15 percent equity yield, and then I take a credit for pay down
5 of the mortgage over an ownership period, and I would take a
6 credit for property value appreciation, but in this case, I
7 projected none, because of the age and abilities.

8 Q. Where did you get any of those numbers?

9 A. The --

10 Q. I mean, is there a source?

11 A. Well, I keep a record in my office of financial market
12 rates. But I set them forth in the appraisal on page 72, I give
13 a survey of financial rates as of November 4, 2005, which is the
14 closest date I could get. I usually clip the rates out of the
15 Sunday paper, but that was the close of the market on Friday,
16 those were financial market rates.

17 Q. The rates on page 72 you got from the newspaper?

18 A. Yes.

19 Q. Okay. Do you ever use Corpass?

20 A. I have.

21 Q. Okay. What is Corpass?

22 A. It's an investor survey.

23 Q. Okay.

24 A. It's a -- the -- it's -- I guess it's Price Waterhouse
25 now. They have a bevy of investors, institutional investors,

1 and they call them up, and they say, what kind of a yield are
2 you looking for now, what are you charging for commercial
3 mortgage loans, and they publish the survey based on what people
4 tell them.

5 Q. Okay. Do you know what Corpass was reporting as the
6 appropriate cap rate?

7 A. No, I didn't use --

8 Q. For R&D and warehouse as of November 2005?

9 A. I didn't use Corpass for this appraisal.

10 Q. Okay. Do you know what Corpass was using for cap
11 rates during this period?

12 A. Well, I don't think Corpass would apply to this
13 property, which is an incubator. It's really applicable to
14 investment grade properties. That's what the survey is.

15 Q. This wasn't investment grade property?

16 A. No.

17 Q. You're presuming somebody's going to buy it for
18 investment purposes, right?

19 A. Well, when I say investment grade property, I'm
20 referring to a large office building with significant corporate
21 tenants, a major apartment complex, a large shopping center with
22 good solid credit rated anchor tenants. This is a business
23 incubator. It's in a different class than the respondents are
24 talking about in the Corpass survey. In my opinion, Corpass is
25 of interest, but not as relevant as the rates I used.

1 Q. So if the CorpPASS rates, for example, were for equity
2 yield nine and eight and a half, that would be of no relevance
3 to you, deciding to use 15 percent, right?

4 A. They might have influenced me, but I would've reached
5 the same conclusion, because I know that those respondents are
6 talking about a different class of property.

7 Q. Okay. So even if CorpPASS has a equity yield rate
8 between nine and a eight and a half, you still would've used the
9 15 percent that you used?

10 A. He's talking about equity yield or a cap rate?

11 Q. Equity yield right now.

12 A. Well, that would apply to a good quality property.
13 This is a business incubator, 50 small tenants, a dog club, a
14 hair salon, a deli, it's not in the same league.

15 Q. Okay. And in the cap rate that was being applied by
16 CorpPASS was between five and six and a half, that again,
17 wouldn't influence your decision to use nine and a half -- 9.4,
18 pardon me?

19 A. No. It wouldn't be relevant to this property.

20 Q. If you had used the CorpPASS numbers, right, how would
21 that have affected your valuation of the property?

22 A. I wouldn't have used them.

23 Q. Okay. But had you used them, is the question, how
24 would that have affected your calculations for the value of the
25 property?

1 MR. RYAN: Objection, Your Honor.

2 THE COURT: Sustained. He said he wouldn't have
3 used it.

4 MR. CLASEN: But, Your Honor, he's an expert
5 who's up here, I'm asking him had he done something, he's
6 an expert. And I'm asking him a hypothetical, had he done
7 so, how would it have impacted this.

8 THE COURT: I suggest you move on, Mr. Clasen.

9 Q. With respect to the existing buildings, you said that
10 after you did this income analysis, you went then -- you went
11 and looked at comparable sales; is that correct?

12 A. Yes.

13 Q. Now, of all the sales -- pardon me. Withdraw the
14 question.

15 Except for two of your comparable sales, all the
16 comparable sales involved property, which is being purchased by
17 an owner occupant, right, except for the two? And the two, I'll
18 tell you who the two are, number 8686 and 8689, right? All of
19 them are being purchased by somebody's who's going to be an
20 owner occupant.

21 A. (Witness looking through Exhibit H) 8686 is --

22 Q. Right. That's that shell that got sold under
23 distress.

24 A. Right.

25 Q. We'll talk about that in a minute.

1 A. Right. It was bought by investors.

2 Q. Right.

3 A. 86 --

4 Q. 89 was also --

5 A. I have an 86 --

6 Q. Was also bought by someone who's going to put three
7 boxes --

8 MR. RYAN: Your Honor, can we allow the witness
9 to answer the question that's been posed, rather than have
10 new questions interjected every time he attempts to make an
11 answer.

12 THE COURT: Thank you, Mr. Ryan. Mr. Clasen.

13 A. 8687 is partially owner occupied and part of it is
14 being leased out. 8689 was bought by investors and 8690 is also
15 partially rented out.

16 Q. First of all, an owner occupied property -- strike
17 that, Your Honor. Strike that.

18 Somebody buys a property to occupy it themselves, that
19 a different motivation from an investor who's buying something,
20 whereas they're going to have multiple tenants, right?

21 A. That's often the case, yes.

22 Q. Okay. Now, I want to go through the two that you
23 identified which had somebody else renting out a piece of it in
24 a minute. But 8686, right, you mentioned, that was a shell that
25 got sold, right?

1 A. It was a shell that got sold?

2 Q. I mean, there was nothing in it.

3 A. Oh, yes, it was an empty building.

4 Q. Right. And it was sold under distress, right?

5 A. Yes.

6 Q. What adjustment did you make for a distressed?

7 A. On page 57 there's --

8 Q. You made an adjustment of ten percent.

9 A. -- there's a ten percent adjustment for motivation.

10 Q. Right. In your expert opinion, is a ten percent
11 adjustment a proper for a property that's being sold under
12 distress?

13 A. Well, it wasn't really distressed, but in my judgment,
14 ten percent is an appropriate adjustment here.

15 Q. Isn't distressed sales somewhere in the lines of 30 to
16 40 percent discount?

17 A. No.

18 Q. Okay. Now, I note with respect to 8689, that is a
19 property where there's going to be three tenants, right? I
20 think it's three.

21 A. Three tenants?

22 Q. How many tenants are they going to have in 8689?

23 A. I don't recall how many tenants, but it was a multi-
24 tenant property.

25 Q. And it's similar to what we're talking about in the

1 subject property, right, a multi tenant.

2 A. Sort of, yes.

3 Q. Well, it's got to be comparable, right. You're saying
4 it's comparable.

5 A. Oh, yes, it's comparable. It's an index of the
6 subject's market value, yes.

7 Q. In fact, how much of an adjustment do you make for
8 this property versus the subject property, in total?

9 A. Minus 15 percent.

10 Q. Minus 15 percent. But did you take into account here
11 market conditions?

12 A. Yes.

13 Q. Okay. When I say market conditions, when did this
14 property sell?

15 A. November 2004.

16 Q. Okay. And the relevant date for us is November 2005,
17 right?

18 A. Yes.

19 Q. Okay. Did you make an adjustment for the fact that
20 this property sold the year before?

21 A. No, not an explicit adjustment.

22 Q. Rents were going up, right? I mean, sales -- pardon
23 me. Sell prices were going up during this period, right?

24 A. I didn't perceive that to be the case. I perceived a
25 strong market, but I'm reluctant to apply an across the board

1 adjustment in a market that really doesn't have that many
2 transactions, particularly when the properties are not standard.

3 Q. It was a strong market, but you didn't make any
4 adjustment for the fact it sold the year before, right?

5 A. Correct.

6 Q. Okay. Was rents -- were sales going up ten percent
7 during this period of time?

8 A. Not that I know of.

9 Q. According to you, it was flat for this year?

10 A. Well, I didn't say it was flat. I have a very hard
11 time measuring it, because you don't have enough standard
12 transactions. It's not like you have a standard commodity and a
13 whole bunch of trades, and you can track the trade, the trading
14 prices. Each property is different, and there aren't really
15 that many transactions, so it's hard to measure. It's only a
16 matter of judgment. You could elect to adjust it up by five or
17 ten percent a year if you wanted to. Personally, I think ten
18 percent would be way too aggressive, but I think transaction the
19 year before the valuation date, is a pretty good indication of
20 current value.

21 Q. And this is going to come up other times about market
22 conditions. Let's deal with it here.

23 The market was going up for this year, right?

24 A. I would say it's a strong market, but I don't have any
25 empiric evidence to measure.

1 Q. You couldn't figure it out, so you just don't make an
2 adjustment, right?

3 A. Correct.

4 Q. Is that the test for an appraiser, if you can't figure
5 something out, you just forget about it?

6 A. With time adjustments, that's appropriate, yes.

7 Q. Well, we also made that on the highest best use
8 analysis, you couldn't figure out if it was going to get rezoned
9 for various scenarios, so you just forgot about it?

10 A. Well, appraising is a social science, you do the best
11 you can.

12 Q. Let's jump ahead to the raw land portion. Now, you've
13 been doing appraisals for a long time, right?

14 A. Yes.

15 Q. And you've testified on the stand before, right?

16 A. Yes.

17 Q. And you've valued raw land before, right?

18 A. Yes.

19 Q. And you're probably more familiar with some of the
20 case law than many other people. Have you heard of the Hewitt
21 case?

22 A. No.

23 Q. Do you know if there's an obligation to -- for an
24 appraiser to value raw land as if it's raw land, and then add an
25 increment for development? Do you know if that's what you're

1 required to do?

2 A. No, I don't know that.

3 Q. The reason, I believe you said on direct, why you did
4 not value the property as raw land, was because you couldn't
5 find raw land zones, right?

6 A. You're talking about the industrial land valuation?

7 Q. Right, for the undeveloped land.

8 A. Yes, that's correct.

9 Q. You didn't value it as raw land, because you couldn't
10 find comparable raw law zones.

11 A. Well, I found industrial land sales, but I tried to
12 match the subject to the industrial land sales. The industrial
13 land sales gave me a value indication of \$195,000 an acre for
14 industrial sites and a business park, and that's what I used.

15 Q. You valued this property as if it had already been
16 developed into industrial, an industrial park, and then you
17 backed out the costs, right?

18 A. Yes.

19 Q. Okay. Now -- and you said you did that because you
20 couldn't value it as raw undeveloped land, because you couldn't
21 find enough comparable raw land sales, right?

22 A. That's fair.

23 Q. Okay. Did you look at Mr. Keller's report?

24 A. Yes.

25 Q. And he identified a number of raw land sales, did he

1 not?

2 A. Well, his land sales were similar to mine, in that
3 they were shovel ready sites, except for one, the school sale.
4 They were not really raw land, and most of them weren't
5 industrial, they were retail. They were purchased for retail
6 development.

7 Q. Okay. Of the 11 you've identified, four of them were
8 actually undeveloped land, right?

9 (Pause)

10 A. There were four that I might classify as raw land, but
11 even that is a little ambiguous. 8690, 8513 -- oh, I'm sorry,
12 8513, 8514 and 8537.

13 Q. Well, let's take a look at 8510 first. Adding one to
14 the mix, because it's the first in your pile. That's on page
15 110, right?

16 A. Yes.

17 Q. You described this property as level and it's street
18 grade, and was unimproved woods when it sold, right?

19 A. Yes.

20 Q. And if you take a look at the picture on the next
21 page, that building didn't exist, at the time of the sale, did
22 it?

23 A. No.

24 Q. So this was unimproved property, right? Raw land,
25 when it sold.

1 A. Is it -- does your question relate to unimproved
2 property?

3 Q. No, raw -- this was raw land when it sold, right?

4 A. Well, it was really one business site. When I saw raw
5 land, I'm talking about land that possibly has -- could either
6 be used as a site or possibly subdivided or developed in some
7 way for a multi-tenant occupancy.

8 Q. You're using this land as a comparable for your
9 subdivision analysis, right?

10 A. Yes.

11 Q. So it has some comparability to the property, right?

12 A. Yes, yes.

13 Q. And it was raw land, though.

14 A. Well, it's one business site. It was developed as one
15 business site with a self-storage complex, and this would go
16 very nicely on Gyrodyne. This building would -- this complex of
17 buildings would mesh very well with the existing buildings.

18 Q. When it was sold, though, it was raw undeveloped land?

19 A. It was vacant land, yes.

20 Q. Vacant land?

21 A. Yes.

22 Q. Well vacant and undeveloped are the same thing, right?

23 A. Well, when you say raw, the thing that comes into my
24 mind is you've got to extend utilities in, you've got to build
25 interior roads, you have to do some significant improvements

1 before you can actually start building, and this is not in the
2 same category because you're on a public street, you've got
3 access to municipal water, and you just have to put in an entry
4 drive. There's no need for an interior road network.

5 Q. It was unimproved woods, right?

6 A. Yes, yes.

7 Q. Okay. Let's take a look at 8513. Now, this is one of
8 the ones you identified also as raw undeveloped land, right?

9 A. I would say this is raw land, yes.

10 Q. Raw land. And you use this as one of your possible
11 comparables, right?

12 A. Yes.

13 Q. And this was for that school that never got built,
14 right?

15 A. Correct.

16 Q. Okay. Now, take a look by the way at the pictures on
17 the next page. You'll see the next page, it's like page 113.
18 Do you see that?

19 A. Yes.

20 Q. Who did these handwritten maps on the bottom?

21 A. I did.

22 Q. Okay. You have -- how did you -- well, let me ask
23 you, how did you do these maps? I mean, how did you do this?
24 What did you use to prepare these maps?

25 A. I used a ballpoint pen and a ruler.

1 Q. Okay. And where did you get the information, though?
2 Good, good question, I like when we hit a basic, we move up.
3 After you had the ballpoint and the ruler, right, you then had
4 to get some information you put on it, where did you get the
5 information?

6 A. From the tax maps.

7 Q. From the tax -- is Sunrise Highway there? Isn't that
8 the Long Island Expressway?

9 A. No, I think it's Sunrise Highway.

10 Q. The tax map by the way actually was not attached to
11 the bottom of any of your pictures, right?

12 A. No.

13 Q. And they were in Mr. Taylor's report, right?

14 A. Right.

15 Q. And you've seen Mr. Taylor's report?

16 A. Yes.

17 Q. He's got the same property here, right?

18 A. Yes.

19 Q. Let's take a look at the tax map that is therefore in
20 evidence, okay, as to what really is there.

21 Let's take a look at 8514, if we could. This again
22 was --

23 THE COURT: I'm sorry, what?

24 MR. CLASEN: 8514.

25 Q. This again was wooded and unimproved property, right?

1 A. Yes.

2 Q. Okay. Raw acreage again, right?

3 A. Yes.

4 Q. Okay. Finally, we have 8537, I believe it is. And
5 this again is raw acreage, right?

6 A. Yes.

7 Q. Now, we see more raw acreage comparables in your list
8 of 11, right?

9 A. Yes.

10 Q. Okay. And that gave you a value for the sale of raw
11 undeveloped land, right?

12 A. Well, they're small sites. I don't have anything of
13 the magnitude of 256 acres.

14 Q. Well, if you use them for the industrial park, you
15 could not have used them also to value undeveloped land?

16 A. I don't think I could, because a ten-acre parcel is
17 not a good indication of what a 300-acre parcel would sell for.

18 Q. Oh, if you're using it as raw land, it isn't, but if
19 you're using it for developed land, it suddenly is? It's your
20 comparables here.

21 A. It depends on how this is developed. It's close to
22 public streets, it's possible that this could be used as a
23 single business site where the road, for at least small
24 infrastructure investment.

25 Q. And if I understand you, you're telling me that all

1 four of these, you can't use them to value raw land, but you can
2 use them to value industrial parks that are already built?

3 A. I think they would have been competitive or could have
4 been competitive for the same type of buyer.

5 Q. Did you attempt to do the math on taking these four
6 properties, making the adjustments to find out what comparable
7 raw land was selling for?

8 A. Excuse me, I didn't hear the whole question.

9 Q. Did you attempt to do the math to look at these four
10 properties, and value them for purposes of valuing raw
11 undeveloped land, like the Gyrodyne property was, raw
12 undeveloped land?

13 A. No, I didn't, because of the huge size disparity.

14 Q. But you did take the same four properties and make
15 adjustments, so that you could use them to value the Gyrodyne
16 property, as if it been already turned into an industrial park,
17 you did that, right?

18 A. The characterization of these comparable sales is a
19 little more ambiguous than that, because I'm saying, they could
20 be construed as raw acreage, but they could also be construed as
21 individual business sites. And I think that they're equally
22 applicable with the others used the way I used them.

23 Q. Wait a second. Did you value this property as an
24 individual business site?

25 A. The Gyrodyne property?

1 Q. Yeah.

2 A. No. I think it's much too big to be an individual
3 business site.

4 Q. By the way, what type of report is your report?

5 A. It's an appraisal report.

6 Q. Okay. Do you still have USPAP in front of you? Those
7 are the standards you have to satisfy, right?

8 A. It depends on the application.

9 Q. Okay. Take a look at standard 2.2.

10 THE COURT: I'm sorry, what was the reference,
11 Counsel?

12 MR. CLASEN: 2.2, I'm sorry, I'll try to speak
13 up.

14 THE COURT: Thank you. Do you have a page
15 number?

16 MR. CLASEN: U-21.

17 A. U-21.

18 Q. I'm referring you to standard -- standards rule 2.2,
19 which reads, "Each written real property appraisal report must
20 be prepared under one of the following three options, and
21 prominently state which option is used; self-contained appraisal
22 report, summary appraisal report, or restricted use appraisal
23 report." Do you see that?

24 A. Yes.

25 Q. Which one was your report?

1 A. I'm not entirely sure of the distinction, but I would
2 say it's probably a self-contained appraisal report.

3 Q. And where in your report does it prominently state
4 which option is used?

5 A. It does not state that.

6 Q. So your report violates standards 2.2, right?

7 A. If you think so.

8 Q. No, I'm asking you. You're the appraiser, these are
9 the standards you live by, your report violates 2.2, doesn't it?

10 A. These are not standards that I live by.

11 Q. You don't apply the -- you don't live by these
12 standards?

13 A. I've never seen this book before, and I wouldn't think
14 of reading it. It's even taller than my own appraisal.

15 Q. Well, I'm sorry, maybe I misunderstood you before. I
16 thought you recognize what USPAP was, right?

17 A. Oh, I know what USPAP is. I've never seen this
18 version of it, but I've seen earlier versions, and it all boils
19 down to one thing, thou shalt not mislead, and I try to write
20 honest appraisal reports that don't mislead.

21 Q. That's the test, that's the sole standard that governs
22 your appraisal?

23 A. I would say so, yes.

24 MR. CLASEN: Can we take a break?

25 THE COURT: I'm sorry?

1 MR. CLASEN: Can we take a short break?

2 THE COURT: Yeah, off the record. How much
3 longer do you --

4 (Off record.)

5 (On record.)

6 THE COURT: Go ahead, Mr. Clasen.

7 MR. CLASEN: Thank you, Your Honor.

8 Q. Mr. Golub, have you ever heard of Article 6?

9 A. I don't know, no, it doesn't ring a bell.

10 Q. Do you know what the law is in Suffolk County
11 governing sewers?

12 A. No, I'm not familiar with them.

13 Q. Do you know if there's any density limitations put on
14 property that doesn't have sewers?

15 A. I believe I've heard testimony to that effect, yes.

16 Q. Do you know what that density level is?

17 A. No, I don't.

18 Q. Your development of the property contemplates a sewer
19 being put in, right?

20 A. Excuse me?

21 Q. Your development that you proposed for the Gyrodyne
22 property for the industrial park, contemplates building a sewer,
23 right?

24 A. Not necessarily, no, it depends on what it is.

25 Q. When you say it depends on what it is, do you have an

1 understanding as to whether or not you could build out the
2 industrial park that you're proposing, 256 acres without putting
3 in a sewer system?

4 A. I think you might be able to do it with septic
5 systems, depending on the size and nature of the buildings.

6 Q. Did you look at Mr. Grover's report? He says he
7 contemplates there will be a sewer system will be built for this
8 property?

9 A. Are you talking about a sewage treatment plant?

10 Q. Yeah, sewage treatment.

11 A. Is that for residential or for business? The
12 requirements are different.

13 Q. Well, he seems to -- he says the likely use is light
14 industrial or mixed use, and he says in the beginning of his
15 report, he contemplates a sewage treatment plant being built,
16 okay. I didn't talk to him, you did, you relied on him
17 significantly.

18 Do you understand whether or not he contemplated a
19 sewage treatment plant would be built?

20 A. Well, apparently he did contemplate that.

21 Q. Did you, for purposes of your analysis contemplate a
22 sewage treatment plant would be built?

23 A. No, I did not.

24 Q. You contemplated it would not be built or just --

25 A. I didn't really deal with it, because I didn't

1 concretize the plans to that extent. I was talking about a
2 subdivided business park, a land development scheme.

3 Q. Have you ever looked at the sewage districts in
4 Suffolk County?

5 A. No, I have not.

6 Q. Would you take a look at Exhibit 11, please? This is
7 already into evidence. This is a map of the Suffolk County
8 sewer district. Do you know if any of the properties that you
9 used as comparables, if any of them are in this -- a sewer
10 district? I'll give you a hint, the sewer districts are in
11 yellow bold?

12 A. Yes, I think some of them are.

13 Q. Are you sure?

14 A. I would have to study this with a magnifying glass.

15 Q. I'd also like to show you Exhibit 9, if I could.

16 MR. CLASEN: (indiscernible) that and it's
17 already into evidence, Your Honor.

18 Q. And that is a Suffolk County Department of Health
19 Services, for sanitary code article six and it shows the areas
20 of zoning. Do you see that?

21 A. Yes.

22 Q. Do you know what zone the subject property is in?

23 A. I think it's in zone three, but I'm not entirely sure,
24 because I would need a magnifying glass. Or maybe it's in zone
25 eight.

1 Q. Do you know where all the comparables that you have in
2 your report, what zone they're in, or zones?

3 A. I --

4 Q. They're all going to be in zones anyway.

5 A. Three and six.

6 Q. Three and six, right.

7 A. Okay.

8 Q. Do you know if the requirements for sewers and pardon
9 me, the requirements for what you can put into the ground,
10 right, for development purposes are different in zone eight
11 versus zone 66?

12 A. I would presume they are different because they're
13 different zones, but I don't know.

14 Q. And did you take that into account at all when you
15 were looking at the comparable properties?

16 A. No, I did not.

17 Q. Well, did you take into account the fact that
18 properties that may be limited under article 6 may sell for less
19 than properties that aren't as restricted?

20 A. No, I did not.

21 Q. Do you know if any of the properties that you looked
22 at, the comparables, if any of them had access to a sewer
23 system?

24 A. 8510, 8515, 8516, 8534, 8535, 8538 and 8539 had access
25 to sewer systems.

1 Q. Let's do them one at a time. 8510, how do you know it
2 has access to a sewer system?

3 A. I went by it and I saw it.

4 Q. You saw the sewer system?

5 A. No, I didn't see the sewer system, but I saw the
6 property. I don't think it would've mattered in this case
7 because there's no affluent here, it's a self-storage complex.

8 Q. Right. But I asked -- the question was, did it have
9 access to a sewer system?

10 A. I believe this does, yes.

11 Q. What's the basis for that? You believe it, you drove
12 by it, did you see the sewer system?

13 A. I didn't see the sewer system. I verified the sale.
14 I think I verified the sale with the buyer, and I spoke to the
15 buyer.

16 Q. By the way, did you verify all the sales?

17 A. Yes.

18 Q. Did you mention it once in your report that you
19 verified it?

20 A. I don't recall if I mentioned it or not.

21 Q. Aren't you supposed to put in your reports, when you
22 verify it, who you spoke with and what they told you?

23 A. What they told me?

24 Q. Yeah. What they verified.

25 A. I'm not sure if that's required, is it. I don't think

1 it's a requirement.

2 Q. Let me go back. I'll get to it in a second. I didn't
3 realize you were going to ask me what was required. You put no
4 verifications in it, but you said you did verify this.

5 A. Yes.

6 Q. And you spoke to the person who told you it had a
7 sewer.

8 A. Yes.

9 Q. And you didn't put it in here, it's no where in your
10 report, right?

11 A. No.

12 Q. Okay. And you're sure it had a sewer?

13 A. I'm not positive, but I assume to recall having that
14 discussion.

15 Q. All the other ones you just mentioned, right, if we go
16 through each one of them, is there going to be any mention of
17 sewer in your report?

18 A. On some of them, yes.

19 Q. Okay. Show us which ones.

20 A. 8515 on page 116, it says, "All public utilities are
21 available."

22 Q. Do you understand all public utilities to include
23 sewer?

24 A. Yes.

25 Q. Did you ask -- did you verify this with this person

1 and ask them, do you have access to a sewer?

2 A. I verified it, I don't recall off hand who I verified
3 it with.

4 Q. How big a property is this?

5 A. This is 10.5 acres.

6 Q. Okay. Would you look at the sewer map?

7 A. Yes.

8 Q. Okay. Is it in any one of the sewer districts?

9 A. I can't tell you, because I can't discern anything on
10 that map, it's too small. My eyesight isn't that good anymore.

11 Q. Okay. Well, if it doesn't have access to a public
12 sewer district, do you know if it has access to a private sewer
13 system somehow set up?

14 A. It has access to sewers, I didn't inquire whether it
15 was public or private.

16 Q. You're sure the person told you it had access to
17 sewers?

18 A. That was my recollection.

19 Q. Who?

20 A. I don't recall.

21 Q. You don't recall their name. Do you remember when you
22 spoke to them?

23 A. It probably would've been on the telephone or some of
24 these buildings, I walked in and talked to people.

25 Q. But all you remember is they said sewer, right?

1 A. I think so, yes.

2 Q. All right. What's the next one you say?

3 A. 8516.

4 Q. And again, okay, why do you believe that this had
5 access to a sewer, because it says access to a sewer? Are you
6 sure this one has access to a sewer?

7 A. That's my recollection.

8 Q. Is it in any one of the sewer districts?

9 A. I can't tell from that map.

10 Q. Was your belief that it had access to a sewer, because
11 you thought it was part of a sewer district?

12 A. No, because I didn't look at the sewer map. I didn't
13 look at the sewer district map.

14 Q. It's because somebody told you?

15 A. Yes.

16 MR. CLASEN: I'm trying to get done by 4:30, Your
17 Honor. So I'm going to jump ahead.

18 THE COURT: It's up to you, Mr. Clasen, I'll be
19 here tomorrow, there's no problem.

20 MR. CLASEN: I thought you were -- I sensed a
21 little leaning to get done, so. All right.

22 Q. Let's go to the next one. Which one is your next one
23 you say that actually is part of a -- has a sewer.

24 A. 8534.

25 Q. And that's because you had all public utilities are

1 available?

2 A. That's the statement I made, yes.

3 Q. Right. Is a public utility accessing one of the sewer
4 districts, is that what you understood that to mean?

5 A. I understand it to mean that there is access to water
6 and sewer.

7 Q. How do sewers work in Suffolk County, do you know?

8 A. That's a very broad question. I presume that you can
9 hook up to a sewer with permission.

10 Q. What sewers exist in Suffolk County?

11 A. There are different sewage treatment plants or sewer
12 mains.

13 THE COURT: The reason everybody in the courtroom
14 is smiling is if you've lived in Suffolk County long
15 enough, that's not necessarily a question you'd ask out
16 loud. You can go ahead with it.

17 Q. Do you --

18 THE COURT: Sorry, Mr. Clasen. I didn't mean to
19 throw you off. All of us who have lived here a long time
20 are just --

21 THE WITNESS: Well, I've never lived in Suffolk
22 County, so.

23 THE COURT: Never, take care of that.

24 MR. CLASEN: Let me do this. Would you put that
25 up on the screen for me, please?

1 Q. Let's look at 8510, if we could for a moment.

2 MR. RYAN: I'm sorry, did you say 8510, Mr.
3 Clasen?

4 MR. CLASEN: 8510, yes, I did.

5 MR. RYAN: Thank you.

6 Q. This is one of the comparable sales that you used,
7 right?

8 A. Yes.

9 MR. CLASEN: Okay. This is in evidence by the
10 way, Your Honor. This is in evidence, we know already,
11 okay?

12 THE COURT: I understand.

13 Q. Okay. And what we put up here was a -- actually a
14 little picture of that site. Do you see that?

15 A. Yes.

16 Q. Have you been here?

17 A. Yes.

18 Q. Okay. And you valued this as if it is 8.2 acres,
19 right?

20 A. Yes.

21 Q. Of useable land?

22 A. It's 8.2 acres gross.

23 Q. How much of it is useable?

24 A. That I couldn't tell you.

25 Q. Is it important when you're identifying a comparable

1 sale, that you attempt to identify the useable acreage of the
2 sale?

3 A. No, not necessarily.

4 Q. So if some of the acres are non-useable, you value --
5 you just take the price -- the total purchase price and divide
6 it by all the acres, including the ones you can't use for
7 anything?

8 A. That's what I do, yes.

9 Q. Would you be surprised to know that with respect to
10 this property, right, there's only 2.5 useable acres?

11 A. That's enough for the self-storage complex.

12 Q. Well, that's wet lands.

13 A. Okay.

14 Q. Did you know that?

15 A. Yes.

16 Q. You knew it was wet lands when you did this, right?

17 A. I knew there was some wet lands, I didn't know it was
18 only two and a half useable acres.

19 Q. But that wouldn't have mattered to you when you were
20 determining how much it sold for on a per acre basis, right?

21 A. No, because it's simply lower density development.
22 It's still 8.2 acres with a lower density development, and it's
23 probably lower density than the zoning would permit. But the
24 gentleman who bought it, bought it to build a self-storage
25 complex and he did.

1 Q. And when this person bought it, he paid \$125,000 per
2 acre, you said, right?

3 A. Yes.

4 Q. And he paid 125 for the 2 point -- each one of the 2.5
5 acres that he could use, right?

6 A. Well, he got the whole thing, 8.2 acres.

7 Q. Yeah, but you contribute it on a per acre basis. So
8 this purchaser paid 125 times 2.5 for what he could use, and 125
9 times six for what he couldn't use.

10 A. Well, he might not have been able to build as many
11 storage lockers if he didn't have that extra wet land to count
12 for density. I don't know. But he bought it as a site for a
13 self-storage complex.

14 Q. Do you know if wet lands can be used to count the
15 density?

16 A. I'm not sure of the zoning here.

17 Q. You're not sure of the zoning, but you used this as a
18 comparable property, right?

19 A. I used it as a comparable, because it was a site for a
20 self-storage complex.

21 Q. If instead of dividing the total purchase price by the
22 total acreage, you had divided it by just the useable land, do
23 you know what number you come up with?

24 A. I come up with a much higher number.

25 Q. Right. Okay.

1 A. \$500,000 an acre.

2 Q. So this person paid \$500,000 per acre for what he
3 could use, right? He couldn't use the wet lands for anything.

4 A. Well, it's really a matter of the density, the
5 development density, and I'm contemplating a low intensity
6 development on the Gyrodyne parcel, whoever buys ten acres,
7 might just put a 30,000 foot building on ten acres, or a 50,000
8 foot building on ten acres, and the density wouldn't be any
9 higher than here.

10 Q. What greater density was going to be permitted for
11 this person who's buying these acres, by the fact that they're
12 also getting the wet lands?

13 A. Excuse me?

14 Q. What greater density was going to be permitted, that
15 you're aware of, for the development of the two and a half
16 acres, by reason of the fact they're buying the adjoining wet
17 lands?

18 A. I'm quite sure that the gentleman who bought it was
19 not looking at density or wet lands, he contemplated a certain
20 size self-storage complex that he thought would be viable in the
21 market, and this is a good site for it. And he paid \$1,025,000
22 and he built the self-storage company.

23 Q. By the way, when you describe 8510, did you mention it
24 to be wet lands?

25 A. No.

1 Q. And when you describe the zoning actually for the
2 subject property, do you mention the fact that Brookhaven had a
3 comprehensive plan?

4 A. No, I don't mention it.

5 Q. Was the fact that the Brookhaven comprehensive plan
6 identified this as a property that should be rezoned to PDD, did
7 that have any impact on your analysis?

8 A. I was not aware of it at the time I wrote the
9 appraisal, but I have since read the PDD ordinance, and no, it
10 wouldn't, because the PDD just asks for a master plan. It
11 doesn't specify a specific type of use.

12 MR. CLASEN: Your Honor, now I'm going to be
13 jumping around about a few loose things, and then I'm going
14 to hit another topic if I could.

15 Q. Earlier today, you were telling us that no developer
16 is going to get involved in this thing, because they have to --
17 it could be ten years before they could build this, right?

18 A. It's going to discourage some developers.

19 Q. Well, is it going to discourage them all?

20 A. No. No. I think the property is marketable.

21 Q. Remember you were talking about discouraging -- the
22 ten years was discouraging them from purchasing it for
23 development of residential. Some of them are still going to be
24 willing to buy it?

25 A. Yes.

1 Q. Okay. Because after all, the potential value for
2 residential is so high, they may be willing to wait, right?

3 A. Well, that's conceivable, but it's a matter of what
4 the price is.

5 Q. So now I'm lost. We have developers who are willing
6 to wait for ten years, and there's a reasonable probability if
7 they're getting rezoned for residential, right?

8 A. Over time, it's possible, yes.

9 Q. But you still didn't appraise it that way, right?

10 A. No, I did not appraise it that way, because I don't
11 know what the number of units approved would be.

12 Q. You know, you've got a lot of numbers in your report
13 when you do the income analysis regarding the costs for
14 infrastructure, engineering fees, professional fees, insurance,
15 real estate. Do you remember all of those?

16 A. Yes.

17 Q. And most of them are on page 88 of your report, some
18 of them are around 68.

19 A. Yes.

20 Q. Okay. Now, to get the costs for the infrastructure, I
21 assume you went to an engineer and got those numbers?

22 A. No, I did not.

23 Q. You're not an engineer, though, right?

24 A. No, I am not.

25 Q. In order to get the cost for the professional fees, I

1 assume you went to all these professionals and asked them what
2 they estimated?

3 A. No.

4 Q. You're not any of these anyway, right? You're not --

5 A. No, I am not.

6 Q. And the insurance, you went to an insurance person and
7 got those numbers?

8 A. No.

9 Q. But you're not in the insurance business, right?

10 A. No, I'm not.

11 Q. Now, the real estate taxes, you used actual
12 information, but the property maintenance, did you contact
13 somebody to get those numbers?

14 A. No.

15 Q. And the sales costs, you got that from somebody else?

16 A. That's a percentage. It's a percentage of the gross
17 sales.

18 Q. Right. But where did you get the percentage to use?

19 A. I estimated it.

20 Q. Okay. Did you ask somebody what's the proper
21 percentage to use?

22 A. No.

23 Q. Okay. And the developer's overhead, I assume you went
24 and contacted the developer and asked them what they would
25 reasonably be expecting?

1 A. There is no developer now.

2 Q. Well, there are other developers in the world, right,
3 you could ask this hypothetical question to them? You didn't --
4 sorry.

5 A. I don't think there are many developers who would give
6 you a number like that. It's what they choose for the
7 particular project. It's appropriate to the project.

8 Q. So this number comes from you also, right?

9 A. Yes.

10 Q. In fact, all those costs and fees and everything that
11 we see in pages 68 and 88 like the two income analysis, okay,
12 let me make sure I got the right pages here, it's actually 69,
13 88 and --

14 A. I think --

15 Q. -- a couple of them are on 68 and a couple of them are
16 over to page 70.

17 A. I think --

18 Q. All those numbers are coming from you, right?

19 A. Yes. Yes.

20 Q. Okay. And you have no expertise in any of those
21 matters, right?

22 A. No. These are the types of numbers that I use on
23 other similar projects.

24 Q. Okay. Well, did you consider using other numbers
25 here?

1 A. Yes, I did.

2 Q. Okay. And I think before you mentioned, how did you
3 come up with these numbers? Did you just guess?

4 A. Pretty much I did guess, particularly with respect to
5 some of the studies preparing for approvals, because I gave
6 Gyrodyne the benefit of the doubt, assuming that a lot of the
7 studies they have already done could be applied by a subsequent
8 developer or for a different plan, they've already done a lot of
9 studies as part of their prior applications.

10 Q. Now, did you actually check through your whole report
11 before you submitted it?

12 A. Yes, I did, but I'm sure there are some errors.

13 Q. Well, how many errors are you aware of that are still
14 in here?

15 A. Four or five.

16 Q. Let's take a look at one of them on page 71, for
17 example. Now, this again is your cash flow schedule for
18 subdivision, right?

19 A. Yes.

20 Q. Year two, you have total expenses of \$833,000, right?

21 A. Yes.

22 Q. That's not right.

23 A. You're right, it's incorrect.

24 Q. Right, it should be what, 419, 533?

25 A. Yes. Yes.

1 Q. Over \$400,000 error here, right?

2 A. You are correct.

3 Q. I mean, did you look for more of those in here?

4 A. I -- no, I didn't look for more of them, no.

5 Q. You have, for example, on page 62, you mention that a
6 building --

7 MR. RYAN: I'm sorry, what page did you say,
8 Counsel?

9 MR. CLASEN: Page 62, page 62.

10 Q. -- you believe that buildings 18 and 25 are going to
11 be destroyed, right? They're going to be raised, pardon me.

12 A. I think I'm projecting that they're going to be raised
13 sooner than the other buildings would.

14 Q. But then you go on and value those buildings, right?

15 A. Yes.

16 Q. Even though your estimate is they're going to be
17 raised way before this ten year building, right?

18 A. Well, I said before. They're much more expendable
19 than any of the other buildings.

20 Q. You know in your addenda you talk about some other
21 opportunity sales. Remember that?

22 A. Yes.

23 Q. One is South Hampton College, right?

24 A. Yes.

25 Q. And you mention that that property is an exciting

1 opportunity because of its long shore frontage.

2 THE COURT: Excuse me, Mr. Clasen, are you
3 talking about page 165?

4 MR. CLASEN: I believe so.

5 THE COURT: All right. Thank you.

6 Q. Do you remember that?

7 A. Yes.

8 Q. Do you know if it has any frontage on the shore?

9 A. Yes, it does.

10 Q. Did you go there?

11 A. Yes.

12 Q. Do you know if their property -- and your testimony is
13 their property has frontage on the shore?

14 A. Yes, it does. It's on Chinnock Bay.

15 MR. CLASEN: Can we not take a break, Your Honor,
16 but just go off the record for a second, I was just going
17 to ask Mr. Ross something.

18 THE COURT: Sure. Off the record.

19 (Off record.)

20 THE COURT: Now, you may.

21 MR. CLASEN: See, the first time I didn't ask, I
22 made a mistake. May I, Your Honor?

23 THE COURT: Yes.

24 MR. CLASEN: No further questions.

25 THE COURT: Thank you. Mr. Ryan, would you like

1 to do redirect now?

2 MR. RYAN: I have no redirect, Your Honor.

3 THE COURT: You're excused, sir.

4 THE WITNESS: Thank you, Your Honor.

5 MR. RYAN: I have no further witnesses, Your
6 Honor. This concludes the State's case.

7 THE COURT: Fine. I take it we're finished.

8 MR. CLASEN: I believe we are, Your Honor.

9 THE COURT: Okay. As I told both you gentlemen
10 before we started, I don't take closing statements, which
11 is probably lucky since it's 4:18 this afternoon. I assume
12 you're both out of good voice at this point anyway. But I
13 will take a memorandum of law after you've received the
14 transcript. Normally I give 30 days for that, but
15 considering the complexity of this matter, why don't we
16 just set a date of November 23rd, which is the Monday
17 before Thanksgiving, which should give you probably, my
18 guess, a good two months if not longer, after receiving
19 transcripts to prepare memorandum of law and to get it to
20 the Court by then. Is that acceptable?

21 MR. RYAN: Very good.

22 THE COURT: Mr. Ryan?

23 MR. RYAN: That seems fine, Judge.

24 MR. CLASEN: Thank you very much, Your Honor,
25 that's fine.

1 THE COURT: Okay. Fine. Thank you very much.
2 And I think we're finished. We stand adjourned.

3 (Off record.)

4 THE COURT: I'm basically being told by my law
5 clerk as I'm being generous and that November 23rd means
6 November 23rd, which is probably three weeks longer than he
7 would've wanted, but that's all right, we'll keep it at
8 November 23rd.

9 THE MONITOR: I appreciate that, Your Honor.

10 MR. RYAN: Very good, Your Honor.

11 (Whereupon, this matter was concluded at 4:19:06
12 p.m.)

13 - o0o -

14

15

16

17

18

19

20

21

22

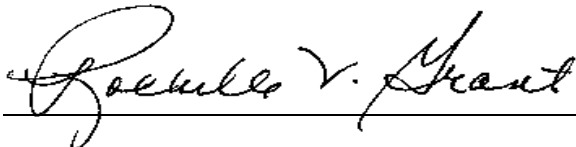
23

24

25

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 18, 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

A SWIFT SCRIPT

(888) 866-5134 ♦ (800) 860-5722 fax